

USDOJ/OIG Special Report

The Handling of FBI Intelligence Information
Related to the Justice Department's
Campaign Finance Investigation (July, 1999)

Unclassified Executive Summary**I. Background of the OIG Investigation**

During the summer of 1996, the news media began reporting stories focusing on allegations of improper fundraising practices during the 1996 Presidential campaign. Among these reports were claims that the Democratic National Committee (DNC) had received large campaign contributions from foreign sources in violation of federal campaign finance laws. These reports prompted members of Congress to ask Attorney General Reno to authorize an independent counsel investigation into such claims.

After concluding that there was insufficient evidence to warrant the appointment of an independent counsel, Attorney General Reno created the Campaign Finance Task Force (the Task Force) in late 1996 to further investigate such allegations of campaign finance violations. In the meantime, Congress launched two separate investigations into questionable fundraising practices during the 1996 Presidential election: one by the Senate Governmental Affairs Committee (SGA) and the other by the House Government Reform and Oversight Committee (HGRO).

Since 1996, the FBI's National Security Division (NSD) had been conducting an intelligence investigation into certain allegations involving the People's Republic of China (PRC). Initial intelligence reporting indicated that the PRC had mounted a plan during 1995 to influence U.S. politics by targeting Congress. In early 1997, the FBI began providing SGA staff with limited briefings about the plan. In July 1997, SGA Chairman Fred Thompson opened public hearings on the committee's investigation into campaign finance violations by claiming that the PRC had embarked upon a plan to influence the U.S. political process and that there was evidence that the PRC plan had affected the 1996 Presidential election. Senator Thompson's claim was challenged by some members of the committee and disavowed by the Department of Justice (Department).

On September 10, 1997, the Department, the National Security Agency (NSA), and the Central Intelligence Agency (CIA) conducted a joint briefing for the Senate Select Committee on Intelligence (SSCI) concerning the PRC's efforts to influence U.S. politics. During that briefing, the CIA presented testimony about two pieces of intelligence information related to the PRC that it had received from the FBI.¹ The FBI had obtained this information as part of its aforementioned intelligence investigation and had disseminated it to the intelligence community. However, the FBI had not previously provided the two pieces of information to Congress.

Senator Thompson, who attended part of the September 10 SSCI briefing, directed the representatives who appeared before SSCI to appear before him the following day. Senator Thompson wanted to know why the FBI had not previously provided this information to his committee, particularly because members of SGA had posed several questions specifically about the subject matter of this information during an earlier briefing. On September 11, Director Freeh explained to Senator Thompson that although the information had been collected by the FBI, he had been unaware of the information until the CIA included it in its testimony for SSCI.

In the wake of the September 10 and 11 briefings, the FBI launched an internal review of NSD's files to ascertain why NSD had not disseminated the information to senior FBI officials. In late September 1997, the FBI also briefed SGA, HGRO, and both the House and Senate intelligence committees on the two pieces of FBI information that had been given to SSCI and SGA by the CIA at the September 10 and 11 briefings.

During the FBI's internal file review, the FBI found eight additional pieces of intelligence information from NSD intelligence investigations that the FBI considered potentially relevant to the congressional and Task Force investigations and that it concluded had not been properly disseminated. The Department provided these newly discovered pieces of information to the Task Force, SGA, HGRO, SSCI, the House Permanent Select Committee on Intelligence (HPSCI), and the National Security Council (NSC) in November 1997.

In late November 1997, the Attorney General asked the Office of the Inspector General (OIG) to conduct a review to determine how these problems relating to the proper dissemination of potentially significant intelligence information arose and how they could be prevented in the future. The Attorney General requested that the OIG review practices for the dissemination of intelligence information related to the Task Force investigation within the FBI, from the FBI to Main Justice, within Main Justice, and from the FBI to the Task Force. In addition to intra-Departmental dissemination of this intelligence information, the OIG also was asked to review the dissemination of intelligence information related to other agencies and entities. Specifically, we reviewed dissemination practices between the Department and SGA, HGRO, the intelligence committees, and the NSC. The OIG's investigation focused on 10 pieces of intelligence information that had been identified by senior Department officials as important information that was not properly disseminated: the two pieces of FBI information that were briefed to Congress in September 1997 by the CIA and the eight pieces of information uncovered during the FBI's September 1997 file review.

The OIG's inquiry was conducted using a combination of interviews and document reviews. In all, the OIG conducted 123 interviews of 73 witnesses. These witnesses were personnel from Main Justice (*i.e.*, from the Attorney General's office, Deputy Attorney General's office, Criminal Division, Office of Intelligence Policy and Review (OIPR), and Executive Office for National Security), FBI (*i.e.*, from the Director's office, Deputy Director's office, NSD, Information Resources Division, Office of Public and Congressional Affairs, and several field offices), the Task Force, U.S. Attorneys' Offices, the CIA, and several congressional committees. We also reviewed more than 18,000 pages of information, almost all of which was classified. The documents were obtained from various components of the Department and from intelligence agencies and congressional committees.

Before being finalized, the classified version of the report was issued for review and comment to the Attorney General's Office, the Deputy Attorney General's Office, the FBI Director's Office, the National Security Division, the Task Force, the Criminal Division, the Office of Intelligence and Policy Review, and certain intelligence agencies. Individuals mentioned prominently in the report also had the opportunity to review and comment upon it before it was completed. On July 12, 1999, we finalized the 576-page classified report. That report, which was classified at the TOP SECRET/CODEWORD level, was provided to the Attorney General, the Director of the FBI, and FBI's National Security Division, and certain congressional committees. This is an abbreviated, unclassified summary describing the main findings of the classified report.

2. Summary of Findings

We found that many of the pieces of information that were identified by senior Department officials as important, undissemated material had in fact been disseminated to varying degrees within the Department during the previous two years. Of the 10 pieces of ostensibly undissemated intelligence information that were the focus of the OIG investigation, the Attorney General had access to seven and parts of two others and Director Freeh had access to five and part of another prior to the "re-discovery" of that information in late 1997.

However, although many of these pieces of intelligence information were made available to the Attorney General, Director Freeh, or senior Department officials, many of them were supplied in a fashion that belied their significance. That is, they were not actually briefed – either orally or in writing – to the Attorney General, Director Freeh, or their senior staffs. Rather, they were contained in routine documents related to the Department's use of the Foreign Intelligence Surveillance Act (FISA), serendipitously included in memoranda on other subjects, or buried amid documents that were made available to the Attorney General, Director Freeh, or their staffs. These were ineffective methods of communicating important intelligence information to senior Department officials. Indeed, this explains why some officials were unaware that they had received these pieces of information before.

We concluded that none of the FBI's problems disseminating and reporting classified information concerning the intelligence and Task Force investigations was attributable to intentional malfeasance or purposeful obstruction of the Task Force investigation. Further, none was the product of an improper intent to conceal information or prevent it from being disclosed to parties in the Department, Congress, or the NSC. Rather, many of the problems we found were attributable to poor judgment on the part of NSD personnel; well-intentioned misapplication of Departmental policy; attempts by individuals in NSD to protect the division's narrow interests without sufficient regard for the impact of their actions upon the Task Force investigation; legitimate Departmental policy disputes about disseminating criminal and intelligence information; problems in the use and maintenance of the FBI's computer database systems; and/or poor communication between members of the Task Force and NSD and among the various parties

within the Department who were involved in the Task Force investigation. The unprecedented nature of the parallel intelligence and Task Force investigations also contributed to complications in the handling of classified information.

3. Facts

A. The PRC Intelligence Investigation

Most of the 10 pieces of information that the FBI re-discovered after the September 1997 hearings were collected by the FBI prior to or during the FBI's PRC intelligence investigation that was begun in 1996 after several FBI field offices began receiving intelligence information suggesting that the PRC had embarked on a broad-based plan to influence U.S. politics. The information being collected by various field offices concerning the PRC plan culminated in 1996 in a decision by NSD to open and supervise an overarching intelligence investigation at FBI Headquarters (FBI HQ) that would administer the ongoing investigations being conducted by the field offices. In the meantime, NSD received provocative reports from an FBI field office concerning alleged ties that a subject of the FBI's intelligence investigation had to the PRC government and to various U.S. political leaders. Some of this information was contained in documents generated by the FBI and OIPR to which the Attorney General and Director Freeh had access.

2. Convergence of the Intelligence Investigation and the Campaign Finance Task Force Investigation

In December 1996, an FBI field office reported information concerning an individual who would later become a subject of the Task Force's investigation. That information would later be identified as one of the 10 pieces of undisseminted information that were the focus of the OIG investigation. When this piece of information was received by NSD, it was shared with the FBI's National Security Law Unit (NSLU) for advice on handling. In early January 1997, NSLU gave a copy of the teletype containing the report to a Main Justice official who often handled intelligence matters. That same official also supervised the Task Force, which had recently been formed to investigate allegations of campaign finance violations. The Main Justice official discussed the information with other Main Justice officials, including the Attorney General, and arranged for the Task Force to receive a briefing on the FBI's intelligence investigation. On January 10 and 13, 1997, NSD conducted briefings on the intelligence investigation for the Task Force and senior FBI and Main Justice officials.

Director Freeh closely followed the Task Force investigation. Accordingly, although he did not attend the January 1997 briefings NSD conducted, he was informed in a January 30, 1997 memorandum about intelligence information that related to the Task Force investigation. Director Freeh received his first briefing on the intelligence investigation on February 5, 1997.

3. The Task Force's Access to NSD's Intelligence Material

NSD began providing certain intelligence information to the Task Force after concluding that such information might be of lead value to the criminal investigation. However, NSD had concerns about the Task Force's access to its intelligence information because of Departmental policies that restricted the sharing of intelligence information with criminal investigators and because of concerns that its sensitive sources and methods might be compromised if the Task Force gained access to NSD's intelligence. Consequently, NSD devised a process for providing the Task Force with intelligence information that would limit the amount of raw intelligence the Task Force would review or receive. This process involved furnishing the Task Force with paraphrased versions of intelligence information NSD was receiving from its intelligence investigation. These excerpts were contained in documents called "letterhead memoranda" or "LHMs."

The process of creating LHMs for the Task Force was a time-consuming effort for NSD that required the assistance of agents from outside the unit and even from the field offices. Agents were brought to FBI HQ for one-month assignments to assist in the LHM-drafting process. The Task Force received its first batch of LHMs in mid-January 1997. The Attorney General's office also arranged to receive copies of the LHMs that NSD produced for the Task Force.

On February 14, 1997, NSD transmitted a teletype to all FBI field offices requesting that information received since 1995 on efforts by several foreign governments to target or influence U.S. political officials or political campaigns be transmitted to NSD. Most of the field office

responses were received by February 19, and on February 22, 1997, NSD delivered to the Attorney General a copy of the packet of teletypes received in response to the February 14 field office canvass. The Attorney General gave the packet of teletypes to then-Deputy Attorney General (DAG) Jamie Gorelick. OIPR reviewed the packet of teletypes for DAG Gorelick and drafted a memorandum on February 27, 1997, summarizing noteworthy information contained in the packet. OIPR then gave the packet to the Task Force. However, NSD retrieved the packet shortly after the Task Force received it, because NSD had not understood that anyone other than the Attorney General and DAG would have access to it. The packet was never returned to the Task Force, and the Task Force would not again have unfettered access to that information until late 1997.

While NSD was committed to using the adapted LHM system to furnish the Task Force with intelligence information, attorneys on the Task Force had misgivings about the process. Task Force attorneys believed it was important to review the raw information underlying the LHMs rather than relying solely on paraphrased documents prepared by NSD personnel who had no connection to the Task Force. Consequently, the Task Force attempted to gain access to the material underlying the LHMs. However, NSD officials resisted the Task Force's efforts to review the raw intelligence material. This prompted a series of discussions between Main Justice and the FBI in an attempt to resolve the dispute over the Task Force's access to NSD's raw intelligence. Although the issue was raised at a series of meetings, it was never resolved, even after senior FBI officials had stated that the Task Force would receive the material that it sought. All of the issues concerning the Task Force's access were not resolved until mid-September 1997, when the Attorney General directed, in the aftermath of the September 10 and 11 congressional briefings, that the Task Force obtain access to all relevant intelligence information.

4. NSC and the PRC Intelligence Investigation

In February 1997, White House Counsel Charles F.C. Ruff contacted the Department twice seeking information regarding PRC involvement in attempts to affect U.S. policy. Ruff's request related to Secretary of State Madeleine Albright's plans for an official visit to China that month.

The Department's first response to Ruff's request merely reiterated information that the FBI had supplied to the NSC in a June 1996 briefing about the PRC's plan to influence Congress. After Ruff's second inquiry, the FBI and Main Justice conferred over the appropriate amount of information to provide in response. Some officials advocated providing only a limited response because they believed that providing investigative information to the White House about the PRC and campaign fundraising violations was akin to briefing the subject of an investigation about that investigation. Ultimately, the White House Counsel only received copies of teletypes concerning the PRC plan to influence Congress that had previously been transmitted to the White House.

Both the FBI and Main Justice sought to ensure that information that might undermine the criminal investigation was not disseminated to the White House. However, there were disagreements over the implementation of this policy. Some senior FBI officials expressed objections to briefing the NSC about information potentially related to the criminal investigation but derived from the intelligence investigation. In contrast, senior Main Justice officials believed more broadly that intelligence information bearing on national security should be given to the NSC. In the aftermath of this disagreement, the FBI chose not to attend NSC briefings on the intelligence investigation, although the FBI continued to review the content of any such briefings.

Following the White House Counsel's request for information, DAG Gorelick directed OIPR and the FBI's Office of Professional Responsibility (OPR) to review the FBI's intelligence material to examine, inter alia, whether the FBI had disseminated salient information about the PRC plan to Main Justice, NSC, and the intelligence community. Their report (the OIPR/OPR Report), which was finalized in May 1997, after DAG Gorelick had left the Department, found that there were shortcomings in the FBI's dissemination practices. The report, which included a brief summary of noteworthy information from the intelligence investigation, was given to senior FBI and Main Justice officials, including the Attorney General and Director Freeh. The report contained some of the intelligence information that would later be considered undissemminated.

5. Congress and the Intelligence Investigation

The Department usually provides intelligence information to Congress through the congressional intelligence committees and relies upon those committees to make information available to other committees as necessary. In the context of the briefings related to the PRC intelligence

investigation, the Department deviated from this policy. The Department instead briefed SGA, HGRO, SSCI, and HPSCI directly. Although the committees were briefed at different intervals, Department officials claim that they attempted to provide each of the committees with the same information.

While the House and Senate intelligence committees were briefed with comparable regularity, HGRO received fewer briefings than the intelligence committees and SGA received more. It appeared that SGA's efforts to obtain information from the Department drove the briefing schedule for the other committees.

SSCI	HPSCI	SGA	HGRO
5/16/96	5/16/96	2/27/97	7/24/97
3/6/97	1/31/97	3/6/97	9/22 or 9/23/97
3/14/97	5/1/97	3/25/97	11/14/97
4/23/97	9/23/97	5/5/97	12/4/97
9/10/97	11/7/97	7/14/97	3/4/98
9/22 or 9/23/97	12/4/97	7/28/97	
11/7/97		9/11/97	
12/4/97		9/23 or 9/24/97	
		11/7/97	
		12/4/97	

According to Director Freeh, he and the Attorney General met with Senator Thompson soon after SGA began its investigation. They explained to the Chairman that they would seek to find a means by which the FBI and Main Justice could provide information to SGA to support its oversight function while continuing to protect grand jury information and the integrity of the criminal investigation. Director Freeh said he and the Attorney General also told Senator Thompson that if the Department obtained evidence of a crime that was important to national security, such as clear evidence that the PRC plan influenced the Presidential election, it would consider providing that information to SGA. Notwithstanding this discussion, a protocol for providing information to SGA was never worked out to the committee's satisfaction.

6. Discovery of the Undisseminated Intelligence Information

After the September 10 and 11, 1997 briefings to SSCI and SGA, Director Freeh directed NSD to review its files to ascertain why the two pieces of FBI intelligence information that had been briefed to those committees by the CIA had not been disseminated to senior FBI officials. In addition, NSD's file review was intended to ascertain whether there was any additional information that should have been provided to Congress. That review and subsequent searches turned up another eight pieces of information in NSD's files that are the subject of the OIG investigation. In November 1997, these 10 pieces of information were provided to the Task Force, Main Justice officials, Congress, and the NSC.

4. Tracking the Dissemination of Information

The OIG report provides an exhaustive account of how each of the 10 pieces of information that the FBI determined had not been properly disseminated were handled within the Department. We tracked each of those pieces of intelligence information through the Department to determine who had access to it and when. We accounted for every opportunity that Department personnel had to learn of this information, regardless of whether it was disseminated using an appropriate means. The chart below provides a pared-down account of the report's findings about Department officials' access to the 10 pieces of

information, which are identified only by number. The notations in the columns represent each time a particular Department official or component had access to one of the 10 pieces of intelligence information.

		NSD	Director Freeh and/or Sr. FBI Officials	Attorney General and/or Sr. Main Justice Officials	Task Force
INTELLIGENCE INFORMATION #1		Late 1995 FBI Teletype.	5/97 OIPR/OPR Report.	<u>AG</u> : 2/97 FBI Teletype Packet; 5/97 OIPR/OPR Report. <u>DAG</u> : 2/97 FBI Teletype Packet; 2/97 OIPR Memo; 5/97 OIPR/OPR Report.	2/97 FBI Teletype Packet; 2/97 OIPR Memo.
INTELLIGENCE INFORMATION #2		Early 1997 FBI Teletype; 1996-1997 OIPR Documents.	<u>Freeh</u> : 1996-1997 OIPR Documents.	1996-1997 OIPR Documents.	
INTELLIGENCE INFORMATION #3		Late 1996 FBI Teletype.	<u>Freeh</u> : 1/97 Director's Note; 2/97 Briefing. <u>Sr. Officials</u> : Late 1996 FBI Teletype; 1/10/97, 1/13/97, 2/97 Briefings; 1/97 Director's Note.	<u>AG</u> : Early 1/97 discussion w/ Dept. official; 2/97 FBI Teletype Packet. <u>DAG</u> : 2/97 FBI Teletype Packet; 2/97 OIPR Memo. <u>Other Sr. Officials</u> : 1/13/97 Briefing; 2/97 FBI Teletype Packet; 2/97 OIPR Memo.	Late 1996 FBI Teletype; 1/13/97 Briefing; 2/97 FBI Teletype Packet; 2/97 OIPR Memo.
INTELLIGENCE INFORMATION #4		1 Early 1995, 3 Late 1996, and 2 Early 1997 FBI Teletypes.	<u>Freeh</u> : 4/23/97 SSCI Briefing. <u>Sr. Officials</u> : 2/97 and 6/97 LHMs.	<u>AG</u> : 2/97 FBI Teletype Packet; 4/23/97 SSCI Briefing; 7/97 LHM <u>DAG</u> : 2/97 FBI Teletype Packet; 2/97 OIPR Memo. <u>Other Sr. Officials</u> : 2/97 Teletype Packet; 2/97 OIPR Memo.	2/97 FBI Teletype Packet; 2/97 OIPR Memo; 2/97 and 6/97 LHMs.
INTELLIGENCE INFORMATION #5	#5A	Mid-1997 FBI Teletype.	<u>Sr. Officials</u> : 8/97 LHM.	<u>AG</u> : 9/97 LHM.	8/97 LHM.
	#5B	Early 1997 and Mid-			

		1997 FBI Teletypes.			
INTELLIGENCE INFORMATION #6		Early 1997 and Mid-1997 FBI Teletypes.			
INTELLIGENCE INFORMATION #7		Early 1997 and Mid-1997 FBI Teletypes.	<u>Sr. Officials</u> : 10/97 LHM.	<u>AG</u> : 10/97 LHM.	10/97 LHM.
INTELLIGENCE INFORMATION #8		12/96, 4/97, 5/97 Intelligence Agency Reports; Mid-1997 FBI Teletype.	3/97 and 8/97 Director's Notes.	4/97 OIPR Memo.	
INTELLIGENCE INFORMATION #9		Mid-1997 and Late 1997 FBI ECs; 10/97 contact w/ FBI Field Office #1.	<u>Sr. Officials</u> : 10/97 LHM.	<u>AG</u> : 10/97 LHM.	10/97 LHM.
INTELLIGENCE INFORMATION #10	#10A	Early 1997 EC on Database Search; 10/97 contact w/ FBI Field Office #1.		<u>AG</u> : 7/97 LHM	7/97 LHM; 9/97 FBI Field Office #1 File Review.
	#10B	7/97 FBI Closing Memo; 10/97 contact w/ FBI Field Office #1.			9/97 FBI Field Office #1 File Review.
	#10C	6/92 FBI Memo; 7/97 FBI Closing Memo; 10/97 contact w/ FBI Field Office #1.			9/97 FBI Field Office #1 File Review.
	#10D	Early 1995 FBI Teletype; 1995-1996 OIPR Documents; 7/97 FBI Closing Memo; 10/97 contact w/ FBI Field Office #1.	<u>Freeh</u> : 1995-1996 OIPR Documents.	1995-1996 OIPR Documents.	9/97 FBI Field Office #1 File Review.
	#10E	10/97 contact w/ FBI Field Office #1.			9/97 FBI Field Office #1 File Review.

5. Analysis and Recommendations

As outlined above, we found that much of the information that was the focus of the OIG investigation was previously given to senior Department officials before being "re-discovered" in late 1997. However, in many cases the officials' access to the information was haphazard. In many cases, the fact that the information was provided by happenstance meant that senior officials were unaware that they had ever received it. With few exceptions, the dissemination problems the OIG found were not attributable to any single cause. Rather, they appear to have resulted from the confluence of multiple factors. We found that many of the problems we uncovered were avoidable and could have been minimized or eliminated if the appropriate efforts had been made. Others were the result of faulty Department practices that increased the likelihood of such problems occurring. A summary of our findings and recommendations follows.

A. Issues Related to Dissemination to Senior FBI Officials

Our investigation revealed that poor judgment exercised by certain NSD personnel concerning the dissemination of information was a factor in the breakdown in the flow of intelligence information within the FBI. However, there were many other factors that also contributed to the dissemination

problems the FBI experienced in this matter.

1. Poor Communication and Dissension Within NSD Affected the Dissemination of Information

Beginning in mid-1997, Director Freeh gave special instructions to NSD officials regarding what information he wanted to receive from NSD's PRC-related intelligence investigation, directing that he be briefed on information from that investigation that otherwise would not have been briefed to his level, including information of doubtful or unknown reliability. Similarly, NSD officials issued instructions to NSD personnel regarding what information they wanted to receive from that investigation. Although Director Freeh and NSD officials may have believed that their instructions were clearly communicated, there was in fact no uniform understanding within the FBI chain-of-command as to what information needed to be shared with them. It is unclear whether Director Freeh's and NSD officials' instructions were too vague, miscommunicated, or simply misunderstood.

In addition to NSD's problems in disseminating information up the chain in a timely manner, we also found that NSD did not disseminate information in a consistent manner. NSD operational personnel at times ignored or contradicted analysts' evaluation of information, creating situations in which the import of intelligence information was the subject of disagreement within NSD. For example, there was disagreement within NSD over the characterization of certain individuals as PRC agents, and this disagreement prompted NSD to send mixed messages in its dissemination of information about these alleged agents. Even as the FBI began to distance itself from such characterizations in congressional testimony, it was continuing to make statements in documents concerning the FBI's intelligence investigations that were ambiguous and could have been interpreted as claiming that an individual was indeed a PRC agent. Poor coordination early in the investigation between different units of NSD also contributed to dissemination problems, although such problems improved by mid-1997.

2. NSD Was Unduly Reluctant to Disseminate Intelligence Information Outside of NSD

NSD exhibited undue reluctance to disseminate intelligence information outside of the division. In regard to dissemination to the Task Force, many NSD personnel cited concerns about jeopardizing intelligence sources and methods. Others explained that their reservations were prompted in part by the strictures of Departmental guidelines governing intelligence-sharing. While both of these constitute legitimate reasons for NSD to be cautious about sharing its intelligence information, these concerns needed to be balanced against countervailing concerns, such as the Task Force's need for the intelligence information to conduct its investigation and the Attorney General's need to have intelligence information related to congressional inquiries. We concluded that NSD did not strike an appropriate balance between its needs and those of the Task Force and Main Justice. We suggest that the Criminal Division, OIPR, and the FBI resolve the issue of their conflicting understandings of the Departmental guidelines concerning intelligence-sharing, and that the guidelines be amended accordingly. We also recommend that the FBI publish guidance to its agents explaining the guidelines and underscoring the need to adhere to them.

3. The FBI Needs to Improve Its Capacity to Create and Disseminate "Finished" Intelligence in a Timely Fashion

Misunderstandings over the interpretation of raw intelligence material that NSD disseminated to senior FBI and Main Justice officials contributed to problems in this case. Indeed, at times NSD personnel and senior FBI and Main Justice officials had dramatically different impressions about the importance of such information. We do not believe that NSD should generally disseminate raw and unevaluated intelligence within the Department. We believe that it is often difficult for senior FBI and Main Justice officials to interpret intelligence information without being given the proper context for the information and without the analysis of capable intelligence analysts. The circulation of a "finished" intelligence product (*i.e.*, one that has been subjected to analysis and contains corroborated information) will also ensure that only information that meets some standard of reliability is disseminated by NSD, thereby reducing or eliminating misinterpretation of or overreaction to unreliable reporting. The FBI should hone its capacity for producing finished intelligence reporting so that it can quickly provide policymakers in the Department with a product that is intelligible and that contains NSD's

collective and definitive analysis of the information. The FBI has apparently already begun working on such an effort.

4. The Global Security Section's Responsibilities Were Overwhelming

NSD's Global Security Section handled all of the information generated in connection with NSD's PRC-related intelligence investigation. The Section Chief of the Global Security Section appeared to bear a tremendous amount of responsibility, perhaps too much for a single position. This may have hampered the ability of the Section Chief to closely monitor events in that investigation. The Global Security Section's responsibilities relate to numerous counter-intelligence issues involving a large number of countries. In addition, the amount of information that had to be processed and converted into LHMs by a single unit within the Global Security Section was immense and overwhelmed that unit. We urge the FBI to consider whether its current apportionment of responsibility among the sections comprising NSD places a reasonable burden on the Global Security Section Chief and upon the personnel working under that Section Chief.

5. There Was Apparent Disparity Between Information That Was Provided to Congress and Information Used to Justify Intelligence Operations

As late as December 1997, information in documents prepared by the FBI that the Department used to justify certain intelligence activities was inconsistent with information that the Department briefed to Congress. These documents, which were drafted by the FBI and OIPR, characterized a certain individual as an "agent." Yet, the FBI told HGRO, SGA, SSCI, and HPSCI that the same individual was not in fact an "agent." We recommend that the FBI take action to correct any misimpression fostered by the manner in which it characterized this individual. To avoid this problem in the future, we suggest that similar information that is provided to Congress – or any other entity outside the Department – be coordinated with the appropriate components of the Department.

2. Issues Related to Dissemination to Senior Main Justice Officials

There was considerable confusion among OIPR, the Task Force, and the FBI over who was responsible for disseminating PRC-related intelligence information to senior Main Justice officials and the Attorney General. We believe the Task Force was principally responsible for disseminating intelligence information related to its criminal investigation. The Task Force made such disseminations principally by making the LHMs it received from NSD available to senior Main Justice officials and the Attorney General. We believe the FBI was responsible for disseminating intelligence information on the PRC that was unrelated to the Task Force investigation. To the extent that it did so, it did so through the documents it sent to OIPR.

1. Lines of Authority and Reporting Need to Be Better Delineated

There was a notable lack of understanding among the representatives of OIPR, the Criminal Division, the FBI and the Task Force concerning their respective roles in the dissemination of intelligence information. A Departmental component's mission should define the scope of its responsibilities. However, in the context of the Department's intelligence functions, there are overlapping roles that blur lines of responsibility. Because of confusion over who bore the responsibility for briefing certain information, no one marshaled the information and took responsibility for reporting it within Main Justice. However, the Task Force provided intelligence information related to its investigation to the Attorney General and Main Justice officials through dissemination of the LHMs it received from NSD.

The missions of OIPR, the Criminal Division, and the FBI regarding intelligence operations and dissemination of intelligence information to the Attorney General should be better defined. Their interlocking and overlapping responsibilities in regard to criminal and intelligence information should be more clearly delineated.

2. No Component of Main Justice Has Access to NSD's Intelligence Information

Main Justice currently does not possess a reliable and routine means of keeping apprised of NSD's intelligence operations and information. To the extent that information is provided to Main Justice, it is either provided on an ad hoc basis or through sketchy information contained

in FISA applications and annual memoranda that serve as the basis for NSD's ongoing intelligence investigations of U.S. persons. The Department must decide whether it is advisable to make the FBI singularly responsible for disseminating intelligence information to senior Main Justice officials or whether instead a Main Justice component should have greater access to NSD's intelligence, thereby creating the capability in a Main Justice component to keep the Attorney General adequately informed about the FBI's intelligence matters. In keeping with its mission, OIPR is the logical Main Justice component to assume a greater role in obtaining intelligence from NSD.

3. Issues Related to Dissemination to the Task Force

NSD instituted certain measures, such as the use of LHMs, to protect the sources and methods used to gather the intelligence information that was being disseminated to the Task Force. NSD's reluctance to provide raw intelligence information to the Task Force was also the product of OIPR's aggressive criticism of NSD's FISA intelligence-sharing practices in past criminal cases. While NSD's efforts to protect its sources and methods were made in good faith, NSD's actions were predicated in part on a misunderstanding of the law and Departmental policy governing intelligence-sharing and were focused too much upon protecting sources and methods.

1. Poor Communication and NSD's Intransigence Hampered the Task Force's Access to Intelligence

Poor communication between NSD and the Task Force and NSD's intransigence stymied the Task Force's efforts to obtain access to NSD's Foreign Counterintelligence case files. While the Task Force raised complaints to the FBI Deputy Director's level about its limited access to the intelligence information, the problem persisted and was not resolved until the Attorney General directed in September 1997 that the Task Force would receive access to the intelligence information.

2. LHMs Should Not Be Used to Disseminate Large Quantities of Intelligence Information to a Criminal Investigation

The use of LHMs prevented the Task Force's criminal prosecutors and investigators from having access to the raw intelligence material, which hampered their ability to assess the importance of the intelligence information in NSD's possession. The fact that the Task Force was reduced to reviewing LHMs instead of the raw material was also undesirable because of occasional errors in the system: at least some of the LHMs created by NSD were never received by the Task Force; others contained incomplete information.

The LHM system was a flawed means of disseminating information to the Task Force. While the LHM system may have protected NSD's sources and methods, it was an extremely labor-intensive and cumbersome method of providing the information. In lieu of LHMs, the system instituted by NSD and the Task Force in late 1997 after LHMs were abandoned should be used in any similar investigation. Task Force agents and prosecutors can review the raw intelligence material in unredacted form in NSD's offices and obtain a redacted copy for Task Force files.

3. The Task Force Should Have Been More Familiar with the FBI's Databases

We found that the Task Force's initial understanding of the FBI's information-management capabilities did not allow it to fully appreciate how to use the FBI's databases to best effect. This problem was ameliorated later when program analysts began working directly with the Task Force. We recommend that any task force that is using the FBI's databases obtain at least a basic appreciation of the various search strategies used to retrieve data from the databases and have direct access to analysts to formulate its searches.

4. Issues Related to FBI Databases

The Task Force and NSD used the FBI's Automated Case Support system (ACS) and other databases to obtain information on the individuals and organizations that had become subjects of the Task Force investigation. However, problems in the way information was entered or searched in the databases, and the way that search results were handled within the FBI, resulted in incomplete data being provided to the Task Force.

1. FBI Practices and Policy Have Handicapped the Usefulness of the FBI's Databases

We found that many of the documents that were discovered in late 1997 regarding two key subjects of the Task Force investigation could not have been found using the FBI's databases. Indeed, because of the FBI's failure to enter information into its databases in a manner that would take advantage of the databases' search capabilities – or in some cases its failure to enter information at all – some of the crucial information about these individuals' ties to the PRC was irretrievable. The FBI's procedures for culling information from its teletypes and electronic communications and inputting it into its databases essentially make it impossible for the FBI to state with confidence that a database search has yielded all information in the FBI's files about a particular subject. The problems we found with the databases are engendered by certain FBI administrative regulations that allow agents to forego entering important investigative information into the system. We recommend that the FBI amend its practices and regulations so that more, rather than less, information is entered into its computer databases.

2. Renewed and Improved Training on ACS Is Needed for Agents

Many of the FBI personnel we interviewed were not well versed in the use of the FBI's database systems. They also harbored beliefs about the ACS system, such as that information in ACS is not secure from unauthorized access, which have prompted agents to forego entering information into the system. We believe that supplementary training for agents, who are principally responsible for the information that is entered into ACS, is crucial to the integrity and utility of the ACS system.

3. Foreign Names Caused Difficulty

We found that confusion over Chinese names – in particular, difficulty in determining which name was an individual's surname – contributed to problems with the name searches performed for the Task Force. It is important for the FBI to ensure that its database operators are conversant with the format of foreign names and that they search the databases in a manner that will take into account errors that may have been made entering the foreign names into the system.

5. Issues Related to Dissemination to Congress and NSC

Throughout the Task Force investigation, Main Justice and the FBI have sought to balance their competing obligations to provide intelligence information to policymakers and to protect the criminal investigation. Department officials described this as a delicate, deliberative process in which the Department struggled to address the needs of the congressional committees and NSC while avoiding doing anything to compromise the criminal case. Department officials were no doubt well-intentioned in this regard, and they did try to set up procedures for reviewing proposed congressional or NSC briefings that would ensure that the criminal investigation would be protected. However, the Department's briefing practices in this case were problematic in a number of respects.

1. There Is Lingering Disagreement Between the FBI and Main Justice Concerning the Briefing of the NSC

Throughout the Task Force investigation, the FBI and Main Justice have disagreed over whether to brief the NSC on matters related to the intelligence and Task Force investigations. Because of the FBI's concerns about briefing the NSC regarding the criminal investigation – concerns motivated both by the desire to protect the integrity of the criminal investigation and by fear of the potential political fallout from such a briefing – FBI representatives have not attended NSC briefings related to the intelligence or Task Force investigations. We recommend that the FBI's appropriate role in such NSC briefings be discussed and agreed upon by senior Main Justice and FBI officials.

2. The Department Abandoned Previous Standards for Briefing Congress and the NSC During the Task Force Investigation

Past Departmental practices and policies for briefing Congress and the NSC were either abandoned or severely amended in the context of the intelligence and Task Force investigations. In order to satisfy the committees' demands for information, and because the

Department was concerned about being accused of withholding relevant information from the committees, the Department adopted a policy of briefing the committees, and later the NSC, on information of unknown reliability rather than waiting until that information could be corroborated. The Department also departed from its bright-line standard of resisting requests to share information about pending criminal investigations.

There appeared to have been some initial confusion within the Department regarding the standard for determining what intelligence information would be briefed to Congress, since the information that was briefed at different points during 1997 did not conform to a consistent standard. Moreover, FBI and Main Justice officials failed to explain in a clear or consistent manner to the congressional committees – in particular to SGA – the standard that was being used. This contributed to the congressional committees' confusion over the type of intelligence information they could obtain and exacerbated SGA's frustrations over the amount of information it was receiving from the Department.

The handling of information related to the intelligence and Task Force investigations may undermine the Department's ability to adhere to its more restrictive practices in the future, which is troubling because some of these restrictive practices were instituted to protect the integrity of investigations and the rights of those under investigation. Department officials need to establish a clear policy regarding standards for briefing Congress and the NSC on intelligence information.

The Department also needs to promulgate standards for determining when information relating to criminal investigations may be briefed to Congress or the NSC. If the Department deviates from a bright-line policy of not commenting on pending criminal investigations and does not promulgate guidelines concerning such comment, it creates perilous circumstances for officials who conduct congressional briefings.

3. The Department Needs to Improve Its Record-keeping for Congressional and NSC Briefings

We found that in contravention of FBI regulations and directives, the FBI lacks any organized, complete record of its congressional briefings related to the intelligence and Task Force investigations or the materials used for these briefings. The records memorializing what was briefed by the FBI are inadequate and no records exist at all of questions asked and responses provided during briefings. Main Justice records were no better. There should always be some record of the content and occurrence of these briefings, because the information that was conveyed to Congress or the NSC may later become important, as it did in March 1997, when the White House claimed that the FBI had instructed NSC staff not to tell their superiors about the PRC plan.

6. Conclusion

When information from NSD's intelligence investigation appeared to become relevant to the Task Force's investigation in late 1996, the Department was forced to confront the difficult issue of providing criminal investigators conducting a high profile, politically charged investigation with sensitive intelligence information. In addition to deciding how to use and disseminate intelligence information within the Department, Department policymakers also had to contend with Congress' demand for information about both the criminal and intelligence investigations. Furthermore, the belief among some Department officials that the White House was a subject of the criminal investigation – at least in regard to allegations concerning illegal foreign campaign donations – prompted them to argue that the Department should not provide the NSC with information from the intelligence investigation, notwithstanding the fact that the PRC's actions presented potential national security concerns. None of these issues was simple and, as demonstrated in the OIG's report, the Department addressed each of these issues with varying degrees of success.

We have concluded that no single individual or decision is responsible for the array of problems that we found. Rather, the shortcomings in the Department's handling of the intelligence information had multiple causes spanning from the exercise of poor judgment to counterproductive institutional practices. Unless changes are made to address the broad spectrum of problems that we found, the difficulty that the Department experienced handling the materials in the intelligence and Task Force investigations will persist.

The OIG report includes recommendations that we believe will help prevent the reoccurrence of the problems we found. However, such recommendations will only prove effective in the future through the good-faith, cooperative efforts of the individuals and entities within Main Justice and the FBI. Indeed, such efforts could have prevented many of the problems that arose between the Task Force and NSD and between Main Justice and the FBI. The OIG is committed to assisting the Department in resolving these issues.

Michael R. Bromwich
Inspector General
July 14, 1999

Special Investigative Counsel

Leonard E. Bailey
Jason M. Weinstein

OIG Investigative Team

Ann Ihnat Prentice
William F. Johnson
Cynthia A. McGrory
Kimberly A. Thomas

¹ These two pieces of information are referred to as "INTELLIGENCE INFORMATION #1" and "INTELLIGENCE INFORMATION #2" in the chart that appears on pages 11-12.