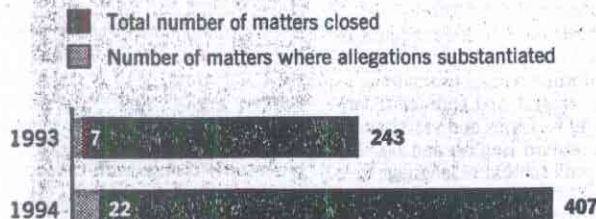


ATTORNEY MISCONDUCT INVESTIGATION RESULTS



SOURCE: Justice Department

THE WASHINGTON POST

Misconduct Cases Rise At Justice Department

Reno Pushed to Have Allegations Settled Faster

By Jim McGee
Washington Post Staff Writer

Last fall one of the country's most respected trial judges delivered a hard blow to the Justice Department. U.S. District Court Judge William Hoeveller accused one of Justice's veteran prosecutors of "bad faith," and overturned guilty verdicts in a huge savings and loan fraud case.

After sitting through the three-month trial, the judge said he realized the government had no credible evidence against the defendant. He criticized the conduct of a federal prosecutor and said the prosecutor had withheld crucial exculpatory evidence in order to prevail in a weak case.

"The enthusiasm and aggressiveness with which the prosecution pur-



FILE PHOTO

JANET RENO

... pressed accountability standards

sued this case was certainly commendable, at least in its early stages," Hoeveller said. "Unfortunately, that aggressiveness ultimately led to excesses."

Hoeveller's conclusion offered new support for the old claim by defense attorneys that federal prosecutors routinely hold back evidence that will hurt their case. It also poses a new challenge for the department's overburdened Office of Professional Responsibility (OPR), which Attorney General Janet Reno has sought to make more accountable and adhere to stricter guidelines.

And now a newly released annual report—covering OPR activity for fiscal 1994—shows that the number of confirmed cases of professional misconduct continues to rise, tripling from seven in 1993 to 22 in 1994. Currently, OPR counsel Michael E. Shaheen Jr. says, more than 100 significant cases are under active investigation by the 17-lawyer OPR staff.

"The [1994] increase was partially attributable to the greater number of attorney matters closed during fiscal year 1994 [407 vs. 243]," Shaheen said. He also pointed to the near doubling of federal prosecutors during the 1980s, the use of misconduct claims as a defense tactic, the addition of more lawyers to OPR's staff, Reno's push to have serious allegations resolved more rapidly and the federal judiciary's growing impatience with cases that appear to offend notions of fairness.

"Our job is to vindicate a lawyer when they've been unfairly or inappropriately accused, but to address allegations when they're substantiated," Shaheen said. "It's in the interests of the department to call out those that don't belong here."

After taking office, Reno faced a large backlog of OPR cases left over from the Bush administration. Despite an increase in the number of federal prosecutors, the tiny six-lawyer OPR staff had not grown in size since 1979. Three years into the job, Reno has added lawyers to the OPR staff and made it a high priority. Reno said, "We still have a ways to go, but are pleased with the substantial progress we have made so far."

Nonetheless, after three years Reno has her own inventory of problematic cases.

For example, last year a massive drug racketeering case in Utah, which reportedly cost \$10 million to

prepare, collapsed after a judge said the evidence failed to support the main charge, prompting the jury to acquit the defendant. The department declined to appeal, the local U.S. attorney said, because of credibility problems with the government witnesses. It is not clear how the case got through the review process at the Criminal Division and was approved by the U.S. attorney in Utah.

Shaheen said Reno insists that OPR look hard at the department managers during its inquiries. "She wants to supervise the whole account," Shaheen said, and have them ask, "How could this have happened, if you were doing your job right?"

Reno also has tried to shore up the internal affairs process in ways that would win the confidence of the federal judiciary without alienating her core constituency of 7,000 federal prosecutors.

She has tried to layer in funding for the internal watchdog units at the Justice Department, which include OPR, the Office of Intelligence Policy and Review and the Office of Inspector General.

In an effort to bring greater openness to the discipline process, Reno implemented a policy that allows public summaries of important OPR cases to be released, but the disclosures are moving at a glacial pace. In fiscal 1994, OPR completed a review of 407 cases involving attorney misconduct—sustaining 22 allegations. Twelve public summaries have been released.

"OPR was asked to expedite the public release of information about high-visibility matters in which the public had the greatest interest and it has responded well," said department spokesman Carl Stern. "In the last three working days it has put out three reports naming names and explaining in detail the conclusions it has reached."

Two of the department's most problematic summaries that have yet to be released include the 1989 case in Chicago when three trial judges overturned convictions against the notorious street gang, the El Rukns. The judges concluded that the prosecutor, Assistant U.S. Attorney William R. Hogan Jr. "withheld" exculpatory evidence and "sub-

orned perjury" from government witnesses.

The other was an international heroin trafficking case in California that went bad after a prisoner from China, Wang Zong Xiao, was brought to the United States by Chinese authorities to testify for the government in a drug case.

During the trial Wang admitted from the witness stand that his testimony was false. Later, U.S. District Court Judge William H. Orrick found that Chinese authorities used cattle prods, repeated beatings and threats of execution to obtain his confession.

Recently the 9th U.S. Circuit Court of Appeals affirmed Orrick's findings. "Members of the prosecution team were aware of human rights abuses occurring in [China] and suspected that Wang might have been tortured when he gave his confession," the court's opinion read. "Nonetheless, the prosecution ignored this evidence, failed to disclose any of it to the defense counsel and arranged for Wang to testify."

Like many of the most serious OPR cases, the Wang case touches upon a larger issue for the department. In an effort to combat foreign drug cartels, ethnic mafias and terrorist groups, Reno is aggressively trying to expand the Justice Department's role overseas. This week she is in Budapest with FBI Director Louis J. Freeh to celebrate the first anniversary of a U.S.-backed police training academy.

But the Wang case also points to the difficulties that can arise when U.S. authorities conduct joint efforts with other countries. Experts testified that Chinese authorities routinely torture criminal suspects to obtain confessions. Such practices could complicate plans by the FBI and the Drug Enforcement Agency to station agents in Beijing, where they would be working with Chinese authorities on criminal cases.