



**U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division**

Review of the Office of International Affairs' Role in the International Extradition of Fugitives

Report Number I-2002-008

March 2002

MEMORANDUM FOR MICHAEL CHERTOFF
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

FROM: GLENN A. FINE (original signed)
INSPECTOR GENERAL

SUBJECT: Review of the Office of International Affairs' Role in
the International Extradition of Fugitives, I-2002-
008

Attached is the final report on our review of the Office of International Affairs' (OIA) Role in the International Extradition of Fugitives. We assessed whether OIA managed the extradition process effectively and whether OIA appropriately carried out its extradition responsibilities.

We found that OIA does not actively manage its extradition caseload in a manner that ensures that all necessary actions on extradition cases are completed. Our review of 58 cases indicated that OIA could have taken additional action in nearly 60 percent of the cases. Under its current practices, OIA has not developed internal policies, procedures, or standards for processing extradition cases that delineate staff responsibilities, time frames, or priorities to guide employees or communicate management expectations.

In our review of extradition case files, we found the majority were either disorganized or missing key documents and information. From the conditions of the case files, the history and status of the extradition requests could not be readily determined. OIA has not established and implemented standards for maintaining the extradition case files.

OIA's centralized automated case tracking system, the Extradition Tracking System, is not used office-wide as a case tracking system and OIA staff do not find the system to be reliable or user-friendly. While OIA staff have devised their own methods for tracking cases, we found these methods are inadequate for the volume of extradition cases that must be tracked and for the type of data needed for management oversight.

To conform to the Government Performance and Results Act of 1993, OIA established performance measures for its treaty negotiation responsibility. However, OIA has not established performance measures

for its other major responsibilities, such as processing extradition requests and evidence requests under the treaties.

We sent copies of the draft report to your office on December 10, 2001, and requested written comments on the findings and recommendations. We have attached your comments as an appendix to the final report. We have incorporated the comments where appropriate. On the basis of your written comments, we consider Recommendations 1, 2, 3, 4, and 5 open and resolved. To close the recommendations, please provide the documentation listed in Appendix IV of the report within 60 days.

We appreciate the courtesies extended to our staff. We hope the information contained in the attached report will be useful in your efforts to improve the extradition process.

Attachment

cc: Julie Wellman
Liaison
Criminal Division

Vickie L. Sloan
Director
Departmental Audit Liaison Office

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EXECUTIVE DIGEST

International extradition is the formal process by which a fugitive found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the U.S. government and a foreign government. As of February 2001, the United States had extradition treaties with 109 countries, with some treaties dating back over 100 years.

The Criminal Division's Office of International Affairs (OIA), established in 1979, is the central point of contact within the Department of Justice (Department) for U.S. prosecutors and foreign governments seeking to extradite fugitives. OIA's role is to facilitate an extradition by providing advice and assistance to U.S. and foreign prosecutors regarding legal, procedural, and other aspects of the extradition process and to process extradition requests for fugitives wanted in the United States and foreign countries. Even though OIA attorneys do not direct the investigation and prosecution related to an extradition, OIA has significant responsibility in the extradition process that affects the overall progression of, and law enforcement decisions relating to, the extradition. OIA is responsible for managing the information it receives pertaining to specific extradition requests, intelligence regarding a fugitive's activities and location, law enforcement initiatives occurring in a country, and diplomatic communications.

Each year since 1990, OIA has opened between 670 to 950 cases for the extradition of fugitives based on requests from U.S. prosecutors and foreign governments. During the same time period, OIA closed between 380 to 960 cases per year. OIA's rate of case closure has not kept pace with the number of new cases, resulting in a pending caseload that has increased over 100 percent since 1990. As of November 2000, OIA had 3,636 extradition cases pending -- approximately 1,100 cases where fugitives wanted by foreign governments were believed to be in the United States and approximately 2,500 cases where fugitives wanted by the United States were believed to be in foreign countries. Included in these cases are requests that were presented to the appropriate governments up to 27 years ago.

The Evaluation and Inspections Division, Office of the Inspector General (OIG), assessed whether OIA managed the extradition process effectively and whether OIA appropriately carried out its responsibilities for the international extradition of fugitives. OIA does not have written policies and procedures that describe the office's responsibilities in processing extradition requests within OIA. Consequently, we examined case files, interviewed OIA managers and staff, other Department officials, and reviewed statistical information contained in OIA's case tracking system in an effort to understand OIA's work processes. We selected a sample of 70 extradition case files from the total pending cases and

cases closed during fiscal year 2000. Of the 70 cases, 39 cases were closed and 31 were open. Of the 70 cases, OIA did not produce 12 case files before we concluded our review.¹

Our review of the 58 case files disclosed that OIA's effectiveness in processing and managing an extradition request was inconsistent, depending upon its stage in the extradition process and the status of any pending actions. We found that in most of these cases OIA was effective during the initial review of an extradition request when it ensured the extradition request met treaty requirements and satisfied other legal and diplomatic requirements. OIA also provided support during the extradition procedures once a fugitive was apprehended. For the cases we reviewed, we found that OIA met extradition deadlines, such as submitting extradition documents after a provisional arrest. OIA's attention to an extradition request diminished, however, after it had taken these actions. With few exceptions, we found that OIA did not review cases to determine whether follow-up action was needed, to ensure that OIA had taken all action it should on the cases, or to close cases in a timely manner.

Although it is reasonable for extradition cases to remain open for many years because of legal, diplomatic, or law enforcement issues, we found that many cases remained open due to inattention. We found various reasons for OIA's inattention to pending cases. According to OIA staff, they did not follow up on cases because of the steady receipt of new extradition cases that required immediate attention, the large volume of cases assigned to each attorney made follow-up not feasible, and a view that it was not OIA's responsibility to initiate follow-up on pending cases. According to OIA officials, U.S. and foreign investigators, prosecutors, and officials are responsible for monitoring their extradition cases and for initiating any follow-up action needed to further the extradition. However, we found that OIA missed opportunities to provide information that could have advanced the extradition effort.

For 34 of the 58 extradition cases we reviewed, we found that OIA could have taken additional action if it had reviewed the cases regularly and followed up with foreign and U.S. prosecutors. The types of actions that OIA could have taken included closing cases in a more timely fashion, determining the status of requests for additional information from USAOs and foreign officials pertaining to an extradition, and determining the status of case actions and providing the information to appropriate prosecutors and law enforcement agencies.

¹ In commenting on a draft of the report, OIA stated that part of the problem in providing these 12 cases was the National Records Center's inability to find the case files; or the Center's late retrieval of the files; or the OIA's erroneous entries into the Extradition Case Tracking System that showed the cases as open, when in fact they were closed and at the National Records Center.

We also found that OIA's case files were not complete and not maintained in an organized manner. To effectively provide advice and assistance in extradition cases, OIA staff must have access to organized and complete information regarding actions on extradition cases. Additionally, as a result of attorney turnover and absences from the office, OIA staff attorneys must often assume responsibility for other attorneys' extradition cases and quickly familiarize themselves with the case details. Therefore, case files should contain all case-related information so an attorney unfamiliar with the case can easily discern its status and history. In 31 of the 58 extradition case files we reviewed, either documents were not in any discernible order or key documents and information were missing.

The Extradition Tracking System (ETS) – OIA's centralized automated case tracking system – is designed to track case information and correspondence, identify and monitor the status of extradition cases, and generate statistics about the extradition process such as the number of pending extradition cases. Of the 14 staff members we interviewed, 10 (6 attorneys and 4 paralegals) said that they generally do not use ETS to determine case status. They said that ETS is unreliable or not user friendly. Many staff members said they use ETS to determine basic case identifying information, such as the OIA attorney assigned, but if they want to determine case actions or status, they refer to the case file. Instead of using ETS to monitor case activities, staff have devised their own methods for tracking cases. For instance, some country team attorneys and paralegals track deadlines and cases by handwriting provisional arrest request dates on their desk calendars, maintaining a mental list of open cases, and attaching notes to case files. Thus, OIA has not integrated its automated system into its case management responsibilities.

We concluded that OIA did not manage individual extradition cases or its overall caseload as effectively as it could because OIA has not developed adequate case management procedures. Cases are not prioritized for follow-up and OIA staff and supervisors do not systematically review pending matters. Unless prompted by outside entities, OIA does not usually follow up with U.S. or foreign officials. This failure to fully manage the extradition process and individual extradition cases occurred primarily because OIA has not established clear objectives for case management, has not developed procedures for systematically reviewing cases, has not developed standards for case file maintenance, and has not incorporated its automated case tracking system in the case management process. Without these basic management procedures, OIA cannot ensure that it has taken sufficient actions on each extradition case.

We made five recommendations to help OIA improve its management of the extradition process and accomplish its responsibilities for the international extradition of fugitives: (1) develop extradition case management policies and procedures that require periodic review of cases by OIA attorneys and their supervisors to ensure legal sufficiency, timeliness, and completeness of actions; (2) coordinate with the Department's law enforcement components to develop

strategies for law enforcement officials to identify individuals who are the subjects of extradition requests; (3) develop standards for maintaining complete and organized extradition case files and accounting for the physical location of each file; (4) incorporate into the extradition process an automated case tracking system that provides reliable and complete data; and (5) develop performance measures for processing extradition requests and for monitoring OIA's progress in meeting its goals.

INTRODUCTION

International extradition is the formal process by which a fugitive found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the U.S. government and a foreign government. As of February 2001, the United States had extradition treaties with 109 countries.

The Criminal Division's Office of International Affairs (OIA), established in 1979, is the central point of contact within the Department of Justice (Department) for U.S. prosecutors and foreign governments seeking to extradite fugitives. OIA provides advice to U.S. and foreign law enforcement organizations and processes extradition requests for fugitives wanted in the United States and foreign countries.

Each year since 1990, OIA has opened between 670 to 950 extradition cases based on requests from U.S. prosecutors and foreign governments. During the same time period, OIA closed between 380 to 960 cases per year. OIA's case closure rate has not kept pace with the number of new cases, resulting in a pending caseload² that has increased over 100 percent since 1990. As of November 2000, OIA had 3,636 extradition cases pending – approximately 1,100 cases where fugitives wanted by foreign governments were believed to be in the United States and approximately 2,500 cases where fugitives wanted by the United States were believed to be in foreign countries.

The Evaluation and Inspections Division, Office of the Inspector General (OIG), reviewed the extradition process at OIA. The review assessed whether OIA managed the extradition process effectively and whether OIA carried out its role and responsibilities for the international extradition of fugitives.

Background

The extradition of a fugitive from one country to another involves coordination and cooperation among law enforcement personnel, prosecutors, and other government officials. OIA's role is to facilitate the extradition process and provide advice and assistance on international criminal matters to both U.S. and foreign law enforcement authorities. OIA supports the Department, U.S. Attorneys' offices (USAO), and state and local prosecutors on issues of

² Pending cases are cases that are not closed by the end of calendar year and are carried forward into the next year.

international law, including extraditions. It also serves as the United States' central point of contact for foreign law enforcement authorities on international criminal matters.³

For extradition requests, OIA reviews legal documents to ensure they meet the treaties' requirements, provides to U.S. and foreign prosecutors advice and assistance that will increase the likelihood of fugitives' extraditions, and recommends ways of resolving problems with extradition cases. When an extradition in a foreign country is not viable, OIA can advise and assist U.S. prosecutors and law enforcement personnel about pursuing other options, such as seeking deportation of a fugitive or issuing an Interpol Red Notice⁴ to facilitate the fugitive's apprehension. When a foreign government's extradition request does not meet the requirements of the United States, OIA informs the foreign government of the request's deficiencies. However, the foreign government, not OIA, is responsible for determining its next action based on its own government's recommendations.

OIA also negotiates agreements on international criminal matters in concert with the U.S. Department of State and other government agencies. OIA's principal concentration is bilateral extradition and mutual legal assistance treaties (MLAT),⁵ but it also negotiates executive and general multilateral law enforcement agreements. In addition, OIA processes MLAT and non-treaty evidence requests and provides information and advice on international criminal matters to the Attorney General and other senior Department officials.⁶

To accomplish its responsibilities, OIA has five teams – four country teams and a “Multilateral Team” – each headed by an Associate Director and staffed with attorneys, paralegals, and support personnel. The number of attorneys and paralegals varies by team.

³ OIA Mission Statement, January 17, 2001.

⁴ An Interpol Red Notice is an international system that distributes information regarding individuals wanted by law enforcement agencies. A Red Notice is submitted by a country that seeks the arrest of a fugitive for whom an arrest warrant has been issued and the fugitive's whereabouts are unknown. When a country issues a Red Notice, the country is making a commitment to extradite the fugitive if arrested.

⁵ MLATs allow one country to directly request evidence through another country's justice agency contact, such as OIA in the United States.

⁶ When we interviewed OIA staff as part of our review, they stated that extraditions were OIA's “highest priority.” In commenting on a draft report, however, OIA stated that extraditions were a “high priority,” and emphasized its work handling requests for evidence under MLATs and providing advice on international criminal matters to Department officials.

According to OIA records, about 25 staff attorneys and 11 paralegals are assigned to four country teams that are responsible for processing requests from both U.S. prosecutors and foreign governments. The country teams process cases that fall within the following geographic areas:

- Team I (United Kingdom/Africa) – responsible for Ireland, Africa, and the United Kingdom (UK) and its dependencies, and English-speaking Caribbean nations.

At the time of our review, Team I had 386 open extradition cases, 107 of which involve the UK.

- Team II (European) – responsible for Europe (except the UK) and the Caribbean islands controlled or formerly controlled by European countries other than the UK.

At the time of our review, Team II had 609 open extradition cases. Unlike the other country teams, no one country dominates Team II's extradition cases. The top four countries are: Switzerland with 86 cases, Federal Republic of Germany with 72 cases, the Netherlands with 66 cases, and France with 60 cases.

- Team III (Latin American) – responsible for Mexico, Central and South America, and Spanish-speaking Caribbean nations.

At the time of our review, Team III had 1,693 open extradition cases. More than half of these cases (849) involved Mexico.

- Team IV (Asia/Canada) – responsible for Asia (which includes the Middle East), Canada, Australia, New Zealand, and Pacific islands.

At the time of our review, Team IV had 942 open extradition cases. Slightly less than half of these cases (456) involved Canada.

The country teams are supported by two OIA sections: the Docketing Unit and the Fugitive Unit. The Docketing Unit is responsible for recording the opening of all extradition cases in the automated Extradition Tracking System (ETS) and preparing the official case file folders that are maintained in the

Docketing Unit's file room.⁷ This unit also receives all incoming correspondence and excerpts information from it into ETS. Original documents are forwarded to the appropriate country team to be included in the extradition case file folders maintained by the teams. This unit also is responsible for recording the closing of all extradition case records in ETS and retiring files to the Federal Records Center.

At the time of our review, OIA had one attorney assigned to the Fugitive Unit. This unit was responsible for maintaining a registry of U.S. fugitives who, after the United States made an original extradition request to a foreign country, eluded law enforcement authorities. This unit notified the country teams when a U.S. fugitive was located abroad so the appropriate country team could contact the prosecutor to ascertain whether the jurisdiction was still interested in pursuing the extradition. The Criminal Division informed us that the unit was abolished after we completed our field work.

OIA has a "Multilateral Team" that is responsible for assisting in the negotiation of multilateral law enforcement treaties.⁸ The team, consisting of two attorneys, serves as the Department's contact for judicial matters involving international tribunals and international criminal courts. The team provides assistance regarding law enforcement activities of multilateral organizations and coordinates activities of Department components engaged in multilateral law enforcement activities.

⁷ When extradition cases are opened, the Docketing Unit establishes the official case file folder for each new case. After the Docketing Unit completes the official case folders, the country teams maintain all documents related to the cases in its own file folders until the cases are closed. Therefore, the official file folders contain only the documentation that officially opened the extradition cases. When cases are closed, the country teams send their case files to the Docketing Unit, which puts all the documents maintained in the country team's case files into the official case file folders.

⁸ A multilateral law enforcement treaty is a treaty to which more than two countries are parties for a law enforcement purpose. For example, a multilateral law enforcement treaty that addresses international trafficking in stolen vehicles establishes requirements for returning the vehicles. These treaties are negotiated through multilateral organizations, such as the Council of Europe and Organization of American States.

Over the past decade, OIA's total staff has not changed significantly, as shown in Table 1 below. The average number of attorneys and other professional staff is 41 and 17, respectively. While the total number of attorneys has decreased since 1992, the total number of administrative and other professional staff has increased.

Table 1. OIA Staffing Levels

End of Fiscal Year	Attorneys⁹	Administrative/Other Professional Staff	Total
1992	47	14	61
1993	45	12	57
1994	42	14	56
1995	37	18	55
1996	35	20	55
1997	40	20	60
1998	39	17	56
1999	43	17	60
2000	40	19	59

Source: OIA

Note: Staffing levels do not include clerical staff.

⁹ In addition to the attorneys in its Washington, D.C., office, five OIA attorneys are stationed overseas in Belgium, France, Italy, Mexico, and UK. Another OIA attorney is detailed to the U.S. National Central Bureau (USNCB) of INTERPOL as its General Counsel.

The numbers of extradition treaties and MLATs have grown significantly over the last ten years (see Table 2 below). The United States currently has 91 extradition treaties in force with 109 countries. Before 1990, there were four MLATs in existence. Since 1990, 34 additional MLATs have been established. Once these treaties take affect, OIA staff has the responsibility of processing the resulting extradition and legal assistance requests.

Table 2. Number of Treaties Entered into Force
From 1990 through February 1, 2001

Calendar Year	Extradition Treaties	MLATs	Total
1990	0	3	3
1991	4	1	5
1992	1	0	1
1993	2	4	6
1994	1	1	2
1995	1	2	3
1996	2	2	4
1997	4	2	6
1998	1	1	2
1999	9	9	18
2000	7	8	15
2001	1	1	2
Total 1990-2001	33	34	67

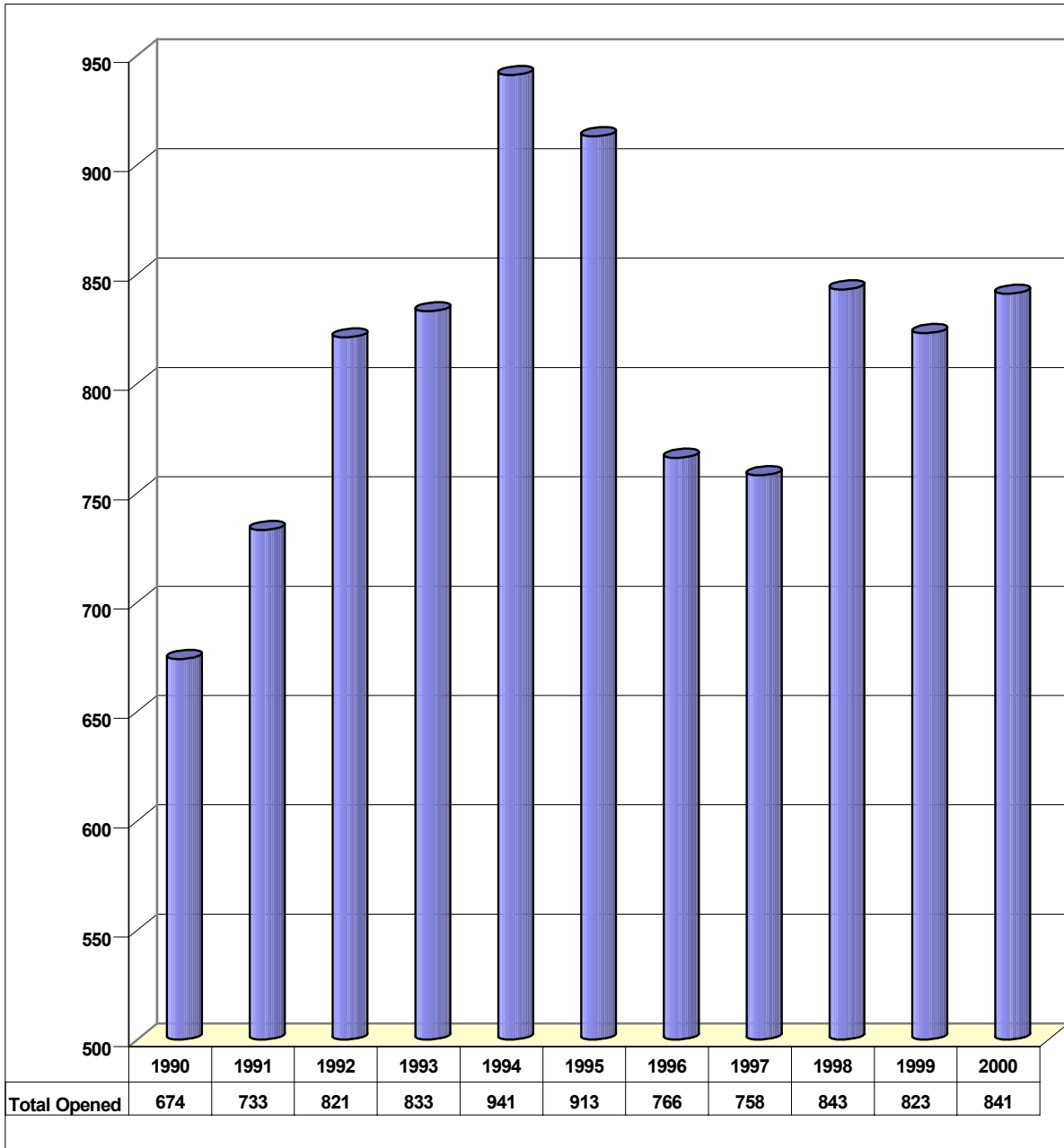
Source: OIA

According to data provided by OIA, the yearly number of incoming mutual legal assistance requests increased threefold from 439 to 1,555 between 1990 and 2000. During the same period, the number of outgoing requests more than doubled from 286 to 608. Appendix III includes a table prepared by the Criminal Division of mutual legal assistance requests by year. According to OIA officials, the expansion of MLATs has contributed to the increase in requests. In responding to our draft report, OIA officials suggested that the increase in mutual legal assistance requests has contributed to case management problems in OIA. The number of requests and methods used by OIA to process the requests were not reviewed during our assessment of the extradition process. Our interviews with OIA attorneys disclosed that mutual legal assistance requests were a large part of their workload. While OIA officials acknowledge that increased mutual legal assistance and treaty negotiation responsibilities do not excuse OIA's case management problems, they assert that these responsibilities increased OIA's overall workload and affected OIA's ability to handle its extradition responsibilities in a timely manner.

Although 33 extradition treaties entered into force¹⁰ from 1990 through 2001, the number of new extradition cases opened by OIA per year did not increase, remaining in the 700 - 900 case range. (See Figure 1 on page 8 for the number of new cases per year.) Thus, OIA's pending workload did not grow as a result of new treaties.

¹⁰ Of these extradition treaties, only four were entirely new treaty relationships (Jordan, the Philippines, South Korea, and Zimbabwe). The remaining treaties updated or entirely replaced outmoded treaties.

**Figure 1. Extradition Cases Opened
Calendar Years 1990 - 2000**



Source: OIA

According to data provided by OIA, the number of OIA's pending extradition cases at the end of each calendar year has been growing, as shown in Figure 2 on page 10. Although the number of new cases has not increased steadily since 1990, the number of pending cases has increased rapidly. In OIA's incoming extradition caseload,¹¹ the number of cases pending at the end of 2000 is over 2.5 times as large as that pending at the end of 1990 (see Table 3 below). The number of outgoing extradition cases pending at the end of 2000 is almost twice as large as that pending at the end of 1990 (see Table 4 below).

Table 3. Opened, Closed, and Pending Incoming Extradition Cases
Calendar Years 1990 - 2000

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Opened	137	216	264	237	303	340	275	237	274	200	218
Closed	211	153	167	214	244	176	141	129	266	199	188
Pending	422	485	582	605	664	828	962	1,070	1,078	1,079	1,109

Source: OIA

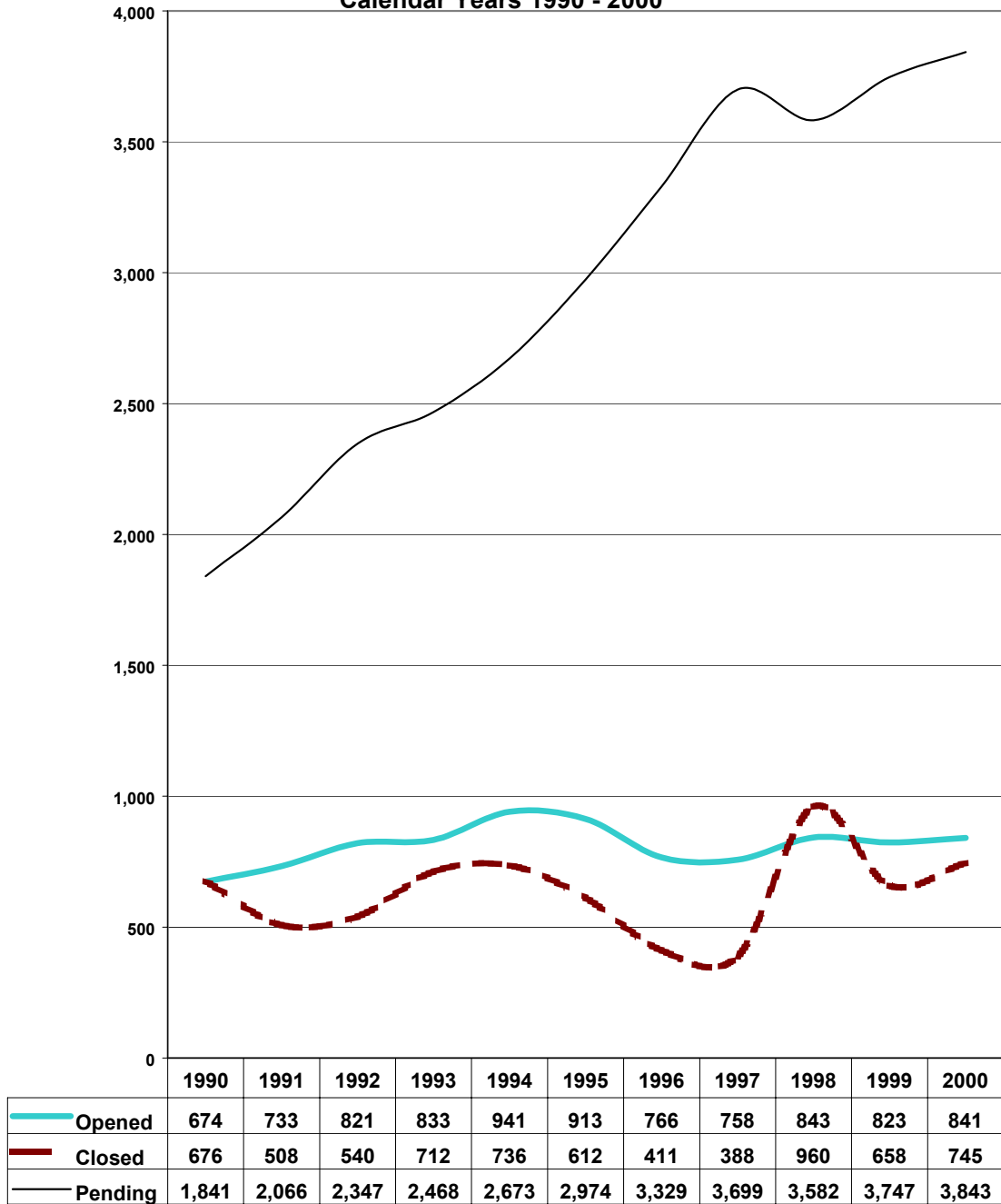
Table 4. Opened, Closed, and Pending Outgoing Extradition Cases
Calendar Years 1990 - 2000

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Opened	537	517	557	596	638	573	491	521	569	623	623
Closed	465	355	373	498	492	436	270	259	694	459	557
Pending	1,419	1,581	1,765	1,863	2,009	2,146	2,637	2,629	2,504	2,668	2,734

Source: OIA

¹¹ Extradition requests submitted by foreign governments to the U.S. government for the return of fugitives believed to be in the United States are referred to as *incoming* extradition requests. When the U.S. government submits extradition requests to foreign governments for the return of fugitives believed to be in the recipient countries, the requests are referred to as *outgoing* extradition requests.

**Figure 2. Total Opened, Closed, and Pending
Extradition Cases
Calendar Years 1990 - 2000**



Source: OIA

The Extradition Process

As the U.S. government's central point of contact in the extradition process, OIA's role combines both criminal justice responsibilities and international diplomacy. While processing an extradition request, OIA assesses the legal aspects of the specific case and whether the case complies with an extradition treaty. Part of this review involves ensuring that the extradition paperwork is properly prepared, the information regarding the fugitive is complete, the fugitive's location has been identified, documentation is included establishing probable cause that the fugitive has committed the specified crimes, and other legal requirements have been met.

Although OIA must ensure that each extradition request strictly adheres to treaty, legal, and procedural requirements, OIA staff use discretion to develop a course of action based on the circumstances of each particular case. OIA staff said a typical extradition takes two to four years from request through surrender. Other factors, including the complexity of the case or diplomatic considerations, may result in the extradition case remaining open for extended periods of time.

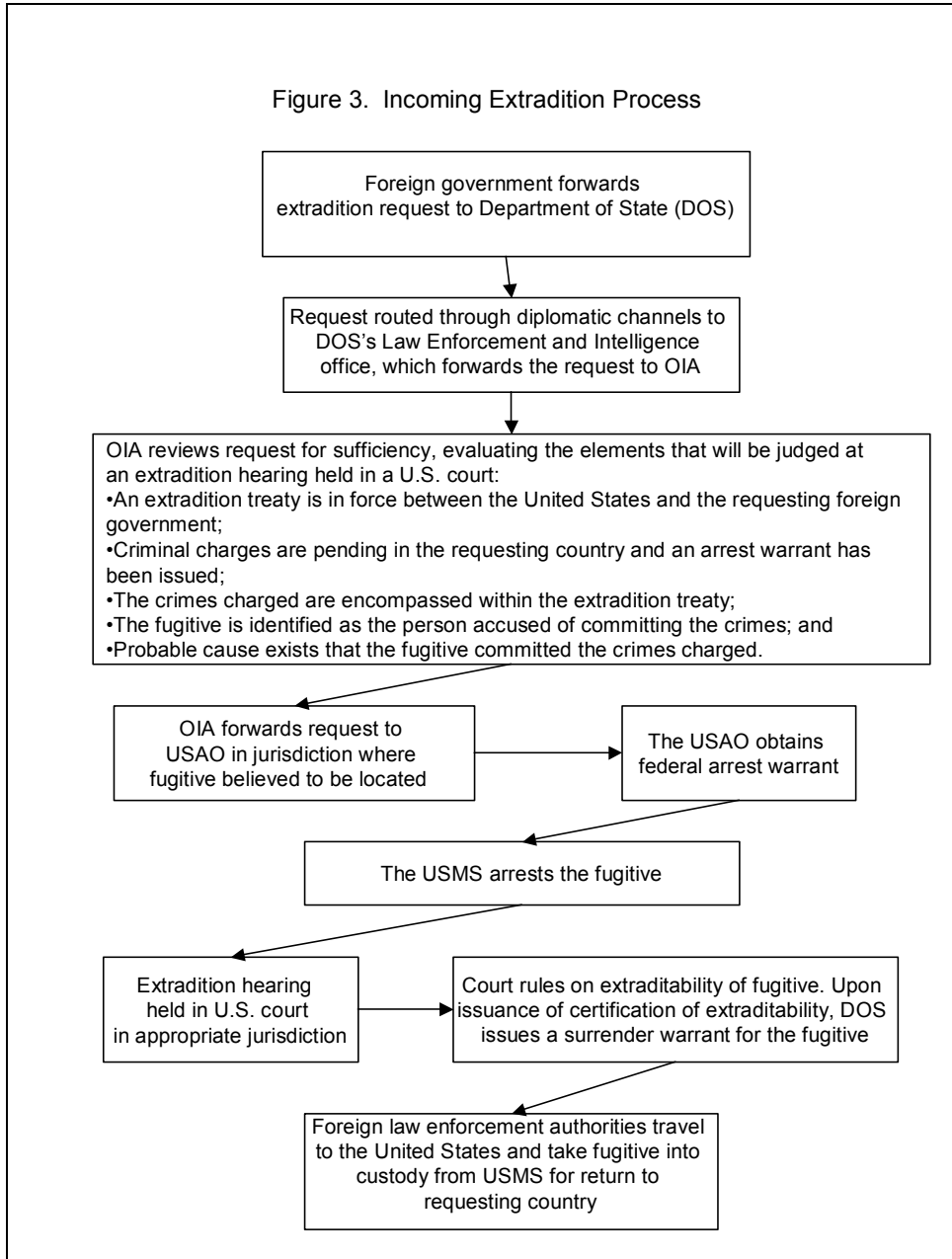
Even when OIA does everything it should, extraditions may not occur because of factors outside OIA's control. For example, an extradition cannot occur when a fugitive eludes law enforcement authorities or when foreign governments cannot provide documents needed to meet the United States' legal standards. In 2000, OIA closed about 630 extradition cases, of which about 350 fugitives or 56 percent were surrendered to the requesting country. The remaining cases were closed without apprehending the fugitive for a variety of reasons including the inability to locate the fugitive or because the requesting entity withdrew the request.

Based on extradition-related documents and interviews with OIA staff, we produced two flowcharts, Figures 3 and 4 on pages 12 and 13, which summarize

the major steps in the extradition process for incoming and outgoing extradition requests.¹²

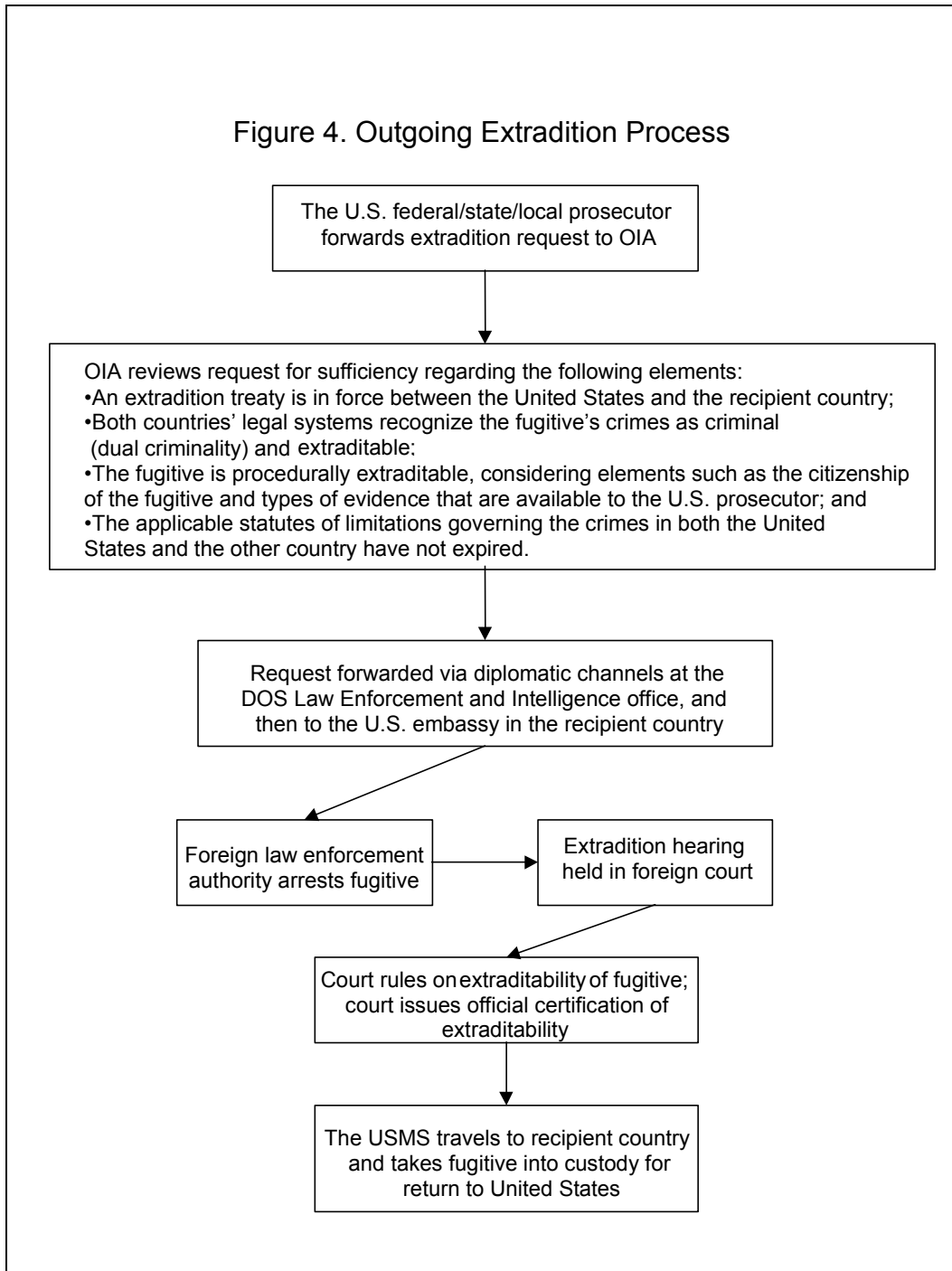
¹² For a more comprehensive description of the extradition processes, see Appendix I. For a more complete description of the roles of U.S. government entities in the extradition process, see Appendix II.

Figure 3. Incoming Extradition Process



Source: OIA, Criminal Resource Manual, and U.S. Attorneys' Manual.

Figure 4. Outgoing Extradition Process



Source: OIA, Criminal Resource Manual, and U.S. Attorneys' Manual.

OIA's responsibilities vary depending upon whether the extradition is an "incoming" or "outgoing" extradition request. OIA advises and assists U.S. prosecutors and, to a lesser extent, foreign governments. In an outgoing extradition request, OIA has a more substantive role in ensuring the request is legally sufficient. Oftentimes, OIA provides the U.S. prosecutor with advice prior to the request being submitted for consideration by a foreign government. OIA is ultimately responsible for ensuring that all U.S. extradition requests are prepared properly and will meet the legal and diplomatic requirements of the foreign government. If the extradition request is rejected by a foreign government, OIA will continue to advise U.S. prosecutors on alternative courses of actions. Conversely, in an incoming extradition, OIA's role is to review the request for legal sufficiency and notify the foreign government of deficiencies in the extradition request. OIA provides advice to a foreign government, but the foreign government will determine the next action to take. In both outgoing and incoming extraditions, OIA most often is the sole channel for communication and information once the request is submitted for government consideration.

When extradition requests are received at OIA, the attorneys evaluate whether the submitted documents establish the basis for extradition, assess the probability of extradition based on those documents and their knowledge of U.S. and foreign legal systems, and, if necessary, consider alternative actions such as deportation to bring the fugitives to justice. To increase the chances of a successful outcome in an extradition hearing in a foreign country, an OIA attorney may advise a prosecutor that a superseding indictment is necessary so that the crime charged in the indictment corresponds to a crime in the country in which the fugitive is located.¹³ In making their legal assessments, OIA attorneys have discretion in determining which actions are appropriate to process the cases.

In addition, OIA attorneys make decisions regarding the timing of actions. For example, based on their experience with particular countries, OIA attorneys may decide that pressing the foreign governments at certain times for responses may have adverse consequences. These decisions may be based on diplomatic issues unrelated to the extradition request, the relative priority of other pending extradition and MLAT assistance requests, or prior incidents with the country's government.

Aspects of the extradition process can require OIA attorneys to perform their duties in a time sensitive manner. For example, OIA is notified when a fugitive wanted by the United States has been located in a foreign country. Because some fugitives may flee the country while a formal extradition request is being finalized, extradition treaties establish a mechanism, called a provisional

¹³ This is known as dual criminality, which holds that for a crime to be extraditable, the conduct alleged must be criminal under the laws of both the requested and requesting countries.

arrest, that allows a requesting government to ask a foreign government to temporarily arrest and detain a fugitive, thereby giving the requesting government time to prepare full documentation for the formal extradition request. This formal request must be submitted to the foreign government within the time period designated by treaty, usually one to three months. If the extradition request is not submitted within that time period, the fugitive will be released from custody.

OIA attorneys also travel abroad to meet with foreign country representatives to negotiate extraditions, to review the status of cases, and to resolve specific extradition issues.

Scope

Our inspection examined how OIA manages extradition requests. Because OIA has not developed written policies and procedures pertaining to its responsibilities in processing extradition requests within OIA, we examined case files for various types of extradition requests; interviewed OIA managers, staff, and other Department officials; and reviewed statistical information contained in OIA's case tracking system. While we obtained information about other OIA responsibilities, such as MLAT requests, our analysis did not encompass these matters. We performed our fieldwork from September 2000 to April 2001.

We conducted interviews with OIA managers, including the Acting Director, Deputy Director, and six Associate Directors; six attorneys and five paralegals assigned to all four country teams; the Federal Bureau of Investigation (FBI) and the U.S. Marshals Service (USMS) liaisons assigned to OIA¹⁴; personnel in the OIA Docketing Unit; an OIA attorney detailed to the U.S. National Central Bureau (USNCB) of INTERPOL as its General Counsel; and three Assistant U.S. Attorneys (AUSA) who were the International/National Security Coordinators (INSC)¹⁵ from three large USAOs – the Southern District of New York, the Central District of California, and the District of Columbia.

We collected statistical data on extradition requests from various sources. The Criminal Division's Management Information Staff (MIS) provided us with extradition case data maintained in ETS. OIA management provided us with extradition workload statistics showing the number of cases closed and opened

¹⁴ The FBI and USMS each have a representative detailed to OIA who serves as a liaison with their respective agency. Liaison activities include advising field personnel on how to properly complete documents in support of extraditions and referring field personnel to an appropriate country team attorney when questions on extradition procedures arise.

¹⁵ Since 1992, an AUSA in each USAO has been designated as the International/National Security Coordinator. The Coordinator provides in-house expertise and guidance on international matters and shepherds the progress of incoming and outgoing requests for fugitives between the United States and other countries.

each year. We examined regulations, policies, documents, and forms that pertain to extradition, such as the U.S Code, Criminal Resource Manual, and U.S. Attorneys' Manual. During our review, we examined the methods by which extradition cases were handled to identify case management practices among attorneys on the country teams.

We selected a sample of 70 extradition case files from the total pending cases as of November 2000 and cases closed during fiscal year 2000. Of the 70 cases, 39 were closed and 31 were open. Of the 70 cases, OIA did not produce 12 cases, 9 closed and 3 open, before we concluded our review.¹⁶ Of the 58 cases reviewed, 30 were closed cases and 28 were open cases. Of the 30 closed cases, 15 were incoming requests and 15 were outgoing requests. Of the 28 open cases, 15 were incoming requests and 13 were outgoing requests. Our case file sample included extradition cases open for time periods ranging from one month to 18 years, from all country teams, assigned to selected attorneys, closed with selected disposition codes, and involving 29 countries including countries that have significant numbers of extraditions, such as Mexico.

For each case, we reviewed information in the case file and ETS. We recorded key dates, determined case actions taken by OIA, and reconciled case dates and status in the case files with those in ETS. In some instances we interviewed the attorney assigned to the case to obtain clarification of the case's status or activities. In addition, we checked 26 of the 28 incoming cases in our sample in the National Crime Information Center (NCIC)¹⁷ database to determine whether any of the fugitives had a U.S. criminal history and whether crimes had been committed after the extradition request had been received by OIA.

¹⁶ In commenting on a draft of the report, OIA stated that part of the problem in providing these 12 cases was the National Records Center's inability to find the case files; or the Center's late retrieval of the files; or the OIA's erroneous entries into the Extradition Case Tracking System that showed the cases as open, when in fact they were closed and at the National Records Center.

¹⁷ The NCIC, a nationwide database managed by the FBI, contains criminal history information on millions of individuals. The system records arrests, convictions, and identifying information about criminals submitted by federal, state, and local law enforcement agencies. The system contains 20 categories of files, including files for wanted persons and foreign fugitives.

RESULTS OF THE INSPECTION

Our review of 58 cases disclosed that OIA's effectiveness in processing and managing an extradition request was inconsistent, depending upon the stage in the extradition process and the status of any pending actions. In most of these cases, OIA was effective during the initial review of the extradition request when it ensured that the request met treaty requirements and satisfied other legal and diplomatic obligations. OIA also provided support during the extradition procedures once a fugitive was apprehended. For the cases we reviewed, we also found that OIA met extradition deadlines. OIA's attention to an extradition request diminished, however, after it had taken these actions. With few exceptions, we found that OIA did not review cases to determine whether follow up was needed or to ensure OIA had taken all action it should have taken on the cases. This failure to fully manage the extradition process and individual extradition cases occurred primarily because OIA has not established clear objectives for case management, has not developed procedures for reviewing cases, has not developed standards for case files, and has not incorporated the use of an automated case tracking system in its case management process. Without these basic management procedures, OIA cannot ensure that all appropriate actions have been taken on each extradition case.

OIA is not Managing its Extradition Cases

Our review of 58 extradition cases showed that in most cases OIA is effective when it first receives the requests for an extradition or a provisional arrest from U.S. and foreign officials. For the cases we reviewed, we found that OIA processed new extradition requests promptly and ensured that USAOs met provisional arrest deadlines. We found that if the extradition documents were complete, OIA transmitted them promptly to the country or USAO responsible for taking the next action. If the documents from a foreign government were not complete, OIA requested that the country provide additional information. If documents from the USAOs were incomplete, OIA advised them of the information needed and provided assistance to ensure the package was complete. When these new requests resulted in a fugitive's apprehension, OIA generally followed through during litigation and surrender.

We found that once OIA's initial review had been completed, it would move on to new extradition requests and other requests that required immediate attention. Unless prompted by an inquiry or receipt of additional information or documents from an official involved with the extradition, OIA did not review pending cases or follow up on the status of actions pertaining to the cases. In some cases, we also found that OIA did not always act on new information pertaining to a pending extradition or promptly respond to an inquiry from a prosecutor or foreign official.

Although it is reasonable for extradition cases to remain open for many years because of legal or diplomatic issues, we found that many cases remained open due to inattention. According to OIA staff, they did not follow up on cases because of the steady receipt of new extradition cases that required their

immediate attention, the large volume of cases assigned to each attorney made follow up not feasible, and OIA's view that it was not OIA's responsibility to initiate follow up on pending cases.¹⁸ According to OIA officials, U.S. and foreign investigators, prosecutors, and officials are responsible for monitoring their extradition cases and for initiating any action needed to further the extradition. OIA's responsibility was only to facilitate the action requested by the U.S. and foreign officials.

OIA's actions in the extradition process can significantly affect the progress made by law enforcement agencies and prosecutors in an extradition case. In addition to providing legal advice, OIA receives and provides time-sensitive and critical information on the status of specific activities pertaining to an extradition case. Extradition cases can involve many federal and foreign law enforcement agencies – each with different responsibilities in the process. As events pertaining to an extradition unfold, information that can affect these agencies' decisions may not always be communicated to the appropriate agencies. Our review disclosed cases where there was a lack of communication among the law enforcement agencies when pursuing the extradition of a fugitive. Through timely follow up, OIA can be pivotal to the success of an extradition. Thus, when foreign and U. S. law enforcement agencies and prosecutors do not contact OIA regarding the pending extradition, we believe OIA should follow up in a reasonably timely manner with the appropriate agencies to determine the status of the cases and ensure that the appropriate prosecutors and law enforcement agencies have the most current information.

For 34 of the 58 extradition cases we reviewed, OIA could have taken additional action to facilitate the extraditions if it had reviewed the cases and followed up with foreign and U.S. prosecutors or responded to previous requests that went unanswered. The types of actions that OIA could have taken included closing cases in a more timely fashion, determining the status of requests for additional information pertaining to an extradition, responding to requests for information about the status of the case from USAOs, and notifying foreign and U. S law enforcement agencies of case-related developments. We found that OIA missed opportunities to gather and provide information that may have advanced the extradition effort. This occurred because OIA has not implemented specific management practices to ensure timely and effective review and disposition of each pending case.

The following cases illustrate lost opportunities to facilitate an extradition that can occur without sufficient case management procedures.

Incoming Extradition Request

¹⁸ Although most OIA attorneys we interviewed frequently expressed this view, we found that several attorneys initiated follow up on some of their cases and generally managed their cases more actively.

A South American country submitted an extradition request in 1991 for a fugitive believed to be in the United States who was wanted for the rape and molestation of juveniles. OIA found the request deficient and promptly returned it in early 1991, requesting additional supporting documentation. The requesting country returned the supporting documentation OIA requested in July 1993. In August 1993, OIA again returned the request because it still did not meet United States legal requirements. According to information in the case file, in July 1995, USMS located the fugitive. In April 1997, the requesting country once again submitted an amended extradition request. However, we found no evidence that OIA had made contact with the country between August 1993 and 1997 even after the USMS notified OIA in 1995 that it had located the fugitive.

In 1997 OIA again returned the request. This time, OIA specified that “almost all of the prior deficiencies have been corrected. However, there is still one area in which the documentation is still lacking.” In July 1997, INTERPOL contacted OIA regarding the status of the extradition request. This is the last evidence of any action on this case. This case is still open at OIA.

In this case, OIA should have promptly notified the foreign country that the USMS had located the fugitive and determined whether the foreign country had the information needed to resolve the legal deficiencies of the extradition request. Over a period of approximately ten years, OIA promptly critiqued the sporadic extradition submissions, but did not actively determine the foreign government’s interest in pursuing the extradition when a critical event occurred in the case, the location of the fugitive in 1995.

OIA should have procedures that require OIA staff to establish a timeline for checking on the status of pending cases to ensure appropriate action has been completed. For example, in the case we examined in the following box, OIA did not respond when the country requested more information regarding a fugitive wanted by the United States. This oversight was not detected for more than two years.

Outgoing Extradition Request

A USAO sought to extradite a fugitive wanted for marijuana trafficking. The foreign country repeatedly asked OIA to provide documents so that the United States' request could be processed. OIA did not respond. After about two years of asking, an OIA attorney apologized to the country for the delay and asked that it provide OIA with the copies of the documents initially sent because they were missing from the OIA file. OIA had not informed the USAO that the foreign country needed additional documents and the USAO did not know the extradition request was not accepted. Though all documents were eventually provided to the foreign country, the case file shows that there is a chance that the Ministry of Justice may now refuse to process the request because of the delay in receiving the requested information.

From documentation in other case files, we found instances where it appeared that either no additional actions were feasible to further the extradition cases or all possible actions had already been taken. When OIA has determined after consultation with the USAOs and foreign governments that there are no additional actions to take in extradition cases, OIA should close the cases. One of OIA's country teams implemented an effective practice of routinely discussing all pending cases with the foreign government. The country team that processes the extradition cases involving Mexico meets periodically with Mexican officials to discuss the status of each pending case. At this time, the OIA and Mexican officials identify the cases that should remain open and those that should be closed. These periodic reviews are an effective practice for prioritizing the most important cases and closing others.

In some instances, we also saw documentation that a case was deemed closed by OIA even though OIA did not officially close it for several years. For example, the following case could have been closed years earlier and removed from OIA's workload. This case remained open for five years, even though the requesting country failed to respond in 1994 or 1996 by indicating that it was still interested in the case.

Incoming Extradition Request

In May 1994, a European country requested the provisional arrest of a fugitive wanted for fraud who was believed to be in the United States. OIA promptly reviewed the extradition request and asked that the requesting country provide an exact location for the fugitive so that the USMS would be able to apprehend him. According to the OIA case file, the country did not provide any additional location information. OIA did not contact the country until September 1996 when it advised the country that because the fugitive could not be located, the matter was considered closed. Furthermore, OIA asked that if the requesting country was still interested, it should contact OIA within 60 days. Again, the country did not respond to OIA's correspondence. However, OIA did not close the case until November 1999. Though OIA reacted in a timely manner to the original provisional arrest request, it did not follow-up for over two years. Even when it gave the requesting country a deadline to express continued interest in the extradition request, OIA did not close the case until over three years after the 60-day deadline had passed.

In instances where a specific item of information from the requester, such as a fugitive's location, has been requested and is not forthcoming, closing the case will help alleviate OIA's case management and tracking responsibilities. Closing cases when nothing more can be done produces accurate statistics for management oversight by OIA, the Criminal Division, the Department, and Congress.

Each attorney in OIA has a large extradition caseload – averaging approximately 150 cases. With this size caseload, cases can be overlooked when there is a lack of case management procedures. The lack of periodic review was a particular problem when attorneys responsible for extradition cases transfer to another team or leave OIA. We found that newly assigned attorneys did not review the cases to determine their status and whether any action was needed. Consequently, we found cases were overlooked, as in the following example:

Incoming Extradition Request

OIA received an extradition request in 1992 from a European country for a fugitive wanted for forgery and fraud. The country also requested a provisional arrest of the fugitive. After nine months in which there was no apparent activity on the part of the United States, the requesting country contacted OIA and inquired why the fugitive had not been arrested. The case file shows that OIA responded that the case had “fallen through the cracks” after the original OIA attorney to whom the case has been assigned had left the office.

The following incoming extradition case demonstrates how the lack of effective case management procedures pertaining to timely follow up on significant case activities can affect OIA’s ability to perform its mission. In addition, the following case demonstrates the need to fully use law enforcement information systems to locate fugitives sought by foreign countries and the need for OIA to explore ways to incorporate checks of law enforcement information systems (e.g., INS systems and NCIC) in regular reviews of its pending cases.

The following case also demonstrates that law enforcement agencies may not always carry out all of their responsibilities pertaining to the arrest and prosecution of a fugitive. In this case, the USAO had an arrest warrant issued but the fugitive was not located, and the USMS did not enter the warrant into NCIC. Moreover, the USAO did not notify OIA that the fugitive was not arrested and OIA did not determine the status of the case or inform the foreign country that the fugitive was not located. We found through an NCIC check that the fugitive committed a violent crime while in the United States, was arrested, sentenced, and released from prison.

Incoming Extradition Request

Case File Review -- In May 1992, OIA received a provisional arrest request for a fugitive who had been sentenced to nine years imprisonment for his conviction on cocaine importation charges in a European country. The fugitive, a Jamaican citizen, fled the requesting country prior to his incarceration. This foreign government believed the fugitive to be in New York City, so in July 1992 OIA forwarded the provisional arrest request to the USAO to obtain an arrest warrant. The OIA case file indicated that in August 1992 the fugitive had not yet been located. The next action documented in the case file occurred in February 1993 when OIA forwarded to the USAO additional documents supporting the provisional arrest, which were recently received from the requesting country. There was no documentation in the case file indicating why the country sent additional documentation seven months after the original request. We found an adhesive note in the case file that read, "Warrant was Issued Mar[ch] 12, 1993." We found no additional documentation after that date in the case file or ETS. We spoke with the USAO regarding the warrant because there was no indication in the file whether it was served. The USAO informed us that the USMS was unable to serve the warrant because the fugitive was not at the location specified by the requesting country. In addition, the USMS never entered the arrest warrant into NCIC. There is no indication in the case file that OIA ever followed up with the USAO or USMS to determine whether the fugitive was arrested – a significant event in the extradition process. Nor did OIA follow up with the foreign government regarding the status of the extradition. OIA relied on U.S. and foreign law enforcement agencies to take the appropriate actions and did not believe follow up was necessary. OIA, however, should follow up with these agencies when information is not received after a significant event occurs. In addition to providing timely feedback, it is possible that OIA's follow up would have detected that the USMS did not enter the arrest warrant into NCIC. There had been no activity on this case since 1993 and the case remains open.

Interview -- We interviewed the OIA attorney currently assigned to this case (he was not the attorney assigned to the case in 1993) to determine whether OIA had additional information regarding this case that was not in the file. The attorney could not provide any additional information. The attorney stated he found the information in the case file to be adequate and that if he wanted to determine the case status, he would contact the foreign government to determine whether it was still interested in pursuing this extradition.

OIG Database Searches -- During our review, we searched the NCIC database and found that this fugitive had been arrested in August 1993 in Okaloosa County, Florida, for attempted homicide. This arrest occurred five months after the warrant was issued for the fugitive's arrest in the extradition case. The fugitive pleaded guilty to aggravated battery with a firearm and was sentenced in December 1993 to three years incarceration in state prison. We also searched the Immigration and Naturalization Service's (INS) Central Index System (CIS) to determine whether this fugitive had come in contact with the INS, since OIA documentation indicated he was not a U.S. citizen. According to CIS, the fugitive was ordered removed based on violations of immigration law because of his state conviction. He was removed from Miami in November 1996, presumably to Jamaica. There is no indication that OIA was aware of this INS removal.

OIA does not match information pertaining to United States and foreign extradition requests with law enforcement information systems such as NCIC because it does not have access to them. Unless a Red Notice or extradition warrant¹⁹ is issued, U.S. law enforcement authorities that come in contact with the fugitive separate from the extradition would not be aware of the extradition. Although we were told that OIA might query the INS regarding a fugitive's immigration status, we were also told that it is not a common practice.

We also found several instances when OIA's review of an extradition request did not detect deficiencies in the legal requirements of extradition requests before transmitting the documents to the USAOs or foreign governments. Our review of the 58 case files disclosed that 9 files had information showing that OIA country teams reviewed and sent cases forward that did not meet legal requirements of the United States or foreign governments. OIA does not have procedures in place to ensure that each case receives an adequate legal sufficiency review, and as a result there were occasions in which cases that did not meet legal standards were forwarded to the USAO or foreign country. For example, case files showed that USAOs rejected cases sent to them by OIA because there were substantial probable cause problems. Foreign countries also rejected cases because dual criminality was absent. Two of three AUSAs we interviewed, who served as International and National Security Coordinators for their USAOs, were critical of OIA legal advice and the completeness of the cases sent to them.²⁰

OIA's Associate Directors told the OIG that they meet with team members to discuss extradition cases. However, they do not routinely review cases to assess whether cases are complete before OIA sends them to either the foreign country or USAO for action. Without reviewing case files, Associate Directors may not even be aware that cases were returned to OIA because they were deficient. Routine supervisory review of the work performed by subordinates is a standard management practice that provides managers with some assurance that cases are processed in accordance with laws, regulations, treaties, and procedural requirements.

¹⁹ According to the USMS Domestic Fugitive Unit, U.S. law enforcement officials verify the location of fugitives wanted by foreign governments prior to the U.S. arrest warrants being issued. Once the warrant is issued, law enforcement officials go to these locations to arrest the fugitives. When the locations are still accurate, the fugitives are arrested so there is no need to enter the warrants into NCIC. However, when the locations are no longer valid and the fugitive is not arrested, the arresting agency (usually the USMS) is responsible for entering the warrants into NCIC. In the previous case on page 23, the USMS had the responsibility to enter the warrant into NCIC, which probably would have been checked by law enforcement officers when the fugitive was arrested in Florida.

²⁰ The third AUSA was critical of OIA's lack of cooperation and assistance.

Case management procedures become more critical as the average number of cases pending at the end of each year per attorney has grown from 80 in 1990 to 153 in 2000. Although OIA performs the initial review of extradition requests promptly, it does not have procedures that ensure cases receive appropriate attention while pending. With an increasing pending caseload, standard policies and procedures for case management are needed so that cases are prioritized for timely follow up. OIA should also develop a systematic method of determining when OIA staff and supervisors should review a case. Each time OIA completes an action on an extradition request, a follow-up action date should be established so that cases can be reviewed. OIA attorneys could determine time frames for follow up based on the priority of the case, whether the case is legally complete, or whether there is continued interest by the foreign country or USAO. In addition, these procedures would detect matters that may have been overlooked, errors in judgment, overlooked action or follow up on prior actions, and possible new strategies for resolving extradition cases. OIA also has not developed internal policies, procedures, or standards that delineate staff responsibilities or communicate management's expectations for processing extraditions. Therefore, OIA is not assured that attorneys explicitly understand that their responsibilities include effectively managing their pending cases in a manner that facilitates the extradition process. These types of policies and procedures would ensure that OIA attorneys actively manage cases and make conscious decisions on the status of the case, ensure appropriate actions have been taken, and establish a review date to reassess the status of the case.

The United States Criminal Justice Extradition Process Limits OIA's Ability to Help Extradite a Fugitive

As described in the United States Attorneys' Manual, OIA advises and assists U.S. law enforcement personnel and prosecutors on options for capturing and apprehending a fugitive if the extradition request is not viable or the fugitive cannot be located in the foreign country. For example, OIA can recommend that prosecutors revise the extradition request, modify criminal charges, or work with the prosecutor and the Department of State to seek deportation. OIA can also advise law enforcement personnel and prosecutors on the use of Interpol Red Notices. OIA is aware that the decision to extradite is costly and must be weighed by the U.S. agencies.

When a fugitive is believed to be in the United States and the extradition request submitted by a foreign country is deficient or the specific location of the fugitive is not known, OIA staff said they have few options to assist foreign governments achieve extradition or advise law enforcement agencies of the pending extradition. If the extradition request does not meet treaty requirements or other U.S. standards, OIA can inform the foreign country of the deficiency. However, OIA staff told the OIG that it is up to the foreign country to determine its next course of action. If the extradition request is viable but the location of the fugitive is not known, it is the responsibility of the foreign government to provide the correct location. If the location is unknown, an arrest warrant

in the United States will not be issued. Meanwhile, fugitives wanted for very serious crimes remain at large in the United States.

If local law enforcement agencies detain or arrest an individual for a crime committed while in the United States, law enforcement agencies have no way to determine whether the individual is a fugitive wanted for extradition in a foreign country unless the foreign country issues a Red Notice or a U.S. arrest warrant has been issued. OIA has no means to alert law enforcement agencies of a pending extradition. Without a mechanism to alert U.S. law enforcement agencies of the pending extradition, fugitives can remain undetected even if arrested, incarcerated, and released.

In some instances, OIA may have information that would indicate a fugitive is an alien and may be in the United States illegally. For these cases, OIA could notify the INS and the INS could determine whether the fugitive should be deported. However, our interviews with OIA attorneys indicated that they rarely refer information to the INS.

As of November 2000, OIA had pending extradition requests for over 1,000 fugitives believed to be in the United States.²¹ Most of these fugitives were wanted for serious crimes, including violent crimes. If the incoming extradition request does not meet all treaty requirements, the United States may not have any basis for alerting law enforcement agencies. However, if the incoming extradition request meets the legal requirements of the treaty but the fugitive's location is not known, U.S. lookout systems should enable law enforcement agencies to be alerted to notify OIA if the fugitive is arrested or located.

For 28 incoming extradition requests we reviewed, we selected 26 fugitives and ran NCIC checks to determine whether the fugitive committed crimes after the extradition request had been received by OIA. Through a comparison of names, aliases, dates and places of birth and other details, we found 4 matches. Thus, potentially 4 of the 26 fugitives were arrested for various crimes committed while in the United States.

For incoming extradition requests that involve a fugitive who is not a U.S. citizen, OIA can coordinate with the INS to determine whether INS can deport the fugitive. In other instances, no procedure exists for OIA to alert U.S. law enforcement agencies of the pending extradition. OIA should meet with representatives from the FBI to determine whether fugitive information can be entered into NCIC in those cases in which the extradition request is viable but the location of the fugitive is not known. OIA should also request arresting agencies to enter U.S. arrest warrants into NCIC when fugitives are not immediately arrested after the warrant is issued.

²¹ Foreign countries forward extradition requests to the United States intending that the fugitive can be apprehended in the United States. However, in some instances, the fugitive may not currently be in the United States – either the fugitive was never in the United States or has already left.

OIA has not Developed Standards for Maintaining its Extradition Case Files

As the central point of contact for extradition requests, OIA receives documents and information that comprise the official record of the extradition effort. OIA receives the official extradition documents, such as the transmittals and certifications; legal documents, such as affidavits; and other required records, such as the address or location of the fugitive. OIA also receives correspondence, diplomatic information, and intelligence information, including classified information, from the Department of State, law enforcement agencies, prosecutors, and other sources. In addition, OIA receives information through telephonic contacts, telexes, and other informal methods of communication.

OIA is responsible for processing the extradition case information and maintaining the information so that the agencies involved in the extradition will receive relevant information. To be a comprehensive record of actions related to the extradition, OIA's files should include all information about the cases. To effectively provide advice and assistance in extradition cases, OIA staff must have access to organized and complete information regarding all actions on an extradition case. Additionally, as a result of attorney turnover and absences from the office, OIA staff attorneys must often assume responsibility for other attorneys' extradition cases and quickly familiarize themselves with the case details. Therefore, case files should contain all case-related information so an attorney unfamiliar with the case can easily discern the case's status and history.

In some cases, a number of different OIA attorneys handle parts of the extradition because of the primary OIA attorney's reassignment or absence. One attorney stated that if the case file did not contain complete information regarding an extradition, he would have to call the applicable government or U.S. prosecutor to ascertain the status of the case or request copies of missing documents.

Our review showed that the extradition case files were not consistently organized or complete. In 31 of the 58 extradition case files we reviewed, documents were not in any discernible order or key documents and information were missing. From the conditions of these case files, we could not readily determine the history and status of the extradition requests. To understand what had occurred in some extradition cases, we had to first sort case documents, then develop spreadsheets to organize case actions by date. After putting all the

information in order, we found that important information was missing in some cases. The following case illustrates how missing documents may seriously jeopardize the extradition's success.

Outgoing Extradition Request

The USAO for the District of Oregon requested the provisional arrest of a fugitive wanted in a murder conspiracy. To construct a coherent timeline from documents in the case file, we developed a spreadsheet that documented case actions and respective dates. Only after sifting through the volume of disorganized documents and logging each document into the spreadsheet were we able to reasonably determine how this case progressed.

We discovered that documents were missing from the case file. In a letter dated June 20, 1995, the OIA attorney states, ". . . I have searched the files for the specific documents you mentioned in the message. Unfortunately, the documents are not in the file." Not only are those documents missing from the case file, the facsimile sent by the African country's Attorney General to which the OIA attorney is responding is not in the file. Additionally, the letter states, "I will ask Harry . . . for a copy of Exhibit 5b which he provided with his affidavit dated 16 August 1991." The letter continues, "Please send these documents to me . . ." At the bottom of the page is a handwritten note that states, "Harry does NOT have a copy of his affidavit." Thus, retrieving one document, the affidavit's exhibit, proved problematic, as the original source of the document did not retain a copy. In this instance, documents were missing that should have been in OIA's case file and OIA was forced to solicit copies from other entities. The last action related to the extradition in the case file occurred on November 6, 1995. As we learned from earlier correspondence, the extradition hearing was to be held on November 13, 1995. However, the case file contains no additional documentation that describes the outcome of that hearing. OIA records indicate the case is still open, but it is impossible to know from the case file what occurred after November 6, 1995.

Documentation in the case files revealed that the conditions of case files sometimes have frustrated OIA staff. In a case file for an incoming extradition request for a fugitive wanted for narcotics trafficking, a note indicated that OIA had requested that the USMS locate the fugitive in June 1996. There is no indication the USMS responded to the request. An OIA letter dated June 2, 1998, to the USMS, states, "I inherited this case recently and am relying on our office's record system, which references the June 28, 1996, letter, to reconstruct the file. I have no hard copy of that letter, nor am I able to have a copy produced for you." Neither the USMS nor OIA had a copy of the request to locate the fugitive.

Most OIA staff said that the files should be organized chronologically, with the latest documented action appearing on top, to facilitate an easy determination of the most recent case action. However, we found the documents were not always ordered chronologically and staff members maintained their case files in any manner they chose.

We were told that many significant events within an extradition case are discussed solely via telephone conversations. Though OIA attorneys often maintain records of these conversations, many times these records are not included in the case files. As significant amounts of time pass and staff members change, crucial information may not be remembered or available that could affect later decisions.

For some cases, we determined the case history, status, and that documents were missing only by comparing information in the case files with case information in ETS. Through these checks, we determined that paperwork was missing from the case files in the following examples:

- Open outgoing case - Key documents that were listed in ETS were not in the case file, such as the finalized extradition documents.
- Open incoming case - According to ETS, this case was opened, closed and reopened. None of the documents related to the original case was in the file.
- Closed incoming case - There was no documentation closing the case in the file, though ETS indicated that the case was, in fact, closed.
- Closed outgoing case - According to ETS, this case was opened, closed, reopened and closed once again. However, the file makes it appear as if the case was closed once and never reopened.
- Open outgoing case - When OIA requested that the foreign country reopen this case, the OIA attorney who inherited this case also sent a letter asking for the foreign country's assistance in providing a copy of a memorandum that could not be located in the OIA case file.

OIA also has not established record maintenance procedures for managing the case files. In practice, each attorney and paralegal is responsible for keeping track of his or her case files. Even though OIA has centralized file facilities, attorneys and paralegals stored case files in their file cabinets or piled them on desks, tables, and floors in individual offices. These practices do not safeguard or maintain control over the files.

Maintaining complete and accurate case files is important to managing extradition

cases effectively. Organized case files should enhance OIA's ability to determine the status of extradition cases and determine the next action that should be taken. Complete case files ensure that OIA decisions are based on a comprehensive knowledge of the underlying reasoning and actions in each case. Disorganized files may result in attorneys and paralegals spending inordinate amounts of time trying to determine the status of extraditions and the next actions to take. Incomplete case files may force attorneys and paralegals to recreate extradition steps that already may have been taken, provide incorrect or incomplete advice regarding the extradition request, or require OIA to contact the requesters for copies of documents.

OIA Does not Have Adequate Methods for Tracking Extradition Case Actions

ETS is designed to track case information and correspondence, identify and monitor the status of extradition cases, and generate statistics about the extradition process such as the number of pending extradition cases.

OIA staff in Washington, D.C., have varying degrees of access to ETS. OIA Docketing Unit enters nearly all the case information into ETS, although the attorneys and paralegals can enter data that pertain to their cases. OIA managers use ETS to construct management reports, such as the number of cases assigned to each attorney on a country team. OIA attorneys and paralegals use ETS to determine basic information regarding cases, such as the USAO contact, but generally do not use ETS to track case activities or to manage their caseload.

ETS contains information about individual extradition cases. Data fields include the name of the fugitive, OIA attorney assigned to the case, type of extradition (incoming or outgoing), foreign country involved, and U.S. jurisdiction involved. A major component of ETS is the "Remarks" text field. This field is intended to capture (in narrative form) significant information about case actions sent and received by OIA through documents or other methods, such as telephone calls. However, during our review of the 58 cases, we compared the information in the case files to the information in ETS. We found that the information did not agree in 18, or 30 percent, of the cases. We found inconsistent information on the status of the case, whether the case was opened or closed,²² the OIA attorney assigned to the case, dates of events, and the documents received by OIA.

According to our interviews with OIA staff, we found that the country teams are not fully using ETS. Of the 14 staff members we interviewed, 10 (6 attorneys and 4 paralegals) said that they generally do not use ETS to determine

²² ETS indicated that three cases in our sample were open, while OIA officials later notified us that the cases were closed.

case status. They said that ETS is unreliable or is not user friendly. Many staff members said they use ETS to determine basic case identifying information, such as OIA attorney assigned, but if they want to determine case actions or status, they generally refer to the case file.

Instead of using ETS, country team staff have devised their own methods for tracking cases. The methods vary from person to person, across country teams. For example, Team III (Latin American) uses a case status matrix to track only outgoing extradition requests to Mexico, including current case status and next recommended action. Conversely, other country team attorneys and paralegals have less sophisticated methods to track open extradition cases and deadlines. For instance, some track deadlines and cases by handwriting provisional arrest dates on a desk calendar, maintaining a mental list of open cases, and attaching notes to case files.

According to our interviews with OIA staff and our review of the paralegals' position descriptions, OIA paralegals are expected to maintain a record-keeping system for tracking extradition cases. Each paralegal we interviewed said they had developed their own tracking system apart from ETS to monitor the most pressing matters, such as provisional arrest deadlines, in their extradition cases. However, none of these systems is designed to track the next actions required in the country teams' extradition cases. Thus, ETS is not used to alert staff of all upcoming actions or prompt staff to periodically review dormant cases. Therefore, we found that neither ETS nor the paralegals' case tracking systems is effective in tracking extradition cases and actions.

The inconsistency and inaccuracy of data in ETS affects the reliability and usefulness of management reports. A common, dependable tracking system would also provide the staff and managers with a mechanism to track case assignments and to monitor the status of actions on open extradition cases. Monitoring the cases through a reliable system would enable the staff to make informed, timely decisions regarding the next steps to take in the extradition process. Without a reliable, office-wide tracking system, open cases may be overlooked and actions not completed. For example, OIA had transmitted translations of extradition documents to a foreign country's Ministry of Justice for a fugitive wanted in the United States for fraud and price fixing. This was the last case action in the file and in ETS for almost six years. A mechanism to track actions would have notified the OIA attorney that the foreign government had not provided a response regarding the extradition, and that OIA should follow up to determine the case's status and whether OIA could do anything to further the extradition.

OIA Needs to Develop Relevant Performance Measures

The Government Performance and Results Act of 1993 requires agencies to set multiyear strategic goals and corresponding annual goals to measure the performance toward the achievement of those goals, and to report on their progress. Setting goals and measuring performance helps to establish priorities, control operations, communicate accomplishments, and motivate staff.

The Department's Strategic Plan for Fiscal Years 2001-2006 outlines specific program goals, objectives, and strategies. One strategic goal is to "Enforce federal criminal laws." A strategic objective supporting this goal addresses reducing violent crime (Objective 2.1) through a variety of supporting strategies. OIA links its performance to the supporting strategy that promotes increased cooperation with foreign law enforcement authorities and uses the "number of new treaties²³ with other countries entering into force" as its performance measure.

Although the OIA has established performance measures for its treaty negotiation responsibility, OIA has not established performance measures for its other major responsibilities, such as processing extradition requests and evidence requests under the treaties. As the "law enforcement community's sole coordinator for all requests for international extradition and the Central Authority for the United States under 37 MLATs in force,"²⁴ measuring OIA's performance in these responsibilities is appropriate and important.

²³ Extradition treaties and MLATs.

²⁴ The Department's FY 2000 Performance Report and FY 2002 Performance Plan.

CONCLUSION AND RECOMMENDATIONS

We found that OIA's effectiveness in managing extradition requests depends upon the status of the extradition and actions generated by outside prosecutors and law enforcement authorities. OIA meets deadlines mandated by the treaties or courts and acts on new extradition requests promptly. However, our review of 58 cases indicated that OIA could have taken additional action in nearly 60 percent of the cases.

OIA has significant responsibilities in the extradition process. In addition to ensuring the extradition request meets legal and treaty requirements, OIA is responsible for managing information that may affect decisions pertaining to the extradition. OIA should ensure that the appropriate law enforcement authorities and prosecutors receive important information pertaining to the fugitive, that foreign and U.S. prosecutors follow up to obtain requested information needed to extradite a fugitive, and if the extradition is not successful, whether the requesting organization is still interested in pursuing the fugitive. Under its current practices, OIA does not actively manage its extradition caseload in a manner that ensures that all necessary actions on extradition cases are completed. OIA relies on U.S. or foreign prosecutors to initiate all actions. OIA has not developed internal policies, procedures, or standards for processing extradition cases that delineate staff responsibilities, time frames, or priorities to guide employees or communicate management expectations. In addition, because of their current caseload and their view of their responsibilities, OIA attorneys believe that they do not need to do more in the extradition process. Accordingly, we found instances when OIA should have ensured prosecutors received important information and cases where OIA did not act upon requests from prosecutors. We believe that OIA's current practices fall short of its mission and the office needs to establish procedures for case file review to ensure that it has taken all actions to facilitate the extradition.

The majority of case files we reviewed were either disorganized or missing key documents and information. From the conditions of the case files, the history and status of the extradition requests could not be readily determined. OIA has not established and implemented standards for maintaining the extradition case files.

ETS is not used office-wide as a case tracking system and OIA staff do not find it to be reliable or user-friendly. While OIA staff have devised their own methods for tracking cases, we found these methods are inadequate for the volume of extradition cases that must be tracked and for the type of data needed for management oversight.

Recommendations

We recommend that OIA:

1. Develop case management policies and procedures to guide its staff in the extradition process. At a minimum, these policies should require
 - OIA staff to prioritize cases for timely follow up,
 - OIA staff to systematically review pending extradition cases to determine whether the status of the case is correct and determine the next possible action,
 - OIA staff to review all cases to ensure legal sufficiency, timeliness, and completeness of actions, and
 - OIA supervisors to review cases.
2. Coordinate with the FBI, USMS, and INS to develop strategies for law enforcement officials to identify individuals who are the subjects of extradition requests.
3. Develop standards for maintaining complete and organized extradition case files and accounting for the physical location of each file.
4. Incorporate into the extradition process an automated case tracking system that provides reliable and complete data.
5. Develop performance measures for processing extradition requests and monitor the office's progress against those measures.

APPENDIX I: PROCESS FOR INTERNATIONAL EXTRADITION REQUESTS

International extraditions involve two separate but similar processes.

Incoming Extradition Requests

A foreign government may request the arrest of a fugitive in the United States so an extradition hearing may be held. The process for an incoming extradition is:

- A foreign government forwards an extradition request to the Department of State. The Department of State's Office of the Legal Advisor's Law Enforcement and Intelligence (OLA/LEI) certifies that there is a binding extradition treaty between the United States and requesting country. The Department of State forwards the extradition request to OIA.
- The incoming extradition request is assigned to the OIA country team that handles the requesting country. A team attorney certifies that all appropriate documentation is included. The attorney also reviews the request for legal sufficiency, ensuring that probable cause exists that the fugitive committed the crime, and that specific location information on the fugitive is provided. When this review is completed, a letter describing the facts of the case and identification information on the fugitive, plus all documentation received from the requesting government, is forwarded to the International/National Security Coordinators (INSC) at the USAO in the federal jurisdiction where the fugitive is believed to be located.
- The INSC ensures the extradition case is assigned to an AUSA. The AUSA obtains an arrest warrant for the fugitive from a federal judge or magistrate in the district where the fugitive is believed to be located.
- The USMS in the district where the warrant is issued then arrests the fugitive. At an initial appearance before an extradition magistrate,²⁵ the AUSA opposes bail, which is the standard U.S. government position. In

²⁵ Title 18, Section 3184, of the United States Code provides that an extradition magistrate can be "any justice or judge of the United States, or any magistrate authorized to do so by a court of the United States." An extradition magistrate has the jurisdiction to order the arrest of a foreign fugitive for the purpose of securing his presence for an extradition hearing before such justice, judge, or magistrate.

most cases, the magistrate conducting the proceedings does not grant bail.

- During the extradition hearing, the AUSA addresses the following key elements that must be satisfied for a magistrate to issue a certification of extraditability: the court must determine that (1) an extradition treaty is in force between the United States and requesting country; (2) criminal charges are pending in the requesting country; (3) the crimes charged are encompassed within the extradition treaty; (4) the fugitive is, in fact, the person accused of committing the crimes charged; and (5) probable cause exists to believe that the fugitive committed the crimes charged.
- If the court finds that the fugitive is extraditable, the magistrate issues a certification of extraditability. The Department of State's OLA/LEI is informed when the magistrate issues the certification. The Department of State then issues a surrender warrant, which officially surrenders the fugitive to the respective foreign government.
- A fugitive does not have the right to appeal a finding of extraditability. However, the fugitive may file a petition for writ of habeas corpus.²⁶ If the petition for the writ is denied, the fugitive may appeal the denial through the federal court system. Should the magistrate rule that the government's case does not sustain a finding of extraditability, the United States has no right of appeal. The United States can, however, remedy any defects that led to the denial of extradition and resubmit the foreign country's extradition request multiple times.
- After the Department of State issues the surrender warrant, law enforcement officers from the foreign country that requested the fugitive's extradition then come to the United States to transfer the fugitive to the requesting country.

Outgoing Extradition Requests

The U.S. prosecutors at the federal, state, and local level initiate outgoing extraditions. An outgoing extradition can typically involve the following steps:

- After a suspected or convicted criminal has fled the United States and has been located in a foreign country, the U.S.

²⁶ The primary function of a writ of habeas corpus is to release a person from unlawful imprisonment. The only issue that it presents is whether the person is unlawfully deprived of his liberty. The filing of the writ does not automatically delay further extradition proceedings.

prosecutor contacts OIA to commence the extradition process. The case is then assigned to a team depending on the fugitive's location. An OIA attorney from the appropriate country team determines whether an extradition treaty exists between the foreign government and the United States. The attorney must also determine whether the crime committed by the fugitive is a crime encompassed within the treaty and is therefore an extraditable crime. The OIA attorney checks the fugitive's citizenship because some countries will not extradite their own citizens.

- The U.S. prosecutor prepares the formal extradition documents, which are reviewed by an OIA attorney. Included in the request is the prosecutor's affidavit outlining the facts of the case. The affidavit identifies the criminal offenses committed, legal statutes violated, and the penalties and statutes of limitations for the violations. The prosecutor's affidavit is accompanied by copies of the charging documents, such as the indictment and arrest warrant. After the prosecutor completes the request, the OIA attorney reviews the request for legal sufficiency and probable cause that the fugitive committed the crimes.
- In addition to reviewing and evaluating the extradition request, the OIA attorney determines whether the likelihood exists that the fugitive may flee once a formal extradition request is presented to the foreign government, or the fugitive poses a risk to the public. If the OIA attorney is satisfied that a potential for flight or a safety risk exists, then a request for a provisional arrest is forwarded to the foreign country. A provisional arrest allows the foreign government's law enforcement authorities to arrest a fugitive before a formal extradition request is submitted. Once a provisional arrest is carried out, the United States must meet a treaty-imposed deadline for submitting the formal extradition request to the foreign government. The deadline varies by treaty, but usually ranges between one and three months.
- The U.S. prosecutors may request INTERPOL Red Notices apart from requesting an extradition through OIA.²⁷ If a fugitive is located in a foreign country based on a Red Notice, the U.S. National Central Bureau (USNCB) of INTERPOL notifies OIA.

²⁷ An INTERPOL Red Notice is submitted by a government that is seeking the arrest of a fugitive for whom an arrest warrant has been issued, the fugitive's whereabouts are unknown, and extradition of the fugitive will be requested by the government that submitted the Red Notice.

Law enforcement in some countries are authorized to arrest a fugitive based only on a Red Notice, while other governments require an official provisional arrest or formal extradition request to arrest a fugitive. Regardless of the notifying foreign government's practices, OIA is in the position to move forward with a provisional arrest or extradition request assuming a treaty exists between the two countries. OIA contacts the U.S. prosecutor who requested the Red Notice to determine whether the prosecutor wants to proceed with the extradition.

- After being approved by OIA, the formal extradition request is sent to Department of State's OLA/LEI and then presented through diplomatic channels at the Department of State to the foreign government. After the foreign government's law enforcement authority arrests the fugitive, an extradition hearing is conducted in the foreign court. If the court finds that the documentation presented by the United States is sufficient, then a certification of extraditability is rendered. If the court does not find the documentation sufficient, then the extradition request is denied. When a court grants the extradition request, the fugitive has the right to appeal.
- The certification of extraditability is a legal order to return the fugitive to the United States. While the USMS is primarily responsible for escorting the fugitive back to the United States, state and local law enforcement representatives may accompany the Deputy Marshals in escorting the fugitive back to the United States.

These extradition steps represent the basic procedures for incoming and outgoing extradition requests. However, the order and degree to which these procedures are employed depends upon the extent to which the extradition progresses. The extent of an extradition is, in turn, affected by various factors, such as the sufficiency of the information in the extradition request and extradition treaty provisions such as dual criminality, that determine the viability of the international extradition of fugitives.

**APPENDIX II: TABLE OF RESPONSIBILITIES –
OTHER U.S. AGENCIES IN THE EXTRADITION PROCESS**

Roles of Other U.S. Government Agencies in the Extradition Process	
<i>U.S. Attorneys' offices</i>	<i>U.S. Marshals Service</i>
<ul style="list-style-type: none"> • In incoming extraditions, obtain federal arrest warrants for fugitives • Represent the U.S. government in federal extradition hearings for incoming extradition requests • Oversee incoming extradition cases in their federal districts • Prepare outgoing extradition documents for OIA review • Provide responses, such as supporting evidence, in outgoing extradition requests • Prosecute those international fugitives successfully extradited to the United States who are charged with federal crimes 	<ul style="list-style-type: none"> • In incoming extradition cases, verifies locations of and apprehends fugitives • Transfers custody of fugitives to foreign authorities upon finding of extraditability • In outgoing extradition cases, accepts custody transfer of fugitives from foreign authorities. Accompanies fugitives to the United States for prosecution or incarceration
<i>U.S. Department of State</i>	<i>U.S. National Central Bureau</i>
<ul style="list-style-type: none"> • Facilitates delivery of extradition documents to and from foreign governments • Authenticates extradition documents and certifies that they contain all required documents • Provides updates to OIA on the status of outgoing extradition requests • The Office of the Legal Advisor's Law Enforcement and Intelligence is the principal point of contact for extraditions 	<ul style="list-style-type: none"> • Serves as U.S. representative to INTERPOL • Forwards information obtained through U.S. and international sources on the whereabouts of fugitives to OIA • Reviews Red Notice fugitive lookouts for U.S. prosecutors and forwards them to INTERPOL headquarters in France • Notifies OIA when fugitives from the United States have been apprehended based on Red Notices

	so that OIA can commence the extradition process
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Source: OIA, Department of State, USNCB, U.S. Marshals Policy Directive, U.S. Attorneys' Manual, and INTERPOL Internet site

APPENDIX III: CRIMINAL DIVISION MANAGEMENT'S RESPONSE



U.S. Department of Justice

Criminal Division

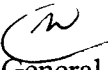
Assistant Attorney General

Washington, D.C. 20530

February 5, 2002

MEMORANDUM

TO: Paul A. Price
Acting Inspector General for
Evaluations and Inspections
Office of the Inspector General

FROM: Michael Chertoff 
Assistant Attorney General
Criminal Division

SUBJECT: Comments on OIG draft report A-2000-21, regarding the Office of
International Affairs

This memorandum responds to your request for comments on draft Report A-2000-21, concerning the Office of the Inspector General's Review of the Office of International Affairs' Role in the International Extradition of Fugitives. In addition to the general comments set out in this memorandum, I have attached detailed comments and proposed revisions to the draft report prepared by the Office of International Affairs.

At the outset, it should be emphasized that we have no significant disagreement with the recommendations of the Office of Inspector General set forth on page 34 of the report. To the contrary, the Office of International Affairs has already undertaken a number of changes in its management procedures, some resulting from an internal review of the overall responsibilities and operations of the office, and others based upon some very practical recommendations made by the Office of the Inspector General in this report.

However, we disagree with a number of the report's findings. Our concerns regarding this report are rooted in three basic areas. First, and most importantly, the report fails to address the context in which OIA's responsibilities relating to extradition matters must be reconciled with other critical duties and responsibilities of the office. The demands of extradition cases are a priority for the Office of International Affairs, but they are not the only priority. To accurately assess OIA's role in the extradition process, the report must at least consider the overall responsibilities of the office, including the mounting demands of mutual legal assistance requests, the negotiation and implementation of bilateral and multilateral treaties and agreements and other areas (all of which occupy the majority of resources and time of the office). While

these areas of responsibility are not the focus of this report, failure to consider their impact on the office as a whole can lead to a flawed analysis of how the extradition process is being addressed. Over the last ten years, the strain on OIA's resources has steadily increased, and until the end of this year, has gone unaddressed. While resource considerations do not excuse many of the case management deficiencies cited in the report, they cannot be ignored as a factor exacerbating the office's mounting backlog of pending cases. Proposed text that would provide some context for the main body of the report is attached.

Second, a significant component of the report contains conclusions of the inspection team that action taken by OIA staff in six extradition cases was deficient. While we do not argue that action in some of the cases reviewed may have been deficient - the most common deficiency being the failure to close moribund cases - some very negative conclusions reached in at least three of the examples set out in the report seem to reflect some fundamental misconceptions about the nature of the international extradition process on the part of the inspection team.

Third, we believe some of the figures in the report are incorrect and need to be reconciled before the report is finalized. In addition, we suggest a few technical changes.

Finally, we request that you redact the names of foreign countries cited in the specific case examples in the report. Correspondence with foreign countries on extradition cases is generally treated confidentially, and in instances where the foreign country appears to have been unresponsive, we would not want to embarrass that country, particularly since the identity of the country is not important to the issues raised in the report. Moreover, some of these may be open cases and it would be prudent to delete the reference to the specific country involved so that details of the specific cases are not inadvertently disclosed.

I am available to meet at any time with representatives of the Office of the Inspector General in order to further discuss the matters described in the annex to this letter.

Attachments

- Tab A: OIA comments on proposed recommendations
- Tab B: OIA comments on proposed findings
- Tab C: Table of new and pending mutual assistance cases, 1990-2000

OIA comments on proposed recommendations in OIG draft Report A-2000-21

While the Office of International Affairs disagrees with a number of the draft reports findings (see Tab B), OIA concurs in the general recommendations set out on page 34 of the draft report. OIA is currently in the process of reviewing its policies and procedures with regard to extradition requests and will focus on some of the very practical recommendations made by the Office of the Inspector General in this report.

As a first step in this review process, a complete file review has begun of the thousands of pending cases and matters in OIA. This is an enormous undertaking, and will take a considerable amount of time, particularly in light of the current strain on OIA resources. As noted in our comments on the report's proposed findings, requesting and responding to requests for the international extradition of fugitives constitute only a part of the overall responsibilities and duties of the OIA. The office-wide file review will include not only extradition requests but also incoming and outgoing mutual legal assistance requests, which now represent the majority of OIA's files.

In the file review process, OIA supervisors will work with the line attorneys in reviewing each case and determining status and needed action. In addition to addressing the need for review and action with respect to individual cases, the file review process will inform our effort to develop and update policies and procedures with respect to extraditions and extradition case management.

Comments on specific recommendations follow:

Recommendation 1:

OIA concurs. Office-wide review of all cases and matters has begun and includes the four points cited in the recommendation. Supervisors will review each case file with the responsible line attorney (this includes all files, not just extradition files). OIA has developed a new protocol to guide attorneys in case closing procedures. This protocol will be implemented within the next few weeks.

Recommendation 2:

OIA concurs. Inasmuch as OIA has in the past been denied direct access to law enforcement data bases, OIA is developing a protocol with INTERPOL whereby INTERPOL will assist OIA in checking law enforcement indices as part of regular review and closing of extradition cases. OIA will explore with FBI, USMS, and INS the possibility of entering information regarding extradition requests which have not yet resulted in issuance of an arrest warrant in law enforcement databases, although in the past this concept has been rejected because of practical problems.

Recommendation 3:

OIA concurs. In the course of the office-wide file review, OIA will review and develop standards and procedures to address maintenance of case files.

Recommendation 4:

OIA concurs. New computer hardware is being installed office-wide beginning in February. This new equipment should facilitate attorney's use of the automated case tracking system. Previous equipment did not have the speed or capacity to allow access by all line attorneys without constant system failures. As soon as all computers are installed, MIS will begin training of all OIA personnel in the use of the automated case tracking. As the office-wide file review is completed, OIA will reconcile the results with the automated case tracking system. A contract employee has been retained to assist the docketing unit in dealing with the increase of cases to be closed.

Recommendation 5:

OIA concurs. OIA has been working with the Office of Administration of the Criminal Division to revise overall performance measures. OIA has asked the Office of Policy and Legislation to assist it in assessing the extent to which the automated case tracking system can produce information relevant to performance measures regarding case management.

OIA comments on proposed findings in OIG draft Report A-2000-21**PART I: The Report's findings incorrectly exclude increased workload as a potential factor in the ever-growing backlog of pending extradition cases.**

Pages 5 through 10 of the report are devoted to an analysis of OIA's workload and resources during the period 1990 to 2001. In several passages, the draft report -- referring to the fact that staff levels and the number of new extradition cases remained essentially the same during the period - either explicitly or implicitly asserts that therefore increased workload could not have been a factor contributing to OIA's mounting backlog of pending extradition cases.¹ Such a conclusion, with which OIA has repeatedly taken issue with IG staff, ignores the very significant increase in OIA's caseload of mutual assistance requests between 1990 and 2001, as well as the negotiation of more than 60 extradition and mutual assistance treaties during the same period.

The figures for mutual assistance requests are striking and were previously provided to the OIG; they are attached once again. They show that from 1990 to 2000, the yearly number of incoming mutual assistance requests increased nearly fourfold, from 439 to 1655. During the same period, the number of outgoing requests more than doubled from 286 to 608. In part, this increase in cases is due to the expansion in the number of MLATs (as noted in the report) from 4 to 38. The figures also reflect the same sort of pending case backlog seen with respect to extradition cases.

While we do not suggest that increased caseload excuses all case management problems cited in the report, it is unfair and misleading not to acknowledge that there was a very significant caseload increase during the period, in which the numbers of pending cases steadily increased, with no corresponding increase in resources. The mutual assistance workload of the office now approaches, if not surpasses, our extradition workload, and cannot simply be ignored. Similarly, the substantial demands of treaty negotiations - including multilateral negotiations - also cannot be ignored.

The specific textual changes to address these problems would include:

1. Adding in the Executive Summary, at p. iii, following the second full paragraph (and elsewhere in the body of the report, as appropriate) a paragraph along the following lines.

Our assessment did not address OIA's caseload of mutual assistance requests (requests for evidence), or its impact on the extradition case management deficiencies cited in the report. However, it is noted that while OIA's extradition caseload has remained relatively stable over the past decade, its mutual assistance caseload has more than tripled, and during this period there has

¹ E.g. "... OIA's pending workload did not grow as a result of new treaties." (p. 6); "Although the number of new cases has not increased steadily since 1990, the number of pending cases has increased rapidly." (p. 8).

not been any significant increase in staff. Also, during the 1990's OIA, working with the State Department, negotiated more than sixty new treaties in the areas of extradition and mutual legal assistance. While we did not undertake an analysis of the impact of OIA's increased workload of treaty negotiations and mutual legal assistance cases on the steadily increasing numbers of pending extradition requests, it cannot be excluded as factor which exacerbated the pending case problem.

2. Revising the second paragraph on page 2 to read as follows, so as to give a more accurate snapshot of OIA's workload and priorities:

Although extraditions are ~~OIA's highest priority~~ a high priority, OIA also handles a large number of requests for evidence, both under mutual legal assistance treaties (MLATs)[~~insert fn 4] and through letters rogator⁷ or request, and provides information and advice on international criminal matters to the Attorney General and other senior Department officials.~~ It also negotiates agreements on international criminal matters with the U.S. Department of State and other government agencies. OIA's principal concentration is bilateral extradition ~~treaties and mutual legal assistance treaties (MLAT)~~ MLATs, but it also negotiates executive and general multilateral law enforcement agreements in a host of fora including the U.N., the OAS and the Council of Europe. ~~In addition ... [text moved to beginning] ... officials.~~

3. With respect to the Table 2 on page 6, and the preceding narrative paragraph on page 5, please see the suggested revisions under PART IV. In addition to those changes, for the purposes of the current discussion, the final sentence in the narrative paragraph should be revised to read: "Thus, OIA's pending extradition case workload did not grow as a result of new extradition treaties." However, OIA's overall workload surely did increase as a result of new MLATs, and the negotiation of 66 treaties in 10 years also was a significant part of OIA's workload.

4. Add at the end of background section (following page 9) a paragraph along the following lines:

"Although the number of new extradition cases per year generally remained in the range of 700 to 900 through the period studied, the number of new mutual assistance cases (requests for evidence) grew significantly. New incoming mutual assistance cases grew from 439 in 1990 to 1655 in 2000; new outgoing mutual assistance requests grew from 286 in 1990 to 608 in 2000. Unfortunately, as illustrated in the Table below [please insert attached table of mutual assistance case statistics], the problem of ever increasing numbers of pending cases also applies to OIA's mutual assistance caseload."

PART II. Overly negative findings in some case studies

As an initial matter, we request that the names of the foreign countries involved in the

2

case examples be redacted. Our communications with foreign governments regarding extradition cases are generally confidential. Moreover, the underlying criminal cases in some of the

examples may still well be open and the report should not disclose details of pending cases. Redacting the country names will make it unlikely that the specific cases can be identified.

OIG selected six of the sixty cases reviewed to demonstrate OIA's case management deficiencies. With respect to the six case examples, some "deficiencies" - including failure to close the case in a timely fashion - are legitimate. However, in three cases the report draws overly negative conclusions which are based on a misunderstanding of the extradition process or on assumptions not supported by the record of the case.

1. Page 18, example and discussion:

This case study involves a defendant wanted for sexual abuse of minors. The report reflects that between 1991 and 1997, OIA three times returned the case to the requesting country [Country Name Redacted] because of deficiencies. Despite these efforts (and our review indicates yet a fourth inquiry from OIA), the foreign country could not cure the problems with its case. What is disturbing about report's characterization of this case is that it leaves the impression that the "deficiencies" were minor or necessarily curable through further effort by OIA. What is omitted, despite this having been brought repeatedly to the attention of OIG, is the fact that the central flaw (diplomatically referred to as a "deficiency") was and remained inadequate evidence to support the standard of probable cause required for an extradition. Lack of evidence is not a problem that can be resolved, as the report suggests, by OIA "more actively communicating," and it is not an unusual problem with foreign extradition requests. Also, the fact that foreign country undertook twice to revise its documents, even if unsuccessfully so, clearly indicated that it remained interested in the case. In sum, over a period of years, OIA and the foreign country tried to cure the problems with the case; they did not succeed. Contrary to the conclusions in the report, more "active" communication by OIA - even if merited as a general aspect of case management - would not have cured the problems in the case, nor was it necessary to ascertain the foreign country's interest.

In this instance, the OIG inspection team seems to assume that the role of OIA is primarily one of "processing" an incoming request for extradition, and forwarding the request to the appropriate judicial district for court action. A great deal of time and a high degree of discretion must be exercised by OIA at this stage of the process to ensure that a threshold showing of probable cause can be demonstrated to the U.S. court. These are often complicated cases about which there is not uniformity of opinion. However, if OIA determines that this threshold is not met with the information provided by the requesting country, the case can not and should not be forwarded to a U.S. court.

Accordingly, we request that OIG revise the report to remove any suggestions that lack of "active communication" by OIA was the cause of delay.

2. Page 21, last paragraph, page 22 example, and page 23, first and second paragraphs:

In the case sample discussed here, a provisional arrest warrant had been issued for a fugitive but not placed on applicable U.S. lookout systems. Five months later the fugitive was arrested on state charges, convicted and three years later deported, events about which OIA was apparently unaware. The report cites several problems with this case.

First, the provisional arrest warrant was not entered into NCIC. Had it been entered, it is likely OIA would have learned through the Marshals Service of the fugitive's arrest and could have notified the requesting country [Country Name Redacted] and preserved its opportunity to extradite the fugitive, even if after his state sentence had been served. However this problem should not be attributed to OIA. OIA does not have authority to enter warrants into NCIC; it is the responsibility of the law enforcement agencies.

Second, the report criticizes OIA for not "following up" with the USAO to determine whether the fugitive had been arrested on the provisional arrest warrant. OIA need not "follow up" in this manner. If the fugitive is arrested, the USAO of necessity informs OIA, in order to obtain the formal documents supporting extradition from the requesting country, which if not produced in the time required under the treaty will result in the release of the fugitive. The U.S. Attorney's Office in this case is the Southern District of New York, which has successfully handled many extradition requests and upon which OIA has every reason to rely in fulfilling routine requirements regarding notice of the arrest of a fugitive.

Third, the report criticizes OIA for not following up with the requesting country [Country Name Redacted] to determine whether it had further leads on the location of the fugitive. The law enforcement authorities of that country are well versed in international practice and will communicate new fugitive location leads through law enforcement channels without prompting from OIA. There is no indication any new leads were developed in the five months between the issuance of the provisional arrest warrant in New York and the defendant's arrest in Florida on State charges. Thereafter, it would have been difficult for the country to develop further leads since the defendant was in fact incarcerated in the U.S. (which was, of course, a critical fact which may never have been communicated to that country).

This case study points out how two very practical steps - routine review of cases and an ability for OIA to easily check law enforcement indices - would have, at a minimum, enabled OIA to ascertain that the fugitive had been arrested on State charges and to then notify the requesting country and preserve its opportunity to seek the fugitive's extradition. However, we find highly objectionable the report's tacit suggestion that OIA's handling of the case made it possible for defendant to go "on to commit a violent crime in this country." There is absolutely no indication there was information available to U.S. or foreign law enforcement which would have permitted the fugitive's arrest for extradition purposes prior to his commission of another crime in United States. Conjecture on the part of OIG staff should not serve as the basis for such a damning characterization of OIA.

For these reasons, if the case study is to be retained at all, it would be more appropriately placed alongside the discussion on pp. 25-26 (pertaining to factors in the extradition process that limit OIA's ability to carry out its functions), and not in a section addressing deficiencies in OIA procedures. Moreover, the key portion of the findings - recognizing an error committed by another agency - should be in the text, not footnotes. Initially, we would request revision to the text of the draft report in last paragraph on p. 21 along the following lines:

"The following incoming extradition case demonstrates the need to fully utilize law enforcement information systems to improve the ability to locate fugitives sought by foreign countries and the need for OIA to be able to incorporate checks of those systems in regular reviews of its pending cases. In this case, the USAO had an arrest warrant issued but the fugitive was not located and the warrant was not entered into NCIC. We found through an NCIC check that the fugitive thereafter committed a violent crime while in the United States, was arrested, sentenced and ~~released from prison~~ deported.

In addition, we request the following revisions to the first and second paragraphs on p. 23 and to footnote 16:

"Given current arrangements, OIA cannot² match information pertaining to United States and foreign extradition requests with other law enforcement information systems, as it does not have access to relevant law enforcement systems, such as NCIC. [fn 16] Unless a Red Notice or extradition warrant [fn 17] is issued, U.S. law enforcement authorities that come in contact with the fugitive separate from extradition would not be aware of the extradition. Although we were told that OIA might query the INS regarding a fugitive's immigration status practice.

"At the time of our review, there had been no activity on this case since 1993 and the case remains open at OIA. The USMS should have entered the provisional arrest warrant onto NCIC once it was determined that the fugitive was not at the location originally provided by the foreign country. Had this been done, the arrest of the fugitive in Florida likely would have come to the attention of the USMS and, in turn, OIA. OIA could then have followed up with the foreign country- to effect the fugitive's extradition, even if his surrender had to be delayed pending the service of his sentence on state charges. OIA did not follow up with the-[Country Name Redacted] to determine whether it had another location for this fugitive who went on to commit a violent crime in this country.

.....

Revision to footnote 16: One OIA attorney, formerly with INS, is permitted direct access

² This is not a matter of "current procedures." OIA has sought and been denied direct access to law enforcement databases.

to some INS databases; otherwise, however, OIA does not have direct access to any all law enforcement systems such as NCIC.

3. Page 23, second and third paragraph, and example on page 24. This discussion sets forth the finding that "... OIA's review ... did not detect deficiencies in the legal requirements of extradition requests OIA country teams reviewed and sent cases forward that did not meet legal requirements of the United States or foreign governments. For example, case files showed that USAOs rejected cases sent to them because they lacked adequate probable cause. Foreign countries also rejected cases because dual criminality was absent." This passage is misleading and seems to reflect the unsupported premise that in cases of differing judgment, OIA attorneys are always incorrect, and AUSAs and foreign courts are always correct.

Prosecutors may differ in their judgment about whether probable cause is met in a particular case; indeed, courts often have. Moreover, given the United States' obligations under extradition treaties it is not unreasonable for the OIA to send forward a case which is arguably sufficient under the treaty, with the possibility that the AUSA may disagree. This is exactly what happened in the case example set forth on page 24, and it should not be cited as an OIA "deficiency." Instances could be cited where an AUSA believed probable cause did not exist, but where the case was handled by OIA and the court found probable cause. In addition, it must be noted where a person has been provisionally arrested, the remedy for non-presentation of documents is the release of the fugitive, so it is not improper to send forward documents which may present weaknesses, provided OIA and the AUSA believe they are at least sufficient grounds to make a credible argument for extradition in court.

The conclusion that an adverse decision by a foreign court must be the result of poor legal advice from OIA is particularly disturbing. Success in a foreign court is never assured. Aside from the constant difficulties of extradition courts having to understand and interpret very different laws and legal systems, OIA does not and should not shy away from pursuing difficult cases which may present to foreign courts novel issues or new types of offenses. Moreover, many adverse decisions by foreign courts are in our view simply wrong. It is unfounded and unfair to suggest that anything less than a 100% success rate in foreign courts is due to failure by OIA in its legal analysis and advocacy.

In sum we ask that the above described analysis and case example either be deleted or substantially revised. They do not support the harsh criticism levied against OIA in this section.

4. Page 26, second paragraph: The OIG report concedes that name matches yielded by NCIC checks it ran to search for at-large international fugitives are not necessarily of the same persons as are sought for extradition. If it cannot be confirmed that the persons arrested for other crimes were the same as those for whom extradition was requested, we would ask that this paragraph be deleted.

PART III: Findings regarding OIA's inability to produce files for OIG review

1. Page i, paragraph 4: The final three sentences of this paragraph indicate that OIA was unable to find 12 files of the 70 selected by OIG for review. As we stated in our letters of October 15 and October 31, our records indicate that OIG actually reviewed 60 rather than 58 files, meaning that OIG did not note its receipt of two files from OIA. Of the remaining 10 files (a) OIG declined to review 3 files received by OIA from the records center after a cutoff date its inspection team set; the record center's delay in producing these files should not be attributed to OIA; (b) five other closed files were not produced by the records center; this may indicate a problem at the records center and should not necessarily be attributed to OIA; (c) the remaining two files were closed cases erroneously entered in the OIA case tracking system as being open; they were subsequently located at the records center, but after the team's cut-off date.

Accordingly, we request that the final three sentences of the fourth paragraph on page i, and continuing onto page ii be revised as follows:

" ... We selected a sample of 70 extradition case files from the total pending cases and cases closed during fiscal year 2000. Of the 70 cases, OIA's records indicated 39 were closed and 31 were open. Of the 70 cases, OIA did not produce ~~12 cases before we concluded our review~~ 10 cases within the timeframe we requested. Some of those appear to be closed cases which either could not be located at the Records Center or which were produced by the Records Center after the cut-off date we provided OIA. In at least two cases, OIA could not produce the files requested in a timely fashion because it erroneously carried the cases as open when in fact they had been closed and sent to the Records Center."

2. Page 15, first full paragraph: We suggest revisions in the first part of the paragraph similar to those above:

"We selected a sample of 70 extradition case files from the total pending cases as of November 2000 and cases closed during fiscal year 2000, Of the 70 cases, OIA records indicated that 39 were closed and 31 were open. Of the 70 cases, OIA did not produce 12 cases, 9 closed and 3 open, before we concluded our review 10 cases within the timeframe we requested. Some of those appear to be closed cases which either could not be located at the records center or which were produced by the records center after the cut-off date we provided OIA. In at least two cases, OIA could not produce the files requested in a timely fashion because it erroneously carried the cases as open when in fact they had been closed and sent to the records center. [Note: With this addition, footnote 13 can be deleted.] Of the ~~58~~ 60 cases reviewed, ~~30~~ 32 were closed cases and 28 were open cases. Of the ~~30~~ 32 closed cases reviewed"

3. Page ii, third full paragraph; page 16, first and second paragraphs; page 17 second paragraph; page 23, third paragraph; page 27, last paragraph, page 33, first paragraph: Change "58" to "60".

PART IV: Revision in Table 2 and accompanying discussion, regarding new treaties

Table 2, on page 6, summarizes by year the new extradition and mutual assistance treaties which entered into force between 1990 and the beginning of 2001. The only problem with the table is that it indicates that there were 58 extradition treaties in force in 1990. We assume this figure was arrived at by taking the total number of current treaties (91, and applicable to 110 countries) and subtracting the number of new treaties negotiated in the past decade (33), to come up with a 1990 total of 58. While this approach works for MLATs, it does not work for extradition treaties.

By our calculations, the extradition treaty situation evolved over the past decade as follows: In 1990 we had extradition treaty relationships with 105 countries, and as of February 2001, we had extradition relationships with 109 countries. (The report reflects an earlier OIA-provided figure of 110, but for the purposes of the report the difference is not significant.) In the years 1990 through February 2001, we count 32 new extradition treaty instruments entering into force. (Again, the report cites an earlier OIA-provided figure of 33, but we don't find this significant.) However, of those 32/33 new instruments, only 4 represent entirely new treaty relationships, i.e., with Jordan, the Philippines, South Korea and Zimbabwe. The remaining instruments are either new treaties which replace old treaty instruments, or are amendments to existing treaties (called "protocols" or "supplemental" treaties). In light of this background, then, it is inaccurate to state, as does the text following the Table, that "the number of extradition treaties increased by 33."

To better portray this rather complicated information regarding extradition treaties, we would suggest simply deleting the first line of the table ("Prior to 1990") and the final line ("Grand Total") thus avoiding the problem of "total" numbers of extradition treaties. This problem might then be resolved by revising the introductory paragraph on page 5 to read as follows (for this purpose, we assume OIG wishes to keep the totals previously provided):

"The numbers of new extradition treaties and MLATs have grown significantly over the last ten years (see Table 2 on page 6). Since 1990, 32 new extradition treaty instruments have entered into force. The majority are new treaties which updated or entirely replaced outmoded extradition treaties, but four represent the establishment of extradition relations with new countries. The United States currently has 91 extradition treaties with 110 countries. Before 1990, there were four MLATs "

PART V: Suggested technical corrections

p. i, 2nd paragraph, last line: in diplomatic practice, "communique" means a particular type of statement (generally meant for the public or press), and not communications generally; thus we suggest the reference be to "diplomatic communications."

p. i, 3rd paragraph, 8th line: suggest "believed to be in the United States" be revised to read "believed at one time to be in the United States." As the report notes, cases are opened when

there is a location lead for a fugitive, but may remain open long thereafter, even though there is no subsequent information that the fugitive was in the U.S.

p. ii, 1st paragraph, line 4: suggest "We found that OIA was most effective during the ~~initial review~~ first phase of an extradition " The actions described constitute more than an initial review. Extradition cases are based in most cases entirely on the documents submitted. Thus, advice regarding and review of the documents is often the most critical phase of the case.

p.2, 2nd paragraph, 7^h line: suggest reference to Red Notice read: "issuing a Red Notice to facilitate apprehension of a fugitive." Red Notices do not necessarily serve as a basis for apprehension (it will depend on the country). However, it is certainly fair to say that as international "wanted posters," Red Notices generally "facilitate" apprehension.

p. 3, 1st paragraph: please amend the reference to Team I's area of responsibility to read: "Ireland, Africa, the U.K. and its dependencies, and the English-speaking Caribbean." Many Caribbean nations have long been independent of the U.K. and may find it insulting to be referred to merely as "former possessions." Moreover, it is primarily the fact that they are English-speaking that places them in Team I's area.

p. 4, paragraph 2: the description of the fugitive unit is not correct. In the vast majority of cases, when a fugitive is located abroad, the regional team is notified directly by foreign or U.S. law enforcement agencies or through diplomatic or Interpol channels, and the fugitive unit (comprised of a single attorney and now disbanded) is not involved. The second sentence should therefore be deleted.

p. 5, footnote 7: the reference to an OIA attorney "stationed" in Switzerland is not entirely accurate. A former OIA attorney, now living in Switzerland, is retained on an "as needed" basis pursuant to a contractual arrangement with the Division. Also, the attorneys in France and the U.K. are part of an "exchange" or "liaison magistrate" program initiated by Attorney General Reno, as opposed to the full-fledged overseas positions filled by OIA attorneys at our Embassies in Rome, Mexico City, and Brussels. We ask that clarification along these lines be included in the footnote.

p. 23, footnote 16: in fact, OIA has access to no law enforcement databases, other than one attorney who is permitted access to the INS database because she is a former INS employee; we suggest a more accurate description would be: "One OIA attorney, formerly with the INS, has access to INS databases; otherwise, OIA does not have direct access to any law enforcement databases."

p. 26, paragraph 1, line 2: it is more accurate to say: "fugitives believed at one time to be in the United States." While footnote 19 is helpful, without reference to the footnote, the statement is misleading. As the report notes, many cases appear to remain open even when an initial lead on a location in the United States has long grown stale.

OIA Case Trends, 1990 to 2000 (from Oracle Data) MUTUAL ASSISTANCE

Year-to-Year running account

		1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
Incoming													
	Open	439	588	712	826	998	990	1007	1088	1087	1207	1655	10597
	Closed	453	503	484	698	581	705	486	569	740	1201	902	7322
	Net	-14	85	228	128	417	285	521	519	347	6	753	3275
Outgoing													
	Open	286	400	552	484	535	484	507	465	518	471	608	5310
	Closed	284	355	287	467	299	586	334	424	324	569	375	4304
	Net	2	45	265	17	236	-102	173	41	194	-98	233	1006
Total		-12	130	493	145	653	183	694	560	541	-92	986	4281

APPENDIX IV: OFFICE OF THE INSPECTOR GENERAL'S ANALYSIS OF MANAGEMENT'S RESPONSE

On December 10, 2001, the Office of the Inspector General (OIG) sent copies of the draft report to the Criminal Division with a request for written comments. The Criminal Division responded with three sets of comments, which we have included in Appendix III. The first is a memorandum from the Criminal Division's Assistant Attorney General, who concurred with the recommendations of the report but disagreed with some of the report's findings. The second is the Office of International Affairs' (OIA) comments on the OIG's recommendations. The third is OIA's specific comments on some of the findings and language of the report. We first discuss the responses to each of our five recommendations, then address the comments that the Criminal Division and OIA provided regarding the findings and language of the report.

Recommendations

Recommendation Number 1 – Resolved – Open. OIA is conducting an office-wide review of all its cases and matters. According to OIA, this review is addressing the four areas that we consider the minimum requirements needed in extradition process policies and procedures. Although OIA has developed a new protocol to guide attorneys in case closing, we believe OIA needs to develop standard procedures that address, on an ongoing basis, the full range of extradition case management policies and, at a minimum, respond to the areas outlined in our recommendation. Please provide a copy of the new case closing protocol and case management policies and procedures.

Recommendation Number 2 – Resolved – Open. OIA responds to the recommendation by planning to explore with the Federal Bureau of Investigation (FBI), United States Marshals Service (USMS), and Immigration and Naturalization Service (INS) the possibility of entering information about extradition requests that have not resulted in issuance of arrest warrants in law enforcement databases, and by developing a protocol with the U.S. National Central Bureau (USNCB) of INTERPOL whereby USNCB would assist OIA in checking law enforcement indices as part of OIA's regular review and closing of extradition cases. Please provide documentation of OIA's consultation with the FBI, USMS, and INS regarding entering extradition request information into law enforcement databases, and a copy of the protocol developed with USNCB.

Recommendation Number 3 – Resolved – Open. OIA's plan to develop standards and procedures to address maintenance of case files is responsive to the recommendation. Please provide a copy of the standards and procedures.

Recommendation Number 4 – Resolved – Open. OIA stated that it is installing new computer hardware, which it expects will facilitate OIA attorneys' use of the automated case tracking system. Training of all OIA personnel in the system's use will follow the installation. OIA will reconcile the automated tracking system records with its office-wide file review. Please provide us with information

showing that the data in the new system is, and will remain, reliable and complete, and the plan OIA intends to implement to ensure that the tracking system is used as an integral part of case management.

Recommendation Number 5 – Resolved – Open. OIA is working to revise its performance measures and determining whether the automated case tracking system will be the method by which to monitor OIA’s progress against the performance measures. Please provide the revised performance measures and method that OIA will use to monitor the office’s compliance with those measures.

Criminal Division and OIA Comments on Report

Although the Criminal Division agreed with all our recommendations, it did not agree with several aspects of our findings. According to the Criminal Division’s response, its three general disagreements were its belief that: (1) we did not sufficiently consider the other duties and responsibilities of OIA, (2) some of our case studies reflected overly negative conclusions about OIA’s extradition activities, and (3) some of the figures in the report were incorrect. The Criminal Division also provided us with amended information about the number of extradition treaties and suggested technical changes to certain wording of the report. Our analysis of the Criminal Division’s concerns and recommended changes is provided below.

OIA’s Other Duties and Responsibilities. The Criminal Division requested that we add more information to the report about OIA’s increased workload involving multilateral treaty negotiations and mutual legal assistance requests. According to the Criminal Division, these have more than tripled over the past decade. The Criminal Division further stated that these treaty negotiations and assistance requests rival OIA’s responsibilities for extraditions of fugitives and also contribute to problems in managing the extradition caseload. The Criminal Division’s response added, “While resource considerations do not excuse many of the case management deficiencies cited in the report, they cannot be ignored as a factor exacerbating the office’s mounting backlog of pending cases.”

Although the draft report already described OIA’s mission, responsibilities, structure, varied workloads, and staffing, we included some additional information about OIA’s workload handling multilateral treaty negotiations and mutual legal assistance requests. Our review did not evaluate the statistics regarding OIA’s mutual legal assistance caseload and its affect on the pending extradition caseload. However, in reaching our conclusions on OIA’s handling of extradition cases, we did not ignore OIA’s other responsibilities or its increasing demands in other areas. As the Criminal Division itself acknowledges, however, its other duties cannot justify the significant deficiencies we found in its management of extradition cases. OIA officials told us at the time of our review that management of extradition cases was OIA’s highest priority. We believe that problems in managing its extradition cases cannot be attributed to increases in other areas; rather, the lack of basic management oversight in extradition

cases is the main fault.

Moreover, during our review OIA provided no documented evidence that it had analyzed its various workloads and work methods or had determined the root causes of its case backlogs. If the increased caseload in other areas has dramatically affected OIA's ability to handle its extradition caseload in a timely and appropriate manner – a proposition that has not been conclusively shown – we believe that the Criminal Division should have sought to obtain, or allocate, additional funds for those other critical responsibilities. In sum, while we noted in the report OIA's other responsibilities, and also include the Criminal Division's statistics and arguments about its other responsibilities, they cannot excuse the significant problems we found in OIA's handling of its extradition cases.

Case Studies. As requested by OIA, we redacted names of foreign countries from the case studies to protect the confidentiality of the countries.

The Criminal Division also asserts that three extradition cases included in the report draw overly negative conclusions about OIA that are based on a misunderstanding of the extradition process or on assumptions not supported by the case records.

To supplement our reviews of the case files and Extradition Tracking System, we interviewed attorneys assigned to cases that had little or no activity over several years. The attorneys could not provide justification or extenuating circumstances to account for the lack of activity. Likewise, we interviewed OIA managers regarding cases and case management policies, but the managers could only speculate as to why cases were handled in a specific manner. The attorneys and managers told us they believed that initiating follow up on pending cases was the responsibility of prosecutors and not the responsibility of OIA. If requested by a prosecutor or law enforcement officer, OIA would then pursue the status of a pending case.

We disagreed with OIA's narrow view of its responsibility for follow up on extradition cases. The case studies on pages 19 and 23, which the Criminal Division cited as overly negative, portray OIA's limited level of involvement in the cases. At the time of our review, OIA had not done anything on the cases in four years and eight years, respectively. When events occurred that could potentially change the status of the cases, OIA did not take action to facilitate the extraditions. For example, in the first case, the USMS located the fugitive, yet OIA did not notify the foreign country. In the second case, when the fugitive was not found at the specified location, the OIA did not inform the foreign country or coordinate with the U.S. Attorney's office (USAO) and the USMS regarding the status of the arrest. A follow-up call to the USAO or USMS may also have ensured the fugitive's warrant was entered into the National Crime Information Center (NCIC) database.

The Criminal Division stated, however, that follow up with prosecutors and law enforcement officials was not OIA's responsibility and that OIA's lack of follow up could not be linked to stymied extradition cases, unapprehended

fugitives, and crimes the fugitives commit while free. Our report does acknowledge that factors such as the complexity of a case or diplomatic considerations may cause a case to remain open for extended periods, or that extraditions may not occur because fugitives elude capture, or foreign governments cannot provide documents needed to meet the United States' legal standards. But we do not agree with OIA arguments about its limited role in extradition matters. OIA has expertise and access to critical, time-sensitive information about cases needed by prosecutors and law enforcement agencies. Extradition cases involve alleged criminals on-the-run who may commit criminal acts. Our checks of the NCIC database showed that fugitives do, in some cases, remain in the United States and may commit other crimes. Similarly, fugitives that flee from the United States to foreign countries may commit crimes in those countries. Because of these potential serious consequences, we did not revise the report to remove or lessen the conclusion about OIA's need to perform proactive follow up on extradition cases. We believe OIA must stay actively involved in cases, coordinate with other parties to the extraditions (such as foreign and U.S. prosecutors and the USMS), and proactively initiate prompt case actions.

We did, however, revise the report to include additional facts in the case studies, such as information about the responsibilities of USAOs and the USMS and OIA's lack of access to law enforcement systems. We also added information to emphasize OIA's expertise and unique position to share information and facilitate extraditions.

The Criminal Division also expressed concern with the report's statements (on page 24) about deficiencies in OIA's legal determinations in certain extradition cases. The Criminal Division stated that these deficiencies could reflect differences in judgment between OIA attorneys, U.S. prosecutors, and foreign courts. However, our concern is that OIA does not have procedures in place to ensure that each case receives an adequate review for legal sufficiency. In addition, International and National Security Coordinators from two USAOs that handle extradition cases

suggested that that knowledge of U.S. law displayed by OIA attorneys for incoming cases was “wanting,” OIA did a poor job in screening incoming extradition requests, and some extradition requests barely set forth probable cause.

In total, we reviewed 58 extradition case files and identified 34 cases with case management problems. We could have used many of these 34 cases as examples in our report of OIA’s lack of follow up or incompleteness of actions in extradition cases. We believe that OIA plays a pivotal role in the extradition process and should assume broader responsibility for case activities, such as reviewing legal sufficiency, sharing information, and initiating follow up.

Number of Files Reviewed. The Criminal Division asserted in its response that we did not have accurate numbers for the number of files we reviewed and the number of files OIA provided. In fact, contrary to Criminal Division’s assertion that the “OIG actually reviewed 60 rather than 58 files,” we did review 58 extradition cases. Our target sample size was 70 cases, but 12 cases were either never located or not received in time to review during our on-site field work.

In its response, OIA also stated that part of the problem in providing these 12 cases to the OIG was that the National Records Center could not find OIA closed case files. OIA also added that the Records Center produced some closed files to OIA late or the files were erroneously entered into OIA’s case tracking system as being open, when in fact they were closed and at the Records Center. We have included OIA’s assertions about the causes for the failure to produce these 12 files in the report, but we also note that this provides another illustration of problematic case management, particularly the inaccurate information about the status of certain cases.

In addition, part of OIA’s disagreement with our numbers reflects a difference with how we treated cases involving co-defendants. Although our sample was 70 cases, we had requested more than 70 case files and had received more than 58 files. The additional cases requested and received, however, contained information involving co-defendants related to other cases in the sample. We did not expand our original sample of 70 cases to include these additional cases.

Extradition Treaties. After reviewing the draft report, the Criminal Division provided us with revised treaty numbers and stated that treaty information provided earlier by OIA was not accurate. Both the number of foreign countries with extradition treaties and the number of extradition treaties since 1990 had been over-counted by one. The revised numbers should be 109 (not 110) and 32 (not 33), respectively. The Criminal Division further explained that only 4 of the 32 extradition treaties established first-time treaty relations with new foreign countries. The other treaties were updates to, or replacements for, existing treaties.

The Criminal Division's revised treaty numbers are the third set of numbers we have received in response to our inquiry. Based on this latest information, we revised the report to delete the number of treaties prior to 1990 (the Criminal Division did not provide a corrected number) and added a footnote about the four new treaties versus changes to existing treaties. We did not revise the total number of extradition treaties entered into force since 1990 from 33 to 32.

The Criminal Division also suggested a variety of technical corrections to language in the report. Where appropriate we incorporated the changes.

In sum, we believe – and the Criminal Division agrees – that the recommendations we make could improve OIA's management of its extradition cases. We believe that OIA's other responsibilities do not excuse the serious deficiencies we found in the way OIA manages extradition cases.