Office of
INSPECTOR GENERAL

Audit Report

Review of the Role of the Office of the General Counsel in Appeals of Commission Decisions in Public Investigations

Report No. IG-05-94

September 1994

Date Issued

INSPECTOR GENERAL

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

September 12, 1994

Review of the Role of the Office of the General Counsel in Appeals of Commission Decisions in Public Investigations

Decisions made by the Commission can be appealed to two Federal Courts and, in some circumstances, involve actions in District Court. Decisions involving Canada can also be appealed to a bi-national panel. The Office of the General Counsel (OGC) is responsible for defending the Commission's decisions. The objective of this review was to determine if the Commission is meeting these litigation responsibilities in a cost effective manner, that the related functions and expenses are property allocated within the organization, and to note other areas for improvement.

This review was conducted by Urbach Kahn & Werlin PC in accordance with the Government Auditing Standards issued by the Comptroller General of the United States. The results of their review are presented in the attached report.

The auditors examined the OGC policies and procedures, organization and management structure, personnel and staffing, future planning, and cost evaluation as they apply to the appeals process. They found that the appeals process was carried out by the OGC in a cost effective manner. They did not identify any instances of non-compliance with Federal laws or regulations. However, certain matters regarding the Commission's internal control structure were found as follows:

1) The Activity Reporting System (ARS) reports contain inaccuracies and do not provide a sufficient level of detail for analysis (page 9).

2) The Commission's accounting system does not provide data which fully indicates the costs incurred to operate OGC (page 11).

We recommend that OGC work with the Office of Administration to obtain a greater level of activity coding detail with respect to OGC litigation and appeals matters, reconcile and test ARS reports on a continuous basis, and obtain some reasonable methodology for allocating joint overhead costs to determine the total costs related to operating the OGC.

The General Counsel generally agreed with the findings but also added that the last recommendation applies to the Commission as a whole, not just within the OGC. A summary of her comments is presented after each finding on pages 10 and 12. The General Counsel's comments are presented in their entirety as an appendix to the report.

Jane E. Altenhofen

Jane E. Altenhofen
Inspector General

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

MAY 1994

UK &W Urbach Kahn & Werlin PC
CERTIFIED PUBLIC ACCOUNTANTS

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

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Appendix -- Memorandum from the General Counsel, dated August 18, 1994, on Draft Report

INDEPENDENT ACCOUNTANT'S AGREED-UPON PROCEDURES REPORT

UK &W Urbach Kahn & Werlin PC
CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT ACCOUNTANT'S AGREED-UPON PROCEDURES REPORT

UNITED STATES INTERNATIONAL TRADE COMMISSION
OFFICE OF INSPECTOR GENERAL

We have performed certain agreed-upon procedures related to the review of the role of the Office of the General Counsel of the United States International Trade Commission (USITC) in appeals of Commission decisions in public investigations. The procedures, identified in Section II of this report, were agreed to by USITC's Office of Inspector General and were performed to assist USITC in reviewing the role of its Office of the General Counsel in appeals of Commission decisions in public investigations. This report is intended solely for the information of USITC. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

The objectives of this engagement included the performance of agreed-upon procedures by Urbach Kahn & Werlin PC (UKW) to determine the cost effectiveness of the role of the USITC Office of the General Counsel in appeals of Commission decisions in public investigations.

The results of our procedures are discussed in Section III of this report. Other findings and recommendations identified during our evaluation are discussed in Section IV of this report.

URBACH KAHN & WERLIN PC

Washington, DC
June 6, 1994

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SECTION I

BACKGROUND

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

BACKGROUND

Introduction

The United States International Trade Commission (USITC or ITC) is an independent agency of the United States Government established by an Act of Congress. USITC conducts investigations and reports findings related to international trade and economic policy matters on behalf of both the President and Congress.

USITC is a quasi-adjudicative, independent, and multipartisan agency with broad investigative powers on matters of trade. The ITC makes determinations of injury and threat of injury to U.S. industry by imports. ITC activities also include:

- determining whether U.S. industries are materially injured by imports that benefit from pricing at less than fair value or from subsidization;
- directing actions, subject to Presidential disapproval, against unfair trade practices such as patent infringement;
- making recommendations to the President regarding relief for industries seriously injured by increasing imports;
- advising the President whether agricultural imports interfere with price-support programs of the U.S. Department of Agriculture;
- conducting studies on trade and tariff issues and monitoring import levels; and
- participating in the development of uniform statistical data on imports, exports, and domestic production and in the establishment of an international harmonized commodity code.

USITC has a full-time permanent staff of approximately 450 individuals, with budget appropriations for fiscal years 1993 and 1994 of $44,852,000 and $43,500,000, respectively.

Office of the General Counsel

USITC's Office of the General Counsel (OGC) has a staff of twenty-seven attorneys, nine paralegals, five secretaries, two law librarians and one library technician. OGC is responsible for providing legal advice and guidance to the Commission and its staff and, in addition, provides the necessary support to assure the legal sufficiency of all activities of the Commission. OGC provides legal advice and support to the Commissioners and the Commission staff on investigations, prepares briefs and represents the Commission in court and before binational panels and administrative tribunals, and provides assistance and advice on general administrative teams assigned to antidumping and countervailing duty investigations and certain other types of investigations (not under Section 337). In addition, OGC defends the Commission when its decisions are appealed.

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BACKGROUND

Appeals of Commission determinations in investigations under Title VII (Antidumping and Countervailing Duty) and Section 337 (Violation of Trademarks, Copyrights, Patents and other unfair acts) comprise the majority of the litigation handled by OGC. These appeals can be brought to either of two specific federal courts. Disputes involving Canada or Mexico can also be brought before binational panels. The Commission is also subject to suit in federal district court in actions other than appeals of its determinations in investigations.

Approximately 50 percent of all Commission determinations under Title VII and Section 337 in FYs 1990, 1991 and 1992 were appealed. At the end of these FYs, the following numbers of cases were pending:

At the end of FY	Title VII	Section 337
1991	34	8
1992	24	3
1993	47	3

For FY 1991, expenditures for litigation expenses were $ 433,617. For FY 1992, the activity reporting system was changed to combine litigation expenses with the expenses for rulemaking. The combined expenses for litigation and rulemaking in FY 1992 were $ 546,322.

A recent staff reorganization within the OGC resulted in the creation of three new positions with only one addition to personnel.

- The Assistant General Counsel for Litigation was named Deputy General Counsel in order to assist the General Counsel in managing the OGC. The Deputy General Counsel continues to have the duties for supervision of all litigation matters within OGC.

- The former Supervisory Paralegal was named the Coordinator for Legal Support Services. One of the other paralegals on the OGC staff has assumed the position of Supervisory Paralegal.

- The position of Assistant General Counsel for Administration was created to consolidate the management of the administrative duties within OGC. The new position was filled subsequent to the date of this report.

SECTION II

OBJECTIVES, SCOPE AND METHODOLOGY

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

OBJECTIVES, SCOPE AND METHODOLOGY

Objectives

Urbach Kahn & Werlin PC (UKW) was engaged to perform agreed-upon procedures related to the review of the role of the Office of the General Counsel in appeals of Commission decisions in public investigations. The overall objective of this engagement was to determine if the Commission is meeting its litigation responsibilities relating to the defense of certain appeals in a cost effective manner, that the related functions and expenses are properly allocated within the organization, and to note other areas for improvement.

Scope

Our review encompassed an examination of management and process structures and functions for providing appellate defense services including organization, staffing, planning and associated costs and expenses, as well as internal controls related to the appellate defense process.

UKW conducted its review from May 23, 1994 to June 3, 1994 at the offices of USITC in Washington, DC. UKW's engagement staff met with numerous USITC employees within the Office of the General Counsel involved in the appellate process, including administrative and support staff.

Methodology

The general procedures followed by UKW were as follows:

- Obtain, review and analyze policies and procedures to understand the appeals process including:
    - 19 U.S.C. 1337 (Section 337 of the Tariff Act of 1930)
    - 19 U.S.C. 1671 et seq. (Title VII of the Tariff Act of 1930)
- Interview key personnel and discuss the method by which the appeals process operates within the structure of the Office of the General Counsel.
- Trace and flowchart how court proceedings are received, compiled, reviewed and filed.
- Document the method by which the decision making process operates in relation to court proceedings.
- Review the Office of the General Counsel's Mission and Function Statement, USITC Directive Number 1004, dated February 1, 1982.

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

OBJECTIVES, SCOPE AND METHODOLOGY

- Analyze previously submitted FMFIA reports to understand relevant internal controls in place in the OGC as they relate to the appellate process.

- Prepare and analyze an organization chart of OGC following the recent reorganization and assess if this structure properly reflects the delegation of assignments.

- Assess the nature of the work within OGC and analyze how assignments are scheduled and assigned to staff.

- Review the method by which technology, including computer data systems, are utilized by OGC.

- Review the OGC's timekeeping system and determine the hours expended in litigation matters (as a percentage of total hours within OGC).

- Interview attorneys and paralegals within OGC and discuss the following:

  ✓ primary responsibilities
  ✓ assignment of duties
  ✓ supervision
  ✓ scheduling
  ✓ use of technology.

SECTION III

RESULTS OF PROCEDURES

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

RESULTS OF PROCEDURES

Background

The Office of the General Counsel's (OGC's) primary role is to act as USITC's chief law officer and advisor. Its mission, as documented in USITC Directive 1004, dated February 1, 1982, is

> *to provide, in a timely manner, legal advice and guidance to the Commission and its staff ... It also provides the necessary support to assure the legal sufficiency of all activities of the Commission.*

The Directive describes the primary functions of the OGC as follows:

- *Interprets all statutes, Executive orders, Presidential proclamations, court decisions, and regulations applicable to the U.S. International Trade Commission and advises the Commission regarding its authority and responsibilities thereunder.*

- *Interprets other general or specific statutes and Executive orders which bear upon contemplated substantive or administrative actions of the Commission and advises as to the legal implications of the proposed actions.*

- *As necessary, drafts and revises the Commission's Rules of Practice and Procedure, including rules governing investigations and hearings.*

- *Advises the Commission as to the legal sufficiency of applications, petitions, complaints, and other requests submitted to the Commission under applicable statutes and regulations.*

- *When directed by the Commission, represents the Commission in Federal Courts and in proceedings before other administrative agencies.*

- *Reviews and is responsible for the legal sufficiency of contemplated investigative reports. Drafts legal instruments necessary to effect Commission decisions when appropriate.*

- *Performs legal liaison between the Commission, the Department of Justice, and other Federal agencies on litigation or other legal matters affecting the Commission's actions or responsibilities, as directed by the Commission.*

- *Maintains, or oversees the maintenance of, a law library which includes indexes of legal opinions, decisions of the Commission, court decisions affecting Commission procedure and jurisdiction, and a research collection of legal materials relating to international trade of the United States.*

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RESULTS OF PROCEDURES

OGC currently consists of the General Counsel, the Deputy General Counsel, three Assistant General Counsels, and twenty-two attorney-advisors. The support staff consists of the Coordinator for Legal Support Services, the supervisory paralegal, seven paralegals and five secretaries. The Law Library on the sixth floor is staffed by three full-time employees. Substantially all OGC staff are available to assist on appellate matters as required.

The General Counsel is responsible for the overall management of operations within the OGC and ensuring that OGC's mission is performed properly and efficiently. The General Counsel is also the Cost Center Manager for OGC's budget. A Cost Center Manager, as defined in USITC Directive 2103, dated January 16, 1990, is:

> *...delegated direct responsibility to authorize the use of agency resources by the Chairman, and has been allocated funds for that purpose along with the responsibility to remain within those funds in accordance with expenditure plan allocation instructions.*

Systems understanding and documentation

Through discussions with various USITC personnel and review of applicable USITC procedures and guidelines, we documented and evaluated the significant internal control systems and procedures related to the appeals and litigation process within the OGC. Our review did not identify any instances of non-compliance with Federal laws and regulations. We did, however, identify certain matters regarding the internal control structure which we discuss further in Section IV (Findings and Recommendations) of this report.

Personnel interviews

We interviewed the following USITC employees with significant involvement in the appellate process within OGC:

- the General Counsel
- the Deputy General Counsel
- an Assistant General Counsel
- five Attorney-Advisors
- the Coordinator for Legal Support Services
- the Supervisory Paralegal
- four Paralegals

Our interviews focused on the following areas:

- Duties and responsibilities

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REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

RESULTS OF PROCEDURES

- Lines of authority and responsibility
- Delegation of work and scheduling
- Use of technology
- The appeals litigation process within OGC

Results of personnel interviews

The employees indicated that the appeals litigation process within OGC was structured in such a manner to assign the same attorney to each appeal who handled the original investigation and had advised the Commission on the writing of the determination under appeal. The attorneys stressed their utilization of the paralegal staff, and the reliance they placed on the quality of the work performed by the OGC paralegals.

The attorneys interviewed emphasized the support provided within the OGC by the General Counsel and the Deputy General Counsel. The commitment to the quality of work and the strength of defense of Commission determinations was underscored by the moot courts which are used in preparation for litigation. Every attorney interviewed mentioned the strength and the professionalism of the paralegal staff.

Conclusion: Overall, based on the results of our evaluation, it appears that the appeals litigation process is carried out by the OGC in a cost effective manner.

The following section outlines certain findings and recommendations related to the internal controls as they affect the USITC OGC identified during our study.

SECTION IV

FINDINGS AND RECOMMENDATIONS

UNITED STATES INTERNATIONAL TRADE COMMISSION

REVIEW OF THE ROLE OF THE OFFICE OF THE GENERAL COUNSEL IN APPEALS OF COMMISSION DECISIONS IN PUBLIC INVESTIGATIONS

FINDINGS AND RECOMMENDATIONS

ACTIVITY REPORTING SYSTEM REPORTS CONTAIN INACCURACIES AND DO NOT PROVIDE A SUFFICIENT LEVEL OF DETAIL FOR ANALYSIS

Background

The Activity Reporting System (ARS) is used by ITC to allocate employees' time and associated cost to the various offices within ITC. Further, ARS provides an activity coding system which allocates time and associated cost by activity as well as by employee. The Office of Finance and Budget (OFB) has the primary responsibility for maintaining ARS and uses the output for its budget justification. ARS is limited to payroll costs and does not include employee benefits such as health insurance and retirement plans. The primary ARS output consists of an expenditure report, by office, by activity; and an expenditure report by office, by employee. Such reports provide a current and year-to-date column for the number of hours allocated as well as the associated labor cost.

Condition

We noted that the level of detail provided in the activity coding system does not provide sufficient detail for useful analysis. For example, the activity code 6CA101 combines all rulemaking and litigation activity. In addition to combining two types of activities, litigation is not allocated by the type of litigation.

We also noted ARS reports contained certain inaccuracies, including the following:

- We noted differences in both the fiscal years 92 and 93 year-to-date hours and associated cost amounts between 1) the expenditure report by activity and 2) the expenditure report by employee. Since the two reports consist of the same figures, the total amounts should be equal.

- One entry indicated a higher current cost than a year-to-date cost. Since the year-to-date cost is the sum of the current cost plus the previous year-to-date cost, the current cost should be equal to or less than the year-to-date cost.

- One entry indicated the same number of current and year-to-date hours. However, the costs for the current and year-to-date periods were slightly different.

In addition, hours worked in excess of eight hours per day, except for paid overtime and compensatory time, are not reported in the current system.

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FINDINGS AND RECOMMENDATIONS

Criteria

OMB Circular No. A-127, Section 1506 6.a., states, "...financial management information shall be reasonably complete and accurate..."

GAO's *Standards For Internal Controls In the Federal Government* states, "Internal control objectives are to be identified or developed for each agency activity and are to be logical, applicable, and reasonably complete. This standard requires that objectives be tailored to an agency's operations..."

Cause

OGC indicated that USITC Administrative Announcement 94-04 dictates the activity coding level of detail. Such guidance does not require that detail activity coding be provided with respect to litigation.

OFB recognized that the Paradox database system used to maintain ARS has been found to have certain problems in the programming area. Upon request, OFB corrected the year-to-date fiscal year 94, however, was not able to retrieve prior fiscal years 92 and 93. OFB maintains that ARS is currently functioning properly.

Effect

The OGC's broad activity coding precludes any form of labor cost analysis with respect to litigation and appeals matters.

Use of the ARS system, in its current format, creates the potential for inappropriate management and budgetary decision making. Therefore, OGC does not use ARS for budgeting or any other management purpose.

Recommendations

- We recommend that OGC work with OA to issue a revision replacing USITC Administrative Announcement 94-04 to provide a greater level of activity coding detail with respect to OGC litigation and appeals matters.

- We recommend that OGC coordinate with OFB and OIS to reconcile and test ARS reports on a continuous basis.

Commission's response

The General Counsel generally agreed with this finding.

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FINDINGS AND RECOMMENDATIONS

USITC'S ACCOUNTING SYSTEM DOES NOT PROVIDE DATA WHICH FULLY INDICATES THE COSTS INCURRED TO OPERATE OGC

Condition

USITC's accounting system classifies all non-payroll expenditures by the type of cost. It does not, however, suballocate such costs to the various offices within USITC. For example, all computer related charges such as hardware and software, Westlaw services, and Lexus/Nexus services would be grouped as an organization-wide type expenditure and, as such, would not indicate how much of those costs were attributable to an individual office such as OGC.

Criteria

GAO's *Standards For Internal Controls In The Federal Government* states, "...assigning and maintaining accountability for resources involves directing and communicating responsibility to specific individuals with an agency for the custody and use of resources..."

OMB Circular No. A-127, 6.c., states, "...Data required for budget and management decisionmaking on unit costs and performance shall be included in the system..."

Cause

USITC's current budgetary control policy allocates funds for certain overhead costs incurred throughout the organization to certain administrative offices, such as OMS and OIS. This policy does not provide for the suballocation of these funds to the users who actually incur the costs. Since the accounting system is geared toward the budgetary process, suballocation of costs does not occur.

Effect

It is not possible to determine certain non-payroll costs incurred to operate OGC. As such, and as has been discussed in previous reports, a detailed financial analysis is precluded.

Recommendation

- In order to improve information available to OGC management, we recommend that OGC work with OFB to obtain some reasonable methodology for allocating joint overhead costs to determine the total costs related to operating the OGC.

Commission's response

The General Counsel generally agreed with this finding, but also added that this recommendation applies to the Commission as a whole, not just within the OGC. UKW agreed and noted that this has been discussed with USITC management as a result of prior reviews.

August 18, 1994

MEMORANDUM

GC-R-442

TO: THE INSPECTOR GENERAL

FROM: The General Counsel LMS

SUBJECT: Draft Report on OGC Role in Appeal of Commission Decisions

Thank you for this opportunity to comment on the findings and recommendations of the recent review of this office's role in the appeals of Commission decisions in public investigations. We are, of course, pleased at the findings of the audit that our operation is cost effective in this area and complies with applicable laws and regulations. The office's lawyers and support staff work hard to provide the Commission the best possible service in a cost-effective manner.

Comments on Recommendations

The draft report's recommendations, referenced in the draft cover memorandum, have to do, as the draft notes, with systems that are not specific to OGC. Our comments concern whether the recommendations properly reflect the nature of the problems identified. Although the particular matters came to the attention of the auditor in the course of an inquiry into an OGC function, where the problems are not OGC-specific, OGC-specific recommendations may not be appropriate.

The first recommendation suggests that the ARS system "does not provide a sufficient level of detail for useful analysis" and suggests that OGC work with the Office of Administration to obtain a greater level of activity coding detail for litigation and appeals matters. We agree that the ARS system should not group litigation activities with rulemaking. Those two activities involve quite different kinds of tasks. We will propose that these two activities be separated in the ARS reporting system. We will also propose that litigation matters not directly related to defense of Commission determinations be reported in a separate category from defense of Commission determinations.

We are dubious, however, that more detailed reporting of litigation activities will provide the basis for analysis that is useful to management so long as the ARS reporting system remains in its current form. That system requires employees to report no more than 8 hours per day.[1] This being the case, the system builds in inaccuracies that are much more substantial than the discrepancies noted in the report. Such inaccuracies are particularly egregious for reporting activities like litigation, which frequently require

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[1] Work beyond eight hours a day is reported as overtime or compensatory time, when claimed as such. Such reporting, however, is not included in the ARS system and does not specify the type of activity that led to the overtime or compensatory time claim. It is also unclear to what extent employees in various offices claim work in excess of eight hours as compensatory time or overtime.

long hours to meet deadlines.

In short, unless the ARS system is itself modified to allow real-time reporting, it will not provide a basis for useful analysis. Certainly it cannot be used to help supervisors judge the amount of time that different kinds of activities involve except in the most gross sense. As in prior years, in response to the IG's request for audit proposals, we will propose that refinements of the ARS system to increase its usefulness as a management tool be the subject of an Inspector General audit.

You also recommend that OGC work with the Office of Administration to reconcile and test ARS reports on a continuous basis. I should note that when, at our closing meeting with the survey team on the draft report, I suggested that we should look into cross-checking ARS reports on a regular basis, the auditors expressed skepticism about the usefulness of such checking for an office of this size. In addition, the auditor's report does not reach conclusions concerning the reason for "inaccuracies" found and allows, at p. 10, for the possibility that some of the discrepancies may be the result of problems with the database system used to maintain ARS, which could not be checked because OFB was not able to retrieve earlier years in the study. Any system that is developed for cross-checking ARS reports should impose a burden proportional to the anticipated management benefit. Keeping in mind the auditor's comments, we will consult promptly with OFB concerning developing a method for regular spotchecking of ARS records for this office. I should also note that the ARS reporting system has not itself been tested to determine whether the anomalies here reported are unique to OGC, so that we do not know whether OGC-specific measures are appropriate.

The last reservation states that OGC should work with the Office of Administration to develop "some reasonable methodology for allocating joint overhead costs to determine the total costs related to operating the OGC." This recommendation is based on an observation of the auditors that is not specific to OGC, and we assume that the recommendation does not intend that this project involve only OGC and the Office of Administration. That observation appears at page 11 of the report: "USITC's current budgetary control policy allocates funds for certain overhead costs incurred throughout the organization to certain administrative offices, such as OMS and OIS. This policy does not provide for the suballocation of these funds to the users who actually incur the costs."

The auditor's observation concerning costs not being allocated to specific operating offices is an agency-wide problem. We assume that an agency-wide solution is contemplated. Thus, if a method of allocation is developed for OGC alone and then applied to other offices, managers in the other offices may have reason to object to the methodology as applied to their operations. I share the auditor's apparent view that budgeting may be more accurate if such costs are allocated to the operating offices. I believe that this should be a project for the entire senior staff in conjunction with the Office of Administration -- not a project for OGC and the Office of Administration alone.

Summary of Action to be Taken

1. We will promptly after issuance of your final report request that the ARS reporting categories be changed from "Rulemaking & Litigation" to three categories: Rulemaking, Defense of Commission Determinations, Other Litigation.

2. We will promptly after issuance of your final report consult with the Office of Administration concerning means that could be undertaken on a regular basis to spotcheck ARS reporting and summaries for this office on a regular basis and implement the results of this consultation by the beginning of 1995.

3. We will promptly contact the Office of Administration, the Office of Finance and Budget, and Office of Information Systems, to determine the nature of overall management review that would be necessary to allocate overhead costs by office, preliminary to consultations with senior management as a whole.

Findings

The following comments review particular observations made in the draft report. Except where objections are noted, we have no reason to question any of the findings in the draft.

p. 3 As of the date of the draft, the position of Assistant General Counsel for Administration had indeed not been filled. The new Assistant General Counsel has now been appointed.

p. 7 The report is not quite complete in stating that there are seven paralegals. Not counting the Coordinator for Legal Support Services and supervisory paralegal, who are separately listed, there are currently five paralegals available for litigation work, not seven. One, Andra Cunningham, although a paralegal during the auditor's study, had left the Commission by the time of the draft report. (We are currently considering applications for an upward mobility trainee to fill her slot.) One other paralegal, who works part-time, is designated in her job description as an ethics specialist, acts as assistant to the Commission's Deputy Ethics Officer and is unavailable for litigation work.

p. 10 Certain of our comments concerning ARS report "inaccuracies" appear above. We disagree that "inaccurate ARS reporting creates the potential for inappropriate management and budgetary decision making," if by "inaccuracies" what is meant is the kind of discrepancies noted on page 9. The ARS system is not used for management decision making -- not because of any reporting inaccuracies but because the system as it is set up does not allow for real-time reporting. "Inaccuracies" in reporting in this artificial system therefore do not affect management decision making. For this same reason, this office, except to the extent required, also does not rely heavily on the ARS reports in developing budget recommendations.

p. 11 The heading on this page is overbroad. As the text reflects, "it is not possible to determine certain non-payroll costs incurred to operate OGC." (emphasis supplied.) To accurately reflect the text, the title should indicate that the Commission's accounting system does not provide data which fully indicates the costs incurred to operate OGC. As the text also reflects, the auditor has discussed this fact in past reports, and the fact that the auditor cannot therefore conduct a detailed financial analysis on an office-by-office basis is not unique to OGC.