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STRENGTHENING THE UNIQUE ROLE OF THE NATION'S INSPECTORS GENERAL

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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STRENGTHENING THE UNIQUE ROLE OF THE NATION'S INSPECTORS GENERAL

WEDNESDAY, JULY 11, 2007

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:02 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Joseph I. Lieberman, Chairman of the Committee, presiding.

Present: Senators Lieberman, Akaka, McCaskill, Collins, and Coburn.

OPENING STATEMENT OF CHAIRMAN LIEBERMAN

Chairman LIEBERMAN. Good morning. Welcome to the hearing. I am going to begin, unusually, without Senator Collins here because she had a prior commitment and she is going to arrive a little late. But I thank you all for coming.

This hearing is on the topic of "Strengthening the Unique Role of the Nation's Inspectors General." This morning we are going to ask two distinct but related questions fundamental to the operation of our Nation's Government watchdogs. One is: Who is watching the watchdogs? And the second is: Who is watching out for the watchdogs?

We ask these questions with some intensity because of recent events that raise concerns that some Inspectors General may have been retaliated against by their agency heads because they were, in effect, too independent, while other Inspectors General have acted in a way that has led some to claim that they were not independent enough.

In today's hearing, we are going to ask our panelists how we can best maintain, indeed strengthen the independence that is crucial if these offices are to carry on their vitally important jobs of ensuring that taxpayers' money is spent efficiently and that the executive departments of our government carry out their responsibilities fairly.

In the United States, the job of Inspector General is actually older than the Republic itself, tracing back to Prussian Baron Friedrich von Steuben's service as Inspector General to General George Washington during the Revolutionary War. The conflict inherent in the Inspector General's office was clear even then. Washington wanted von Steuben and his inspectors reporting only to him. Von Steuben wanted more independence.

The Continental Congress, perhaps in a more harmonious and compromising day than our own, split the difference by passing legislation requiring that while Inspector General von Steuben would report directly to General Washington, his reports would go to Congress as well. The system worked so well that many of the ideas and systems that von Steuben began putting into place in 1778 are still used by military Inspectors General today.

Building on this model and, interestingly, precisely 200 years later, in 1978 both Houses of Congress unanimously passed the Inspectors General Act that created an office of Inspector General in 12 major departments and agencies that would report both to the heads of the agencies as well as to Congress. These new IGs were empowered with even more independence than their military counterparts to ensure that they would be able to conduct truly robust oversight. The law was amended in 1988 to add an Inspector General to almost all executive agencies and departments.

Overall, I would say that these laws and the Inspectors General are working well, as desired, in the public interest to combat waste, fraud, and abuse in the Federal Government.

According to the President's Council on Integrity and Efficiency, last year alone IG audits led to $9.9 billion in potential savings and another $6.8 billion in savings when the results of civil and criminal investigations are added in.

Two of our witnesses today—Department of Justice Inspector General Glenn Fine and Department of the Interior Inspector General Earl Devaney—are models, in my opinion, of what an Inspector General should be.

Mr. Fine, for example, recently detailed the sloppy and sometimes inappropriate use of National Security Letters to conduct wiretaps within our country. Mr. Devaney has uncovered costly errors regarding oil and gas leases, while also challenging lax ethical conduct by Department of the Interior officials.

While obviously not all IG activities can or should generate as much attention as those two investigations I have mentioned, this is the kind of independence and credible work that really sets a standard and is appreciated.

Unfortunately, there are recent reports about IGs that are more troubling with regard to their relationship to their agency heads, and noteworthy here and recent is the former Smithsonian Inspector General, Debra Ritt, who said she was pressured by the former Director of the Smithsonian, Lawrence Small, to drop her investigation into the business and administrative practices of Mr. Small and other high-ranking officials at the Smithsonian.

The investigation continued—first by Ms. Ritt and then by her successor—and ultimately revealed that Mr. Small had been involved in a series of unauthorized expenditures.

At the General Services Administration, Administrator Lurita Doan has been highly and publicly critical of Inspector General Brian Miller's audits of the agency's office practices and into prices vendors were charging the government for products or services, at one point, according to Inspector General Miller, actually calling his auditors "terrorists" and threatening to cut his budget and responsibilities.

At a different end of the spectrum, we have had some IGs step down amid allegations about their misconduct. At NASA, for instance, an Administration investigation of IG Robert Cobb concluded that he had created an appearance of lack of independence by his close relationship with the NASA Administrator and that he had created an "abusive work environment."

So today I think this Committee wants to reaffirm its support of the Inspectors General and the critical work that they do on our behalf and on the taxpayers' behalf, and we want to ask how best to balance the need for the IG offices to be independent investigative forces for good government, while still ensuring that those investigations are thorough and fair.

I know that both Senator Collins and Senator McCaskill have given much thought to this topic and have made proposals for change that I hope we will have the opportunity to discuss this morning.

[The prepared statement of Senator Lieberman follows:]

PREPARED STATEMENT OF CHAIRMAN LIEBERMAN

Good morning. In today's hearing, "Strengthening the Unique Role of the Nation's Inspectors General," this Committee will examine two distinct but related questions fundamental to the effective operation of our nation's government watchdogs.

One: "Who is watching the watchdogs?

And two: "Who is watching out for the watchdogs?"

We need to ask these questions because recent news stories have said that some Inspectors General may have been retaliated against by their agency heads, while other Inspectors General have created the appearance of not being independent enough, sweeping problems and complaints under the rug.

With today's hearing, we are going to ask our panelists for advice on how we can improve the existing Inspectors General legislation to encourage and maintain the independence that is crucial if these offices are to carry on their vitally important jobs of ensuring that taxpayers' money is spent efficiently and that the executive departments of our government carry out their jobs fairly.

In the United States, the job of Inspector General is older than the Republic itself, tracing back to Prussian Baron Friedrich von Stueben's service as Inspector General to General George Washington during the Revolutionary War.

The conflict inherent in the Inspector General's office became clear even back then. Washington wanted von Steuben and his inspectors reporting only to him. Von Steuben wanted more independence.

The Continental Congress split the difference by passing legislation requiring that while Inspector General von Steuben would report directly to General Washington, his reports would go to Congress as well.

The system worked so well that many of the ideas and systems von Steuben began putting into place in 1778 are still used by military Inspectors General today.

Building on this model, precisely 200 years later, in 1978, both Houses of Congress unanimously passed the Inspectors General Act that created an office of Inspector General in 12 major departments and agencies that would report both to the heads of the agencies as well as Congress.

These new IGs were empowered with even more independence than their military counterparts to ensure they would be able to conduct robust oversight.

The law was amended in 1988 to add an Inspector General to almost all executive agencies and departments to combat waste, fraud, and abuse.

Overall, the law is working as desired. According to the President's Council on Integrity and Efficiency, last year alone IG audits resulted in $9.9 billion in potential savings and another $6.8 billion in savings when the results of civil and criminal investigations are added in.

Two of our witnesses today—Department of Justice Inspector General Glenn Fine and Department of the Interior Inspector General Earl Devaney—are in my view models of what an IG should be.

Among the many efforts of his office, Mr. Fine recently detailed the sloppy and often inappropriate use of National Security Letters to conduct wiretaps within the United States. Mr. Devaney has uncovered costly blunders regarding oil and gas leases, while challenging lax ethical conduct by department officials.

While not all IG activities can or should generate as much attention as those investigations, this is the kind of independent and credible work we want to make the standard for all Inspectors General offices and that means we have to examine where the system has flaws.

On the one end, we have heard reports of the independence of Inspectors General threatened, such as former Smithsonian Inspector General Debra S. Ritt, who said she was pressured by former Smithsonian Director Lawrence Small to drop her investigation into the business practices of Small and other high-ranking officials at the Smithsonian.

The investigation continued—first by Ritt then by her successor—and ultimately revealed that Small, among other things, had charged the Smithsonian $90,000 in unauthorized expenditures, including chartered jet travel, his wife's trip to Cambodia, hotel rooms, luxury car service, and expensive gifts.

Over at the General Services Administration, Administrator Lurita Doan has been highly and publicly critical of Inspector General Brian Miller's audits of the agency's office practices and into prices vendors were charging the government for products or services, at one point even reportedly calling his auditors "terrorists," and threatening to cut his budget and responsibilities.

At the other end of the spectrum, we've had several IGs step down amid allegations about their conduct and some have called for the resignation of the NASA Inspector General Robert Cobb.

As many in this room are aware, an Administration investigation of Mr. Cobb concluded that he has created an appearance of lack of independence by his close relationship with the NASA Administrator, and has created an "abusive work environment."

With today's hearing, we want to start exploring the question of how best to balance the need of the IG offices to be an independent investigative force for good government practices within their departments and agencies, while still ensuring that those investigations are thorough and fair.

I know both Senators Collins and McCaskill have given much thought to this topic and have proposals for change that I hope we'll have the opportunity to discuss this morning.

With that, I want to thank today's expert witnesses for agreeing to share their thoughts and experience with this Committee to help guide our legislative efforts.

Chairman LIEBERMAN. I am delighted that I was able to offer my opening statement in just the right length so that Senator Collins has arrived. I thank you and I yield to you now.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Thank you very much, Mr. Chairman. I apologize for not being here to listen to your opening statement, which I am sure was, as always, brilliant and insightful and eloquent, and I look forward to reading it in the record, if not sooner.

Chairman LIEBERMAN. Yes, copies are available. [Laughter.]

Senator COLLINS. Thank you, Mr. Chairman.

The Inspectors General in the Federal Government perform invaluable services for the people of this country. They serve the taxpayers' interest in making government operations more efficient, effective, and economical. They assist those of us who serve in Congress in performing our oversight duties and in determining whether or not investigations or legislative reforms are in order. They detect and report criminal activity. They alert agency heads to problems within their organizations.

In its most recent report, the President's Council on Integrity and Efficiency reported that the work of the Inspectors General has resulted in nearly $10 billion in potential savings from audit recommendations; $6.8 billion in investigative recoveries, and more than 6,500 indictments.

The IGs have, in fact, undertaken many major investigations that have benefited the taxpayers of this country. To cite just a few of the many possible examples:

The DHS IG investigated waste, fraud, and abuse in the wake of Hurricane Katrina—an effort that ultimately revealed an astonishing loss of taxpayers' funds exceeding a billion dollars.

The Special Inspector General for Iraq Reconstruction not only uncovered nearly $2 billion of waste, fraud, and abuse, but also detected criminal activity in contracting that led to four convictions.

Just last week, the DHS IG reported that FEMA has not applied minimum security standards to its laptop computers and has not implemented an adequate inventory management system. These findings indicate continuing vulnerability to equipment and data theft, as well as exposure to computer viruses and hackers.

And to cite the work of one of our witnesses, IG Glenn Fine has performed vital work in monitoring the Justice Department's implementation of the PATRIOT Act and the FBI's use of National Security Letters.

Clearly, the Inspectors General that have been provided by statute for 64 Federal entities perform a vital role. Whether they are working in a Cabinet Department like Justice, Interior, or Defense, at the Export-Import Bank, or at the Postal Service, they are indispensable watchdogs for auditing and improving government performance.

It is, therefore, important that we help to ensure that the Inspectors General are selected, compensated, protected, and empowered in ways that will enhance their service to our country.

As the Chairman mentioned, I have authored legislation toward this end with the support of the Chairman and Senator McCaskill. Our legislation, S. 680, would take some important steps toward strengthening the role and independence of our Inspectors General.

For example, the bill would raise the level of pay for the IGs while prohibiting cash bonuses from agency heads. We have a situation right now where the Deputy IGs in some departments make more money than the Inspectors General themselves because they receive cash bonuses. Now, clearly, it would be inappropriate for an IG to receive a bonus from the agency head because it sets up an obvious conflict of interest. So I think the answer to this is to move the IG up on the pay scale, but prohibit the award of bonuses.

Another provision of the bill would provide that IGs who are appointed by agency heads rather than by the President be selected for their job qualifications and not their political affiliations—in other words, the same kind of criteria that are used for the presidential appointments.

Another provision of the bill would bolster the independence of IGs appointed by agency heads by requiring a 15-day notice to Congress of intent to terminate.

The bill would strengthen the subpoena power of the IGs with respect to electronic documents—really just updating the law.

And it would grant all IGs the ability to use the Program Fraud Civil Remedies Act to recover fraudulently spent money.

As I mentioned before she arrived, there are other Members of the Senate, including Senator McCaskill, who have proposed further changes in the laws on Inspectors General. All of this activity

and the Chairman's holding this hearing demonstrates an encouraging level of appreciation for and interest in the work of the IGs.

Today's hearing should provide us with a valuable resource as we study the legislative options, and I join the Chairman in welcoming our distinguished panel, and I look forward to hearing their observations.

[The prepared statement of Senator Collins follows:]

PREPARED STATEMENT OF SENATOR COLLINS

The Inspectors General in the Federal Government perform invaluable services for the people of the United States.

They serve the taxpayers' interest in making government operations more efficient, effective, and economical. They assist Congress in performing its oversight duties and in determining when investigations or legislative reforms are in order. They detect and report criminal activity. They alert agency heads to problems within their organizations.

In its most recent report, the President's Council on Integrity and Efficiency reported that the work of Inspectors General has resulted in:

- $9.9 billion in potential savings from audit recommendations;
- $6.8 billion in investigative recoveries;
- 6,500 indictments;
- 8,400 successful prosecutions;
- 7,300 suspensions or debarments; and
- 4,200 personnel actions.

The IGs have undertaken major investigations. To cite just a few of many possible examples,

- The DHS IG investigated waste, fraud, and abuse in the wake of Hurricane Katrina—an effort that ultimately revealed a loss of taxpayer funds exceeding a billion dollars.
- The Special Inspector General for Iraq Reconstruction not only uncovered nearly $2 billion of waste, fraud, and abuse, but also detected criminal activity in contracting that led to four convictions.
- Just last week, the DHS Inspector General reported that FEMA has not applied minimum security standards to its laptop computers and has not implemented an adequate inventory-management system. These findings indicate continuing vulnerability to equipment and data theft, as well as exposure to computer viruses and hackers.
- And, to cite the work of one of our witnesses, IG Glenn Fine has performed vital work monitoring the Justice Department's implementation of the Patriot Act and the FBI's use of national security letters, ensuring that the government's response to terrorist threats does not undermine civil liberties.

Clearly, the Inspectors General that have been provided by statute for 64 Federal entities perform a vital role. Whether they are working in Cabinet Departments like Justice, Interior, or Defense, at the Export-Import Bank, or at the Postal Service, they are indispensable watchdogs for auditing and improving government performance.

It is, therefore, important that we help to ensure that the Inspectors General are selected, compensated, protected, and empowered in ways that will enhance their services to our country.

I have authored legislation toward this end with the support of colleagues, including Senator Lieberman and Senator McCaskill.

My bill, S. 680, would take some important steps toward strengthening the role and the independence of our Inspectors General. For example, it would:

- raise the pay of Presidentially appointed IGs to Level III while prohibiting cash bonuses from agency heads;
- provide that IGs appointed by agency heads be selected for their job qualifications, not their political affiliation;
- bolster the independence of IGs appointed by agency heads by requiring a 15-day notice to Congress of intent to terminate;
- strengthen the subpoena power of the IGs with respect to electronic documents; and
- grant all IGs the ability to use the Program Fraud Civil Remedies Act to recover fraudulently spent money.

Other Members of Congress have also proposed changes to the laws on Inspectors General. All of this activity demonstrates an encouraging level of appreciation for and interest in the work of the IGs.

Today's hearing should be a valuable resource as we study our legislative options. Our witnesses bring to our hearing deep experience in the IG process as well as views from within and outside of government. I join the Chairman in welcoming the witnesses, and I look forward to hearing their observations.

Chairman LIEBERMAN. Thanks very much, Senator Collins.

Normally we just have the two of us make opening statements, but since we only have one panel and only four Senators here, I want to give Senator Akaka and Senator McCaskill a chance for an opening statement, if they would like to offer one.

Senator Akaka.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you very much, Mr. Chairman. I join you and the Ranking Member in welcoming our distinguished panel members.

I want to thank you for organizing this important hearing, and as a matter of history, it was 30 years ago, in 1978, that the Inspector General Act was passed. And since then really there has not been a review. So, Mr. Chairman, I am so glad that we are taking the time to review the IGs' responsibilities here at this time. And it is an opportune time to review not only the successes of our Nation's Inspectors General but to consider how their role can be strengthened.

Inspectors General serve as watchpersons for the Executive Branch, promoting honesty, integrity, and efficiency throughout the Federal Government. IGs, along with Federal whistleblowers and the Office of Special Counsel, make sure the Federal Government works for the American people.

I am deeply troubled by recent allegations of agency attempts to interfere with the independence of Inspectors General. Among the most important duties of the IG is to investigate and report the facts when there is evidence of high-level wrongdoing in an agency. This is also perhaps an IG's most difficult duty, and it is a time when the IG's independence is most likely to be challenged.

Recent allegations of agency attempts to interfere with the IGs' investigations remind us that IG independence is not an academic matter but a pressing policy concern. For example, Chairman Lieberman mentioned then-Secretary of the Smithsonian Institution Lawrence Small who reportedly attempted to interfere with the Smithsonian IG's audit of his expenses before allegations of top-level wrongdoing were revealed.

I am particularly interested in learning more about ensuring that IG offices have adequate resources. Perhaps they should be required to submit their budget requests directly to Congress. Inspectors General save taxpayers billions of dollars by promoting efficiency and rooting out waste, fraud, and abuse. So, ensuring that IG offices are adequately funded is a wise investment of taxpayer money.

Again, Mr. Chairman, I want to thank you for holding this hearing, and I look forward to the testimony of our witnesses.

[The prepared statement of Senator Akaka follows:

PREPARED STATEMENT OF SENATOR AKAKA

Thank you Mr. Chairman. I join you in welcoming our distinguished panel members. I want to thank you for organizing this important hearing. As the thirty-year anniversary of the Inspector General Act of 1978 nears, it is an opportune time to review the many successes of our nation's Inspectors General (IG) and to consider how their role can be strengthened.

Inspectors General serve as watchdogs for the Executive Branch, promoting honesty, integrity, and efficiency throughout the federal government. IGs—along with federal whistleblowers and the Office of Special Counsel—make sure the federal government works for the American people.

I am deeply troubled by recent allegations of agency attempts to interfere with the independence of Inspectors General. Among the most important duties of an IG is to investigate and report the facts when there is evidence of high-level wrongdoing in an agency. This is also perhaps an IG's most difficult duty, and it is the time when the IG's independence is most likely to be challenged. Recent allegations of agency attempts to interfere with IGs' investigations remind us that IG independence is not an academic matter, but a pressing policy concern. For example, then-Secretary of the Smithsonian Institution, Lawrence Small, reportedly attempted to interfere with the Smithsonian IG's audit of his expenses before allegations of top-level wrongdoing broke.

I am particularly interested in learning more about ensuring that IG offices have adequate resources. Perhaps they should be required to submit their budget requests directly to Congress. Inspectors General save taxpayers billions of dollars by promoting efficiency and rooting out waste, fraud, and abuse, so ensuring that IG offices are adequately funded is a wise investment of taxpayer money.

Again, Mr. Chairman, I thank you for holding this hearing today, and I look forward to learning more about these important issues.

Chairman LIEBERMAN. Thanks very much, Senator Akaka.

Senator McCaskill, as I assume many know, if not everyone, comes to the Senate with the unique experience of having been the auditor for the State of Missouri, and she has submitted legislation regarding the Inspectors General. So I am glad to call on her now for a statement, if she would like.

OPENING STATEMENT OF SENATOR McCASKILL

Senator MCCASKILL. Thank you so much, Mr. Chairman.

First, I want to say that my experience as an auditor defines my interest in this area, but I certainly acknowledge that I am merely adding to the great work of this Committee and hopefully can be a contributor to legislation that would hopefully move forward that I know that the Ranking Member and the Chairman have been engaged in long before I got here. And I am anxious to be a bit player and contribute as we try to make something that is very good better.

It is interesting how audits are perceived by the people that are being audited, and really how that perception is reflected in the public tells the public how effective that work is going to be.

If an investigation is received by the agency with good, constructive criticism—"We are going to fix these things"—then that is the kind of dynamic that the public should celebrate.

On the other hand, when someone takes the attitude that "We are as good as we are, and we don't need to be any better, and you are meddling or you are trying to improve something that doesn't need to be improved," that is a bad sign. And, really, what we are trying to do here today is embrace the attitude that we can make something that is good better; that we can foster the independence; that we can promote the aggressive stance that IGs must take on behalf of the public and make sure that their work is, in fact, consumed by the public.

One of the provisions in the law that I have introduced deals with that public consumption of the product. The way an audit gets juice and heat behind it is for the public to understand what has happened.

I was surprised to learn how many agencies did not have the IG's link on their home page. It is a big problem that you have to search for Inspector General reports on the Internet, that they are not immediately available to anyone who wants to see what the Inspector General has found. And, frankly, they ought to also put on the home page what the response to that finding was and whether or not the findings have been addressed.

I notice in some of the testimony that we are going to hear today that there is talk about potential savings that have occurred. Well, "potential" is not a good word for an auditor. We want to be much more exact than "potential."

I think we need to begin to turn the page on accountability on the Inspector General corps and say to the agencies in a public way, "You must tell us if you have, in fact, implemented the findings of your Inspector General. And if not, why not?" That is an important part of this public accountability piece that the Inspectors General represent.

I have had the opportunity to read hundreds of pages of IG reports and GAO reports since I have been here. My staff accuses me of being a little weird because I like to read IG reports and GAO reports. I would rather read that work than any other work that they bring to me. As I read them, I am struck by the level of professionalism that we have in the Federal Government in this area.

There are some bad apples, and I think the legislation that the Ranking Member has proposed and the legislation that I have proposed try to get at a system where the bad apples are easily discovered and easily removed from the orchard so that we can celebrate the professionalism of the Inspectors General within the Federal Government and the very important work they do.

I thank you all for being here today and for your testimony, and I look forward to an opportunity to ask questions.

Thank you, Mr. Chairman.

Chairman LIEBERMAN. Thanks, Senator McCaskill. I want to certify for the record that in the time I have known you, I have never thought of you as "weird." [Laughter.]

Senator MCCASKILL. Thank you.

Chairman LIEBERMAN. Incidentally, I do want to say that Senator Collins and I and this Committee like to legislate. We feel we have a responsibility to legislate when there is a need to do so. So I want the witnesses to know that your testimony is important to us because both in the proposal of Senator Collins that I am privileged to cosponsor and Senator McCaskill's legislation, there are recommendations for legislative changes that relate to the IGs. And we are going to move ahead this year and try to mark those up, so your testimony will have direct relevance to that.

Our first witness is Clay Johnson III, Deputy Director for Management of the Office of Management and Budget. This position—I believe in Administrations before this one as well—has been the one—certainly in this one—that has tended to be the coordinator and overseer and including some Committee responsibility for the

Inspectors General. So, Mr. Johnson, I thank you for being here, and we welcome your testimony now.

TESTIMONY OF HON. CLAY JOHNSON III,[1] DEPUTY DIRECTOR FOR MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET

Mr. JOHNSON. Mr. Chairman, Senator Collins, Senator Akaka, Senator McCaskill, thank you for having me up here. I am, by Executive Order, the Chair of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). Also, by statute or Executive Order, I am the Chair of the CFO Council, and the CIO Council. I am the Vice Chairman of the Chief Human Capital Officer Council. I am the Chair of the Chief Acquisition Officer Council. I am involved in a lot of different entities in the Federal Government whose job it is to make sure that the money is well spent, that we get what we pay for.

Chairman LIEBERMAN. Tell us just for a moment about PCIE and ECIE, what they are, for the record.

Mr. JOHNSON. They were created by Executive Order, I think in 1996, by President Clinton. The PCIE is a council or association of the Senate-confirmed, presidentially appointed IGs for the larger agencies. I think there are 26 of them. Then the ECIE is the same thing for the not-presidentially appointed but the head-of-agency appointed IGs, the smaller agencies. And it is the entity by which they come together and look at common opportunities, common problems, training, orientation, legislation, that sort of thing. And my involvement is I am the Chair and the person that really runs each of those is the vice chair of each of them—who is an IG—and I used to think that my involvement was largely non-substantive until the last year or year and a half, and it has become a significant part of what I do because of all these issues that you are talking about here in this hearing.

My association with the IGs is something I enjoy as much as anything I do. There has been reference here to the quality and quantity of the work of the IG community, and it is superb. And I really enjoy being associated with it. I like fixing things. I like bringing order to chaos and method to madness, and that is what IGs do. And we want the money to be better spent. We want to achieve desired goals.

You talk about liking to legislate. What we like doing in the "M" world at OMB is we like to take the policies that have been agreed to and the money that has been appropriated and make sure that the money is well-spent to implement the policies to achieve the desired outcomes. And the CFOs, CIOs, etc., and the IGs help do that.

You talked about how important the IGs are to the Legislative Branch. They are equally important to the Executive Branch. They are the means by which the heads of agencies understand what is not working as well as it should or as well as desired in their agencies, and so energies can be focused on fixing those things.

I look forward to working with you on all the different legislation that has been proposed to see if there are opportunities to make the IG community create the potential for it to be even more effec-

[1] The prepared statement of Mr. Johnson appears in the appendix on page 37.

tive. Some parts of the legislation I disagree with. Some I agree with. Some I agree with the goal but think there might be a different way of doing it. My general statement is: I agree with the findings of the report by the General Accountability Office when they had their open forum, I think last fall or some time, that report, I agree with the findings there.

One of the things I would like to comment on here at the beginning is about trying to guarantee certain things for the IG community, guaranteeing certain levels of independence, guaranteeing a certain relationship between the agency head and the IG. And I do not think we can legislate a level of independence or we can legislate a relationship between an agency head and an IG. It is just impossible.

I think the key is that we are very clear about what we expect IGs to do, that there are high levels of accountability, there is a lot of clarity, that we want lots of—the numbers that were quoted here earlier, $9 billion and $8 billion. We want lots of identification of waste, fraud, and abuse, lots of recommendations about how to fix it, lots of follow-through on whether agencies, in fact, did what they said they were going to do and so forth. We need lots and lots of that. We need lots of transparency, lots of assurance that is happening.

I think we need a very clear definition of—not prescriptively, but in general—what we think an effective working relationship is between an IG and an agency and what is the desired relationship, what is too much dependence, too much independence. And then I think we need to hold IGs and agency heads accountable for accomplishing those goals.

That is the way we achieve desired outcomes as opposed to trying to guarantee in legislation that a level of independence will be this and not this.

There are mechanisms in place—the Integrity Committee, hearings, notification of Congress, and so forth—that guarantee that if an agency head or an IG gets off base, there are mechanisms that bring that to everybody's attention to get it back on track.

If we are not having those hearings, if we are not finding that people are challenging the nature of an IG and agency head relationship, something is wrong, our IGs are not being aggressive enough, our agency heads are being too compliant, and so forth.

So let's not be surprised if we waver off track here on occasion. That happens when people are involved, and the key is are there mechanisms in place to bring it to everybody's attention very quickly so we can get it back on track.

In general, I believe that it is important that IGs not be feared by their agency heads. As David Walker said, their goal at GAO is to be respected, not feared. I do not like the idea, as Mr. Devaney points out in his written testimony, of the dog metaphors, but it is important that IGs not be lapdogs or junkyard dogs. And I think it is very important that independence be primarily a focus of what the findings of an IG are, not what kind of personal relationship they have with the agency head. I know two really well-respected IGs, and one would not be troubled by going to the agency head's Christmas party. The other one would not think of going to the agency head's Christmas party. And yet they are both excep-

tional IGs. That says to me that how they manifest their dependence or independence of the agency head has little to do with the quality of their work.

Anyway, those are my comments. Sorry I ran long, but it is with great honor that I am here to talk to you about these IGs and to work with you subsequent to this hearing on the legislation that we will be considering.

Chairman LIEBERMAN. Thank you, Mr. Johnson. That is a good beginning, and I know we will have questions for you.

Next is the Hon. Glenn Fine, Inspector General of the Department of Justice. Thanks for your good work, and welcome.

TESTIMONY OF HON. GLENN A. FINE,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. FINE. Thank you. Mr. Chairman, Senator Collins, Members of the Committee, thank you for inviting me to testify at this hearing as the Committee considers how to strengthen the independence and accountability of Inspectors General.

IGs are given broad authorities to perform a challenging job, and I believe that, overall, most IGs have performed their responsibilities independently and effectively. But I believe that it is useful to regularly assess IG authorities, performance, and accountability, particularly because of the importance of their work and the impact they can have throughout the government.

In my testimony today, I will discuss my personal views on the proper role of an effective Office of Inspector General. Next I will comment on various proposals to strengthen the role of IGs, including proposed amendments to the IG Act. Finally, I will briefly discuss a limitation on the jurisdiction of the Justice Department OIG that I believe is inappropriate and should be changed.

First, with regard to the role and attributes of an effective IG, the IG Act notably describes our offices as "independent and objective" units within Federal agencies. This is a critical requirement for an Inspector General. We must be and we must be perceived as both independent and objective. While OIGs are part of their agencies, we are different from other components within the agency. For example, while we listen to the views of the agency and its leadership, we make our own decisions about what to review, how to review it, and how to issue our reports.

At the DOJ OIG, we independently handle contacts outside the agency, such as communicating with Congress and the press separately from the Department's Offices of Legislative and Public Affairs.

An important role for an Inspector General is to provide transparency on how government operates. At the DOJ OIG, we believe it is important to release publicly as much information about our activities as possible, without compromising legitimate operational or privacy concerns, so that Congress and the public can assess the operations of government.

An Inspector General also must be tenacious. It is not enough to uncover a problem, issue a report with recommendations, and move on to the next topic. We must continue to examine critical issues

[1] The prepared statement of Mr. Fine appears in the appendix on page 39.

again and again in order to gauge the agency's corrective actions and improvements over time.

In carrying out our responsibilities, we also must recognize that the job of an IG is not designed to make us popular. I am sure that I am not the most popular person in the Justice Department. However, I hope our work is respected and that we are viewed as being tough but fair.

By the nature of the role, IGs cannot please everyone, nor should we try. We regularly are accused of being either too harsh or too soft, of acting like junkyard dogs or lapdogs, of being out to "get" someone or out to "cover up" a problem, of engaging in a witch hunt or a whitewash. Sometimes we are described in each of these ways by different sides in the same matter. Ultimately, our goal should not be focused on whether our work makes our agency look good or bad, but whether we help improve its operations. Our role is to be independent, to objectively identify problems, and to provide effective solutions to correct deficiencies.

To be an effective IG, it is important to develop a professional working relationship with agency leadership. I have been fortunate to have professional relationships with all of the Department leaders during my tenure. Since I have been the IG, the Justice Department has had three Attorneys General and four Deputy Attorneys General—all of whom have appreciated the importance and difficulty of the OIG's work. I met with them on a regular basis, but none of them ever attempted to direct or interfere with our work. They recognized that, to be effective and credible, the OIG had to be scrupulously independent in how we conducted our work and reported our findings.

In general, I believe the IG Act has worked well and provides IGs with the tools and independence necessary for us to perform our mission. Nevertheless, I believe it is useful to examine proposals to strengthen the role of Inspectors General, and I appreciate this Committee's willingness to consider that topic.

I will now turn to various proposals that have been advanced to amend the IG Act and will offer my personal view on additional changes I believe the Committee should consider.

One proposed change to the IG Act would provide Inspectors General a fixed term of office, subject to possible reappointment, and removal during that term only for cause. In my mind, the need for and benefits of this change is a close question. The change seeks to strengthen the independence of IGs by giving them more job security. However, I do not believe that the threat of removal currently undermines the independence of IGs or the willingness of IGs to address the hard issues or to confront their agencies when necessary.

In addition, the proposal could create a different problem. If an IG seeks reappointment near the end of his or her term of office, he or she would be dependent on the recommendation of the agency head, which could create both a conflict and an appearance of a conflict. While I agree that ensuring the independence of IGs is critical, I am not convinced that this proposed change would accomplish that important goal without creating additional problems.

I believe that the most important issue that can directly undermine the effectiveness of IGs relates to the adequacy of resources.

On the whole, I believe that OIGs have been underfunded, particularly when compared with the growth of our agencies and the increased demands placed on us. While the size of OIGs have remained flat, our agencies and our responsibilities have grown dramatically. I believe that with the added responsibilities and the growth of the agencies, OIGs should receive a commensurate increase in resources, which has not happened.

I am proud of the work of OIG employees and their dedication in handling their many important assignments. But our resources are significantly constrained, and I am concerned that inadequate resources can affect both the thoroughness and timeliness of projects that are by necessity staffed more thinly than warranted. While I recognize that this Committee cannot solve the resource issue on its own, I agree with the proposal to allow OIGs to submit their budget requests directly to OMB and Congress and to independently make the case for resources.

As discussed in my written statement in more detail, I also support other proposed changes to the IG Act, such as providing a dedicated source of funding for the IG training academies, addressing the issue of IG pay, which has lagged significantly behind the salaries of other Federal employees, and amending the IG Act to allow ECIE IGs to petition the Attorney General for statutory law enforcement powers.

Finally, in line with the intent of this hearing to consider ways to strengthen the role of Inspectors General, I want to raise an issue that affects the Justice Department OIG only, but which I believe is a critical issue that contravenes the principles and spirit of the IG Act. Unlike all other OIGs throughout the Federal Government who can investigate misconduct within their entire agencies, the Justice Department OIG does not have complete jurisdiction within the Department. We do not have the authority to investigate allegations against DOJ attorneys acting in their capacity as lawyers, including such allegations against the Attorney General, Deputy Attorney General, or other senior Department lawyers. Instead, the DOJ Office of Professional Responsibility (OPR) has been assigned jurisdiction to investigate such allegations.

As I discuss in my written statement, the limitation on the Justice Department OIG's jurisdiction arose from the history of the creation of OPR and the OIG, and now only Congress can change it. For several reasons, I believe Congress should remove the limitation of the Justice Department OIG's jurisdiction.

First, the current law treats DOJ attorneys differently from all other DOJ employees and from all other Federal employees, all of whom are subject to the jurisdiction of their agency's OIG. No other agency has a group of its employees carved out from the oversight of the OIG.

The limitation on the Justice Department IG can create a conflict of interest and contravenes the rationale for establishing independent Inspectors General throughout the government. This concern is not merely hypothetical. Recently, the Attorney General directed OPR to investigate aspects of the removal of U.S. Attorneys. In essence, the Attorney General assigned OPR—an entity that does not have statutory independence and reports directly to the Attorney General and Deputy Attorney General—to investigate a

matter involving the Attorney General's and the Deputy Attorney General's conduct. The IG Act created OIGs to avoid this type of conflict of interest.

In addition, while the OIG operates transparently, OPR does not. The OIG publicly releases its reports on matters of public interest, but OPR does not release its reports publicly.

Finally, dividing oversight jurisdiction within the Justice Department between the OIG and OPR is inefficient and duplicative.

In sum, I believe that the current limitation on the Justice Department OIG's jurisdiction is inappropriate, violates the spirit of the IG Act, and should be changed. Like every other OIG, the Justice Department OIG should have unlimited jurisdiction within the Department. I believe Congress should amend the IG Act to give the Justice Department OIG that authority.

In conclusion, I appreciate the Committee's willingness to hold this hearing. Inspectors General perform a valuable and challenging service, but we, like our agencies, should always consider ways to improve. Thank you for examining these issues, and thank you for your support of our work.

That concludes my statement, and I would be happy to answer any questions.

Chairman LIEBERMAN. Thanks, Mr. Fine. Very interesting statement. Again, we look forward to some questioning.

Next is Hon. Earl Devaney, Inspector General of the U.S. Department of the Interior. Welcome, and please proceed.

TESTIMONY OF HON. EARL E. DEVANEY,[1] INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Mr. DEVANEY. Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to address the Committee this morning about several emerging issues that affect the unique role played by Inspectors General. My hope is that we will have ample time for a long overdue dialogue this morning about these important issues. I also want to make it clear that my testimony today reflects my own views, which may or may not be shared by my colleagues.

Mr. Chairman, I believe that the original IG Act and its subsequent amendments have effectively stood the test of time and have served the American public well. I do not think that a wholesale change of the Act is necessary. That having been said, however, I believe that there are a number of improvements that could be made to enhance the effectiveness and the independence of IGs. In particular, I would like to offer my thoughts about IG independence, IG pay, and IG budget submissions.

Committee staff has informed me that you would also like to hear my views on the appropriate relationship between the IGs and their agency heads and the role that the Integrity Committee, established in 1995 by a Presidential Executive Order, plays in ensuring that "someone is watching the watchers."

Since I have experienced both difficult and excellent relationships with the Secretaries I have served with during my 8-year tenure at the Interior Department and since I have been a member

[1] The prepared statement of Mr. Devaney appears in the appendix on page 55.

of that Integrity Committee for over 5 years, I am in a position to informatively discuss these issues, and would be pleased to do so.

I believe that an independent IG is someone who possesses both integrity and courage. I personally define integrity as not only being truthful and honest but consistently doing the right thing for the right reasons. Courage is easier to define, but in this context I am talking about the ability to "speak truth to power."

Given the dual reporting obligation that IGs have to both the Congress and the agency head, making somebody unhappy is not difficult to do. In fact, trying to make everybody happy is the fastest way I know of for an IG to get into trouble. Of course, it goes without saying that IGs should be selected without any regard to political affiliation and solely on the basis of demonstrated integrity and professional abilities related to the roles and responsibilities of this position.

For instance, when I was appointed as an Inspector General, I had nearly 30 years of Federal law enforcement experience, and no one involved in my nomination process ever inquired about my political affiliation. Far too often, IGs are characterized as either being lapdogs or some type of attack dog. And as Mr. Johnson stated earlier, I reject that premise that either is a desirable trait of an independent IG, and I do not like the indignity of being compared to a dog on a regular basis.

My own view is that an independent IG needs to strike a balance between being tough on the Department, when called for, and being equally willing to stand up and say that a particular program is running well or that allegations against a senior official are unfounded, when the facts warrant such conclusions. At the end of the day, an IG who consistently proffers professional, fact-based audits and/or investigations, without regard to whom they might offend, will end up meeting the standards of independence that the IG Act envisioned and that the American public deserves.

Mr. Chairman, several pieces of pending legislation in both the Senate and the House would attempt to enhance IG independence by adding a specified term of office for an IG and a removal-for-cause provision. Personally, while I have no objection to these proposals, I do not think that they would either enhance or detract from my own ability to act independently. I am, however, attracted to the idea that the President should have to provide Congress with prior written notification together with an explanation of the reasons behind the removal of any IG. A reasonable time frame of 30 days would give Congress the opportunity to enter into a discussion with the Executive Branch concerning the circumstances of any removal.

Of greater concern than removal, perhaps, is the recruitment and retention of highly qualified IGs. There is a huge pay disparity affecting the presidentially appointed and Senate-confirmed (PAS) IGs that needs to be corrected as soon as possible. I cannot overstate the effect this is having on IG morale, the long-term ability to attract the best candidates for IG positions, and the near-term potential for losing some of our best IGs. PAS IG salaries are currently capped by statute at Level IV of the Executive Schedule, currently $145,400, and are appropriately excluded from the bonus benefits of the performance-based pay system Congress established

with the passage of the 2004 Defense Authorization Act for career SES. Of course, PAS IGs have, as a matter of practice, chosen not to accept bonuses from agency heads since the early 1990s to further preserve their independence. As a result, virtually all PAS IGs are paid at a level significantly below the average annual compensation of the SES personnel they supervise—currently capped at $168,000, excluding bonuses.

Retirement annuities are equally affected. Considering that the average salary of a SES in fiscal year 2005 was $150,000, and the average SES bonus was $13,814, IGs frozen at the ES–IV level stand to make, on average, over $19,000 less than the average career SES member. Practically speaking, this results in both present and future IGs drawing lesser salaries than many of their SES subordinates. In my case, three of my seven SES subordinates earned more compensation than I did in fiscal year 2006. Obviously, this disparity is a significant concern for current PAS IGs and could soon have an adverse effect on the government's ability to retain its best and most experienced IGs.

Perhaps more importantly, however, is the impact this pay disparity has on the willingness of qualified and talented Federal career executives to serve as IGs in the larger and more challenging Federal departments and agencies. My understanding is that the Administration expressed a willingness to support a pay raise for all PAS IGs to Level III of the Executive Schedule, which currently stands at $154,600. While this would appear generous, and something for which I and many other PAS IGs would be most grateful, I would strongly urge that PAS IG pay be adjusted to mirror the current SES cap and match any future increases of the SES cap.

Of course, all PAS IGs should, in my opinion, continue to forego any bonus opportunities and thus would still be left with lesser compensation than their highest-level, highest-achieving subordinates. Bridging the significant salary gap to which PAS IGs are presently subject would enhance the attraction of IG appointments for the most qualified candidates and help prevent the most talented sitting IGs from leaving government service for more lucrative private sector positions.

While I personally have never experienced any problems with the Secretary regarding my annual budget submission, I can certainly understand the interest by some of my IG colleagues in legislation that would have annual IG budgets submitted directly to OMB and/or Congress. This would have the obvious benefit of insulating IGs from the potential for many agency heads to retaliate with personnel or other resource cuts. Ironically, despite my propensity for upsetting Secretaries, I have routinely received decent support of my budget at the Department and OMB level with most cuts coming at the congressional level. In fact, I have often felt that the Secretaries I have served with have gone out of their way to avoid even the appearance of retaliation, regardless of our working relationship.

This leads me to that relationship. A good working relationship between an IG and an agency head is essential. The relationship with the Secretary ought to be built on mutual respect and trust. An IG must be independent, but should never blindside or surprise the Secretary. I have always pledged not to surprise any of the

three Secretaries with whom I have served and, to my knowledge, none has ever been caught unaware by the findings of our audits or investigations. While more than one Secretary has occasionally requested that I tone down my rhetoric, none has ever tried to tell me what to say.

IGs are also responsible to do more than simply identify problems, but rather achieve that balance between criticism and commendation, which I spoke of earlier. Audits, to the extent possible, should highlight Department successes and be as solution-based as auditing standards allow. For example, because most problems we encounter are not unique to the Department of the Interior, my audit teams routinely include best practices from other Departments or the private sector in their audit recommendations. Our investigations often present an opportunity to inform the Department of how to prevent the reoccurrence of a problem. My view is that IGs have an equal duty to prevent fraud, waste, or abuse as they do in detecting it.

My office's role in the 4-year task force investigation of the Abramoff scandal profoundly tested my relationships with two Secretaries. Quite understandably, my relationship with former Secretary Norton was negatively affected by the two separate investigations of Deputy Secretary Griles conducted by my office and our FBI partners, although I will allow his recent conviction and pending prison term to speak to the efficacy of those endeavors.

While Secretary Norton and I disagreed about virtually everything concerning Mr. Griles, my relationship with Secretary Norton remained professional. On the other hand, Secretary Kempthorne has used this unfortunate scandal as an opportunity to foster an increased awareness and emphasis on ethics and integrity at the Department. I am impressed with his leadership in this area, and I believe that he and I have achieved the desired level of respect and trust for each other. Secretary Kempthorne has also come to understand that he can count on me to provide him with the facts, whether good or bad, which in turn helps him avoid the risks inherent in the tendency of well-meaning subordinates to overemphasize the positive. He and I both understand that it is not an IG's job to tell an agency head what he or she wants to hear but, rather, what he or she needs to hear.

As I mentioned earlier, I have served on the PCIE/ECIE Integrity Committee for over 5 years. Although I have dropped several hints that my time on this Committee has been served, I have not found any of my colleagues eager or willing to take my place. The truth is that no one could possibly enjoy sitting in judgment of one's peers; it can be a very difficult role to play. That having been said, I can, without reservation, commend to you each individual that I have served with on this Committee. To a person, they have been highly professional, impartial, and interested only in arriving at the truth of each matter that has come before us.

I would remind you that the Committee is always chaired by the FBI Assistant Director of Investigations, staffed by career FBI agents, and its members consist of three IGs and the Directors of the Office of Government Ethics and the Office of Special Counsel, and a staff member of the Public Integrity Unit attends each meeting in an advisory role.

As I noted earlier, an Executive Order created this Committee in 1995, with a principal mandate of adjudicating allegations of wrongdoing against IGs. It is important to understand that every allegation is first screened by the Public Integrity Unit for criminal consideration. If that allegation does not rise to the level of a potential crime, it is then forwarded to the Integrity Committee for administrative review.

From 1997 through June 30, 2007, the Integrity Committee has received 387 complaints against IGs. Of those 387 complaints, only 17 have resulted in the Committee ordering a full administrative investigation, usually conducted by another IG's office.

Mr. Chairman, I have had a long and rewarding career in the Federal Government. My years as IG of the Interior Department, however, have been at once the most challenging, the most frustrating, and the most gratifying. I sincerely believe in the critical importance of the work IGs do, and I appreciate the interest that you and other committees in both the Senate and the House have shown in the work of my office and that of my colleagues.

This concludes my written statement. I would be glad to answer any questions.

Chairman LIEBERMAN. Thanks very much, Mr. Devaney. Very helpful statement. Thanks for your public service. I couldn't help but comment to Senator Collins when you made the understandable statement that an IG should not be considered as either a lapdog or an attack dog that if we compared public opinion of the Federal Government with public opinion of dogs in general, I would say that the canines are ahead. [Laughter.]

So I will thank you and Mr. Fine here for your doggedness, in the best sense of that term.

The next witness is Eleanor Hill, a very familiar and respected person here. It is great to welcome you back here today in your capacity as a former Inspector General of the Department of Defense, a distinguished record of public service, which in the contemplation of this Committee reached its height when you were a Staff Director of the Permanent Subcommittee on Investigations of this Committee under the chairmanship of our distinguished former colleague and dear friend, Sam Nunn.

So, Ms. Hill, it is good to see you, and we welcome your testimony.

TESTIMONY OF HON. ELEANOR J. HILL,[1] FORMER INSPECTOR GENERAL, U.S. DEPARTMENT OF DEFENSE

Ms. HILL. Thank you, Mr. Chairman. It is especially great to be here this morning. Senator Collins, Senator McCaskill, Members of the Committee, good morning. Thank you for the opportunity to discuss the role of IGs in promoting good government.

As you mentioned, I have had a long career in public service. It was a great privilege for me to be in public service for all those years, including my tenure as IG of the Department of Defense and also as the Vice Chair of the PCIE. But as the Chairman mentioned, I have to say I am especially pleased to be here today. This room holds many fond memories for me because of my long years

[1] The prepared statement of Ms. Hill appears in the appendix on page 63.

of service with the Permanent Subcommittee on Investigations. I have great respect and appreciation for the work not only of that Subcommittee but also of this Committee. And so thank you again for the chance to return here this morning.

My experience in government has convinced me that the statutory IGs play an absolutely critical—and unique—role in our Federal system. In creating IGs, Congress was driven by a need to provide objective, independent, and professional oversight on a sustained basis throughout the incredibly vast and complex operations of the Federal Government. In today's world, where new issues and new technologies further complicate those operations, the IGs, with their focused, professional expertise regarding Federal programs, are perhaps more important than ever before.

Although the IG concept originated in the military context in 17th Century Europe and, as the Chairman mentioned, was brought to this country in the form of Baron von Steuben, the idea of a truly "independent" Inspector General, as we know them today, is a relatively recent modern phenomenon. Congress, and the IG Act of 1978, went far beyond the traditional military concept in creating IGs within Federal agencies and departments. The biggest and most critical difference is that military IGs continue to work within their chain of command. They do not have the statutory independence that set the Federal IGs completely apart, in my view, from other military and departmental oversight mechanisms.

My work at the Pentagon when I was the IG with the military IGs brought home to me the importance of independence. Military IGs often requested that our office conduct top-level, particularly sensitive investigations since they did not believe that they had the independence needed to conduct an investigation that would both be and appear to be objective.

I had similar conversations with some Defense agency IGs, who also are appointed and serve at the pleasure of their directors, without statutory independence. Those IGs recognized that in investigations of very senior officials or in audits of programs dear to the agency head, the statutory independence of a departmental IG is key to both the integrity of the inquiry and to the credibility of the findings in the Department, on Capitol Hill, and with the American public.

I could not help but recall those conversations when I read reports last year that oversight of what has been termed the National Security Agency's "terrorist surveillance program" had been handled by the NSA IG, who has limited resources and no statutory independence, and not by the Department of Defense IG. In my view, that is exactly the kind of program where the oversight should have been conducted, from the very beginning, by the independent departmental IG.

All of this underscores the fact that, more than anything else, independence goes to the heart of the IG mission. It is what makes IGs a critical and a unique link in ensuring effective oversight by both the Executive and the Legislative Branches. The IG Act provisions make the IG the most independent and the most unfiltered voice below the Secretary in any Federal department.

As one example, IG testimony to Congress, unlike that of other Executive Branch officials, was not—at least in my experience—

edited or approved by non-IG departmental or OMB officials before being delivered to Congress.

Unfortunately, while the statutory protections for independence are excellent, they are not foolproof. Not all IGs felt as secure in their independence as I did. Operating under the same statute, some IGs are extremely independent while others have been less so. Other factors do impact independence. The department or agency head's view of the IG role and the relationship that develops between the IG and senior management is especially important. I was fortunate to work under two Secretaries of Defense who understood, appreciated, and accepted the role of the IG—Bill Perry and Bill Cohen. Secretary Cohen, of course, knew well about the IGs from his service on this Committee as a Senator.

The IG's own experience and background can also be a factor. I had the benefit of becoming an IG only after being schooled for years in jobs where independent, fact-driven investigation was the norm. I was a Federal prosecutor, and I was a congressional investigative counsel on many inquiries that followed the strong bipartisan tradition of this Committee.

IGs must be comfortable with their independence. They must fully understand its importance. They must be willing to exercise it, and they must be prepared to defend it, if necessary. IGs should be agents of positive change, but they must insist on doing so in an environment where independence is understood and respected. Congress must ensure, during the confirmation process, that those who would serve as the department or agency head and as IGs understand the IG mission and the statutory independence on which it rests. The success of the statute, the process, and the mission depends to a large degree on the quality and the judgment of the people entrusted with those positions.

Congress itself also plays an important role in assuring independence, excellence, and effectiveness for the IGs. During my term as Defense IG, various congressional committees were extremely interested in what our OIG was doing in terms of oversight. Congress needs to maintain focus on what IGs are doing and what it is that they are—or are not—finding. Both our OIG and the senior management of the Department of Defense were very aware of the congressional interest in our work. In those circumstances, it would have been very difficult for management to undercut our independence without incurring the wrath of those committees—something which most departments clearly want to avoid.

At its core, the IG Act relies on the tension that usually exists between Congress and the Executive Branch to reinforce and protect IG independence. For the concept to work, Congress has to be an active player, remaining alert to IG findings and fully engaged in exercising its own oversight authority. In my mind, that is perhaps the single biggest non-statutory factor that impacts IG independence.

Congress has to be willing to insist on objective oversight from the IG, separate and apart from the views of any department and any Administration. When that happens, the IG must walk a fine line between what may be the very different views of Congress and the Department. The overwhelming incentive in those circumstances is for IGs to resist attempts at politicization from ei-

ther side. The best way to succeed when answering to these two masters is to conduct independent, professional, and fact-based inquiries—which is, of course, what we want IGs to do.

Some have suggested additional ways to strengthen the IGs, and both Senator Collins and Senator McCaskill have mentioned their proposals. Generally, I support all reforms that are designed to bolster IG independence, and I have mentioned some of those in my statement. One example, for instance, is that I very strongly support the idea of the direct transmittal of IG budget appropriation estimates and requests to both OMB and Congress because, obviously, it supports and bolsters IG independence.

I just want to briefly mention accountability. Independence unquestionably gives IGs a great amount of power, and with that power comes the responsibility to use it wisely and in keeping with the highest ethical and legal standards. While we hope that all IGs take the high road, the system has to be capable of addressing allegations of abuse of power within the IG community. The public must be assured that those who enforce high ethical standards on others are themselves held to those same standards.

This was a focus of PCIE discussion in the mid- to late-1990s. In 1995, the PCIE created an Integrity Committee to review allegations of misconduct by IGs and Deputy IGs. While well intended, the Committee initiative lacked clear investigative authority, was limited by insufficient resources, and encountered recordkeeping problems. Those problems and increasing public concerns about accountability prompted an effort to formally address accountability in the Executive Order that Mr. Devaney mentioned.

Some have now proposed consolidation of the PCIE and the ECIE into a single statutory council. My experience with the PCIE was, frankly, mixed. The Federal IG community is large and clearly not homogeneous. There are huge differences in size, in capabilities, and in focus among the various IG offices. The issues that were of paramount importance in some large offices had little relevance to the smaller ones. Some IGs were very accustomed to dealing with Congress. Others had relatively minimal contact.

While the PCIE and ECIE do facilitate communication across the community and consensus on internal IG issues, it was difficult in my memory to develop a community position on important governmentwide issues of effectiveness and efficiency. Statutory authorization of an IG Council would be a step in the right direction. Working together, IGs have tremendous potential for the identification of common governmentwide problems and the search for common governmentwide solutions. A statutory mission for the council, coupled with appropriate funding and resources, could help the IG community realize that potential.

Any statutory IG Council should also have statutorily mandated reporting responsibilities, not just to the President, but also to the Congress. The independence that has been so crucial to the work of individual IGs should be available to support independent and professional governmentwide assessments by an IG Council.

In closing, let me just note that I have been genuinely dismayed by reports in recent years of less congressional oversight and less independence and professionalism in the IG community. As an investigator, I know better than to prejudge the accuracy of reports

without access to all the facts, and so I do not know to what degree all those reports are true. I can only say that for the good of the country, I hope they are not. My own experience over the years has convinced me that the rigorous but always objective and fair exercise of the congressional oversight power, bolstered by the work of an independent and professional IG community, is clearly the surest way to promote integrity, credibility, and effectiveness in government. The American people deserve and, quite rightly, expect no less.

Thank you and I welcome any questions you may have.

Chairman LIEBERMAN. Thank you for a very thoughtful statement.

Our last witness this morning is Danielle Brian from the Project on Government Oversight. Tell us what—of course, it is hard not to notice that it spells POGO.

Ms. BRIAN. Yes, it does. [Laughter.]

Chairman LIEBERMAN. Which, for those of us of an earlier generation, brings back happy memories of a particularly astute cartoon strip.

Ms. BRIAN. That is not unintentional, the acronym.

Chairman LIEBERMAN. Thanks, Ms. Brian. Welcome.

TESTIMONY OF DANIELLE BRIAN,[1] EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT

Ms. BRIAN. Thank you, Chairman Lieberman and Senator Collins, for inviting me to testify. We are an independent nonprofit organization that has for 25 years investigated and exposed corruption and misconduct in order to achieve a more accountable Federal Government.

The subject of this hearing raises a number of timely issues. IG offices play a tremendously important role in advancing good government practices, but only if they are led by independent and qualified IGs and those IGs are allowed to do their job. Next year will be the 30th anniversary of the 1978 Inspector General Act, and this is the perfect time to determine the strengths and weaknesses of the IG system.

The intent of Congress in creating these watchdogs—with my apologies to Mr. Devaney—was to have an office within the agencies that would balance the natural inclinations of agency or department heads to minimize bad news and instead give Congress a more complete picture of agency operations. That intention is clearly shown by Congress' decision to break with tradition and create a dual-reporting structure where IGs would report not only to the agency head, but also directly to Congress itself.

It is this independence from the agency the IG is overseeing that gives the office its credibility. Not only the actual independence, but also the appearance of independence allows the IG's stakeholders, including the Congress, the agency head, the IG's auditors and investigators themselves, and potential whistleblowers to have faith in the office. Over the past year, POGO has held monthly bipartisan Congressional Oversight Training Seminars for Capitol Hill staff, and we regularly tell participants that the IGs at agen-

[1] The prepared statement of Ms. Brian appears in the appendix on page 73.

cies within their jurisdiction can be important allies and sources of honest assessments. Unfortunately, we also have to point out that not all IGs are well qualified or appropriately independent.

I have the honor today of sitting on this panel with model Inspectors General. However, in the past few years, the ranks of the Nation's IG community have not always been filled with such stars. Investigations of the current NASA IG and former Commerce, Postal Service, and HHS IGs have substantiated allegations of improper conduct by those offices. Some of the types of improper conduct included illegal retaliation against IG employees, not maintaining the appearance of independence required of an IG, and interfering with IG investigations.

At the same time, several IGs have suffered retaliation for doing their jobs too well. In addition to the formerly mentioned Smithsonian IG, the Special Inspector General for Iraq Reconstruction, the GSA and Legal Services Corporation IGs, as well as the former Homeland Security IG, have all suffered some form of retaliation—ranging from budget cuts by their agencies to personal attacks and even threats to eliminate their office entirely.

The House Committee on Oversight and Government Reform has created a Fact Sheet outlining these instances, and I request that it be submitted for the record.[1]

Chairman LIEBERMAN. Without objection.

Ms. BRIAN. While POGO believes improvements can and should be made to the IG system and we applaud the Committee for holding this hearing, any changes to that system need to be very careful and deliberate. The balance between independence and accountability is a difficult one to maintain. On the one hand, an IG must be afforded the opportunity to pursue audits and investigations without fear of reprisal. On the other, there needs to be enough accountability that an IG does not pursue a partisan agenda or become otherwise ineffective. Every legislative change needs to be considered through both prisms to ensure it does not have unintended consequences.

POGO is in the beginning stages of a major investigation into the IG system to determine best practices as well as weaknesses. There are significant unanswered questions, one of which is the question of who is watching the watchdogs, and we look forward to presenting you with our findings in the future. There are, however, a few improvements to the system that we have already determined make good sense.

The first is to better ensure that people chosen to be IGs are of the caliber of those sitting on this panel. The recent improper conduct to which I referred above has made it clear the process of selecting IGs, unique people who can thrive in the unpopular job of being an Inspector General, perhaps needs to be improved. During the Reagan Administration, a small group of IGs from the PCIE used to recruit and screen IG nominees. They then supplied lists of candidates from which the White House could select. This peer review helped ensure that unqualified or partisan people were not placed in the role of IG. Congress should consider recreating and formalizing that model.

[1] The Fact Sheet appears in the Appendix on page 76.

The second improvement is that presidentially appointed IGs should have their own General Counsel's office. While most do, we know of at least one that does not—the Department of Defense IG. As a result, the DOD Office of Inspector General has relied on lawyers assigned to it by the Pentagon's General Counsel for legal advice. You can see how this could significantly undermine the independence of an IG: A General Counsel's role is to protect the agency, whereas an IG's role is to investigate it if need be. Furthermore, General Counsels have the power to undermine IG investigations because they affect such decisions as criminal referrals and what to redact from documents released through FOIA.

I realize that for many of the smaller ECIE IGs, having their own General Counsel might double the size of their office and could unnecessarily create a new bureaucracy. One solution to this dilemma might be to allow small ECIE IGs to use the General Counsel's office of a PCIE IG for necessary legal resources, or perhaps to create a General Counsel's office to be shared by the smaller ECIE IGs, rather than turning to the counsels of their own agency.

Another improvement, and a way to mitigate any possible bias caused by being appointed by the President or agency head, is to create a term of office longer than 4 years and to stipulate that an IG can only be removed for specific cause. I respect and understand the point that Mr. Fine made on this that it does raise important questions, but our concern and our support of this idea is focused more on the IGs that enjoy less—that have a weaker stature within their agency or in the public eye or in the Congress than those IGs that are here. There are many IGs that do not enjoy the kind of strength that the IGs here have, and we are concerned about those IGs in particular with this provision.

A further improvement is to allow IGs to submit their budgets directly to both OMB and Congress, and we absolutely support that, especially because it will ensure for Congress that the IG's budget is commensurate with the size of the agency they are overseeing.

Finally, it is clear that IGs need to be paid in accordance with their position of responsibility. There are a number of problems with the pay system for both PCIE and ECIE IGs, which have been discussed, but it appears fixing the pay problems would be more akin to housekeeping than significantly changing policy and should be addressed quickly by the Congress so that these issues do not dissuade good and qualified people from becoming IGs.

Legislation introduced by Senator Collins, Senator McCaskill, and Representative Jim Cooper are all important steps toward making the IG system stronger. Even with the perfect legislation, however, the IGs will only thrive when the relevant congressional committees are actively engaged with their offices and regularly ask them to report on their findings. I look forward to presenting you with POGO's investigative findings once they are complete and to working toward implementing these recommendations.

Thank you.

Chairman LIEBERMAN. Thanks, Ms. Brian.

There is a vote that apparently will go off around 11:30 a.m., so I would like to limit our questioning to 5 minutes each so each of us can get a chance before we have to go.

Ms. Brian, let me briefly start with you. You cited an interesting earlier practice in your testimony under which the PCIE would prepare a list of qualified candidates for IG openings, and then the selection would be made from that list. Is your suggestion of that based on a concern that in recent times the IGs have either been less qualified or less partisan than you would like them to be?

Ms. BRIAN. Or perhaps more partisan I think is the concern. There have been a couple——

Chairman LIEBERMAN. Excuse me. I do mean "more partisan."

Ms. BRIAN. There have been a few instances where there really are questions about the qualifications of the IGs that were appointed and whether their appointment was more because of relationships they had with the White House or people in the Administration than their real qualifications for the job.

Chairman LIEBERMAN. Yes. So, in fairness, it may not, as your answer suggests, be partisanship so much as lack of independence.

Ms. BRIAN. Yes, absolutely right.

Chairman LIEBERMAN. Right. Three of the witnesses—Mr. Fine, Mr. Devaney, and Ms. Brian—have commented on the idea of a fixed term for the IGs as a guarantee of independence. Ms. Hill and Mr. Johnson, I wanted to ask you if you have an opinion on that.

Ms. HILL. Mr. Chairman, I have said that I would support a fixed term. I agree with Mr. Fine that there are pluses and minuses to it. The obvious minus is if you get someone in there that is not very good, you are going to have that person in there for a while. But I believe that a fixed term, coupled with termination for-cause in the statute so that there is some guidance as to what grounds you would have to have to terminate somebody, would bolster independence. I would support that.

Chairman LIEBERMAN. Right. Mr. Johnson.

Mr. JOHNSON. I am opposed to the idea of a fixed term and the idea of dismissal for cause only. The reasons, the causes that have been suggested would not have applied to any of the IGs that people have been suggesting be replaced. The GAO assembled that group of people several months ago. It was the opinion of the vast majority of these very informed people in this forum that a term accomplished nothing, in fact, it might even be dysfunctional.

The key is that there be accountability for performance. We talk about the potential for this and the potential for that. I do not think anybody is suggesting that, in fact, there is not independence of findings in what the IGs are doing. We talk about there have been allegations of dependence or not enough independence, but there has never, to my knowledge, been a finding by the Integrity Committee or any other entity that, in fact, we haven't had fully independent investigations by the existing IG community. And I do not think that there is a problem that warrants a term, and I think it is the opinion of the vast majority of the people that have looked at it that a term and a listing of causes buys you anything.

Chairman LIEBERMAN. Thanks. Mr. Fine, let me——

Ms. HILL. Mr. Chairman, can I just add to that point? I think independence does not just go to findings. It also goes to the willingness to initiate the investigation and cover all the issues.

Chairman LIEBERMAN. Right.

Ms. HILL. And as I mentioned, the NSA case is an example of where there was apparently not sufficient independence to conduct that kind of oversight.

Chairman LIEBERMAN. That is an important point.

Mr. Fine, you cite in your testimony this anomaly in the law that prohibits you from investigating lawyers at the Department of Justice, and you recommend that we eliminate that exception, which makes them the only group so protected in any agency.

From my point of view, you make a very strong argument. I am interested to ask you the kind of question my law professors used to ask me. What is the argument on the other side?

Mr. FINE. I think the argument on the other side is that lawyers are different. They have specialized duties, and you need a special office to look at the conduct of lawyers. And you do not want to chill the conduct of lawyers by being too aggressive about your oversight of them. In addition, it has to do with the historical practice, and OPR has existed for a while and has experience in this realm.

I think those arguments are not persuasive. They remind me of the arguments that had to do with our jurisdiction over the FBI. We originally did not have jurisdiction over the FBI, and they said that they were too special, that they were somehow different, that they had to look at their own misconduct, and that the IG should not come in and look at FBI actions. I think that was wrong, and I think that has been proved wrong by the experience since we did get jurisdiction over the FBI in 2001. I think the same principles should apply to lawyers in the Department of Justice. There should not be this carve-out of a special class that is not subject to the jurisdiction of the Office of the Inspector General.

Chairman LIEBERMAN. I agree with you. And just finally, am I correct that, notwithstanding that, in response to your request you are now involved in the investigation of the supervisors in DOJ who were involved in the firing of the U.S. Attorneys?

Mr. FINE. Yes. When we learned about the assignment to OPR, we objected and said that we thought it was our jurisdiction. We discussed it. There was a dispute. Eventually, because of the unique circumstances of this, we agreed to do a joint investigation with OPR. So we are jointly investigating this matter. It is moving forward. But in my view, it is an example and an instance, an illustration of why the OIG, the IG, should have unlimited jurisdiction throughout the Justice Department, just like every other agency.

Chairman LIEBERMAN. Thank you. Senator Collins.

Senator COLLINS. Thank you.

Mr. Johnson, recently there was a dispute between the head of GSA and the IG concerning the budget for the IG. That became public only because the IG went public to complain about the budget cuts. Some of the witnesses here today have recommended that the IGs' submission of the budget requests go not only to OMB but to Congress. That way we would always know if the budget has been cut by the agency head before it is presented to us.

What is your judgment, what is your opinion on having the IG do a direct budget submission not only to OMB but to Congress?

Mr. JOHNSON. I believe that an IG office is part of an agency, and you have to look at the total budget for each agency, and that in-

cludes the IG operation. Just like at Social Security, there are disability claims, investments that can be made or not. In the disability claims, people at Social Security do not submit a separate budget to Congress or separate budget to OMB, separate from the Social Security Administration, or the IRS does not submit a separate budget to Congress for auditing of people's tax returns and so forth. It is done in the context of the overall Treasury budget.

So I believe that it should not be a separate submission. I think it ought to be part of the agency's submission. I think there should be lots of transparency about what budget is being recommended this year versus prior years so that the Congress has that information before it. But I do not believe it should be an independent submission.

Senator COLLINS. Ms. Brian, I want to follow up with you on the issue of the effectiveness of IG offices. There are some IG offices in smaller agencies that are extremely small. They have maybe one person, literally, or two people.

Several years ago, I proposed legislation to consolidate some of those smaller IG offices. For example, I remember there was one for the National Endowment for the Arts and a separate one for the National Endowment for the Humanities. So I proposed combining those into a larger office that would have more critical mass.

My proposal went nowhere on that. It turned out every agency had a stake in having its own IG. So we still have this problem where we have very small offices, literally in some cases one- or two-people offices, that really cannot accomplish much because they do not have a critical mass.

What is your judgment on whether we should take a look at some of the smaller IG offices and try to consolidate them?

Ms. BRIAN. Senator, I think that is an excellent question. I do not have an answer to it yet. It is the kind of thing that we would enjoy looking at and coming back to you with a recommendation. But I think the points you are making are very well taken.

Senator COLLINS. I really hope you will come back to us on that. It would help us if an outside group found that it was a good idea to overcome the bureaucratic turf battles that always occur whenever you try to do consolidation.

Ms. Hill, I want to follow up with you on the issue that has been raised about whether the IG offices need separate General Counsels so that they are not borrowing from the agency because DOD does not have a separate counsel for the IG's office.

Ms. HILL. Right.

Senator COLLINS. You served very effectively as the DOD IG. Did you feel hampered by the lack of your own General Counsel, or did it work fine for you?

Ms. HILL. Senator, in our particular circumstance, it worked. And I will tell you, when I became IG, my knee-jerk reaction was: This is not going to work; I need to have my own counsel.

However, I had a 1,500-person shop at the time, and I wanted to take a few months to make sure I knew what was working in the organization and what was not before I made major changes. So I gave everything a few months to watch. The General Counsel issue was one of them. There was strong sentiment in the IG office senior leadership, the professional long-term people, that it was a

good thing to have a lawyer that was a Deputy General Counsel of the Department of Defense. That lawyer is housed in the IG's building right down the hall from the IG, serves daily under the IG, and has a team of lawyers serving under him. So there are about seven or eight lawyers there.

I watched it for several months, and it worked in our circumstances. They argued that it was good to have someone who could get the input from the other much larger General Counsel's office at the Pentagon on procurement issues, contracting issues, and other very technical issues. You have the benefit of getting their expertise because you are part of that office.

It worked for us because, one, we had a very good lawyer there who had been with the IG for a long time and really was loyal to the IG. I never sensed there was any division of loyalty.

Second, the General Counsel at the time for the Department of Defense was a very good General Counsel who understood and appreciated IG independence. I had a very good relationship with her. She never tried to tread on our territory.

And, third—and this probably made me feel the most comfortable—I was a lawyer, and I was a fairly experienced lawyer. I had been a prosecutor for 6 years. I had been in congressional oversight for 15 years. I knew the IG issues. So I was not reluctant to question my lawyers and probe and push them back a little and do the kind of things that you would want to do to make sure you are getting solid, independent advice. Had I not been a lawyer, I might have felt differently. So in our unique situation, it worked.

On the other hand, as a rule institutionally, I will tell you that I would probably say my recommendation would be that IGs should have their own counsel. I think our situation was unique at the time. I do not know if that situation still exists today because it was dependent on the IG's background, on the Department's attitude, on the person that was in the job—all of which can change very easily.

Senator COLLINS. Thank you.

Chairman LIEBERMAN. Thanks, Senator Collins. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mr. Johnson, good to see you again. Over the past year and a half, Mr. Johnson, the OPM IG, at your request as head of the PCIE, has been investigating Special Counsel Scott Bloch, who is a member of the PCIE but not an IG. To my knowledge, this is the first investigation of this kind.

Do you believe any change should be made to the PCIE or Integrity Committee structure to address this type of investigation?

Mr. JOHNSON. Well, there is a particular issue with investigation of a Special Counsel because there is no mechanism for inspecting complaints against a Special Counsel, and they could not inspect themselves. And so we thought the best thing to do was to help the Office of Special Counsel create an Economy Act agreement with an IG's office to come in and do the inspection of the Office of Special Counsel.

So one issue is how do we deal with future complaints against the Office of Special Counsel, or the Office of Government Ethics is another one that we have to deal with. That is one issue.

Another issue is does the Integrity Committee apparatus need to be modified or enhanced or something, and I think the second issue there is a bigger issue, potential issue, than the first one. We probably need to do something to make sure there is a formal mechanism for dealing with complaints against the Special Counsel and the Office of Government Ethics in the future to clarify that.

On the question of does the Integrity Committee need to be revised, I think I would defer and engage in conversation with Mr. Devaney and the other members of the Integrity Committee to see what they think the strengths and weaknesses of it are. I know a lot of the people that have been the target of investigation by the Integrity Committee would like to see it change, more open notification to them of what the charges are and more opportunity to respond to the charges against them and so forth.

So I think the Integrity Committee process does need to be looked at. I don't have any specific recommendation for changing it now. But I think a thorough review of that is in order, and maybe we decide to leave it the way it is, but it ought to be looked at.

Senator AKAKA. What is the status of that OPM investigation?

Mr. JOHNSON. Well, it has gone on for a very long time. In my mind, too long a time. But we do not say you should only take so many months to conduct this investigation. It is not clear to me all the reasons why it has taken this long, but it is what it is. I am not satisfied, nor are you, with the fact that we do not have findings yet on that, but it would be totally improper for me or anybody to step in and say you only have this much time to conduct this investigation.

Senator AKAKA. Thank you.

My next question is to any of the current and former IGs—Mr. Fine, Mr. Devaney, and Ms. Hill. I am concerned that the PCIE and ECIE, particularly the Integrity Committee, may not be strong enough. Earlier this year, the Integrity Committee concluded that the NASA IG, Robert Cobb, had abused his authority and had not maintained an appearance of independence from NASA officials. The Committee took the unusual step of recommending disciplinary action, which they normally do not, up to and including removal. Mr. Cobb rejected the Committee's findings, and he remains in office.

What should be done if the Integrity Committee's recommendations are ignored? Can the Committee's role be strengthened? Mr. Fine.

Mr. FINE. I think that is an important question dealing with accountability, and I do think the PCIE and the Integrity Committee are a fundamentally important concept to ensure accountability over IGs.

I do think it can be strengthened. I think one of the things that can be done to strengthen the PCIE is to make it statutory, make it a statutory council and provide designated funding for it. The people who work on the PCIE—either the Vice Chair or the people on the Integrity Committee—are IGs who have enormous other responsibilities, and this is a collateral duty piled on top of all their other responsibilities. So to the extent it can be made more con-

crete, codified, and provided funding, I think it would be a positive thing.

Mr. Devaney is on the Integrity Committee, and I am sure he has ideas as well.

Senator AKAKA. Mr. Devaney.

Mr. DEVANEY. Senator, without commenting specifically on that case that you mentioned, the Committee looks at these allegations. They are first screened by the Public Integrity Unit of the Department of Justice, which eliminates any possibility of criminal wrongdoing, and then we look for administrative review, if necessary. And as I mentioned earlier, in the some 300-odd cases that have come down in the last decade or so, only 17 have been forwarded for a full administrative investigation.

My observation, having been on the Committee, is that each of those investigations that I was on the Committee while those investigations took place were all done very professionally and in keeping with Federal investigative standards. And then the Committee forwards, sometimes with and sometimes without recommendation, to the person who sits in Mr. Johnson's position for whatever action they deem appropriate, particularly with a presidentially appointed IG.

I would never advocate that the Committee that does the investigation also act as the judge and set the sentence. It is not appropriate for both duties and roles to be in the same place.

So I think in the case you mentioned and in other cases that I have observed while I have been there, it has worked right. There is always a cry that it is not as transparent as people would like it to be. There are obvious due process considerations that we have of the people that are being investigated. We have changed some of the internal guidelines of the Committee recently to allow the people being investigated to understand the extent of the allegations being made against them, to provide an opportunity for them to provide the other side of the story. But I would never advocate that the Committee take on the role of final adjudicator of what happens to an IG if, in fact, the facts substantiate the allegations.

Senator AKAKA. Ms. Hill.

Ms. HILL. Well, Senator, obviously I am not a member of the PCIE now, so I do not have facts on current cases and I really cannot speak to that. But I clearly would, based on my own experience, echo what Mr. Fine said in terms of strengthening the Committee. My recollection from my years with PCIE was that, as Mr. Fine said, everything connected with PCIE, including the Integrity Committee, is an additional burden on various IG offices. And in my experience, when it came time to get manpower to conduct investigations, for instance, for the Integrity Committee back in the 1990s, there was always an issue of trying to find an IG who was willing to give enough resources to do that because usually the answer was: I have other things going on; I cannot do this, etc. The PCIE was kind of out there as sort of this amorphous thing that was a council, but it really was not a statutorily authorized function or a statutory requirement.

So I think codifying it, making it statutory, giving it resources, and giving it funding would certainly give it a lot more authority and make it a more serious effort.

Senator AKAKA. Thank you very much for your——

Mr. JOHNSON. Senator Akaka, could I clarify one thing? The recommendations of the Integrity Committee were not ignored by Administrator Griffin. There was a range of opinion on the Committee. Some felt up to a dismissal. But there was not a consensus recommendation. It was recommended that some action be taken and some action was taken.

Senator AKAKA. Thank you.

Chairman LIEBERMAN. Thanks, Senator Akaka. A vote has just gone off, but that should give us time to have questioning by our two remaining Senators.

Senator McCaskill.

Senator MCCASKILL. I do not want to dwell on Inspector General Cobb, but I had the opportunity to sit on that hearing in Commerce, and I was shocked at the level of denial that this Inspector General had about the findings against him, understanding that the Committee on Integrity is made up of cautious, conservative people. I know this. These are cautious, conservative people that are fact-driven. It was a unanimous decision that disciplinary action be taken. I think a lot of Americans would quarrel with the idea that a management course is disciplinary action.

And to add insult to injury, this Inspector General came in front of a Committee of the Senate and basically called out the Committee of Integrity as being bogus, basically said their findings were not valid, that they were not fair.

I think it is breathtaking that an Inspector General would be so dismissive of a body of his peers that had made that kind of unanimous determination for disciplinary action. And I will tell you, I am disappointed that you would see that as an appropriate outcome based on that investigation because it seems to me if the Committee on Integrity says unanimously that disciplinary—and, by the way, after that management course was—after a "de novo investigation" by the counsel at NASA, and after the Committee learned of that, they wrote another letter to that agency saying, Hello, we said in this letter that this was serious and this was a real problem.

So from my chair, listening to Inspector General Cobb, he believes that he has been wronged, that he has done nothing wrong, that somehow this Committee has dealt him dirty. And so I am frustrated that we have a system—and I realize this is an exception to the rule. I realize in most instances the Committee does their investigation and issues findings, and I have got many examples in my preparation for today's hearing where the work of the Committee on Integrity has had that validity and had the kind of oversight it should have. But in this instance, it failed, and we have to figure out how we fix that.

I would ask you, either Ms. Hill or Mr. Devaney, as to what we can do in Congress to make sure that we do not have an Inspector General that gives the back of his hand to the Committee on Integrity.

Mr. DEVANEY. Well, I certainly did not enjoy being on the receiving end of those comments.

Senator MCCASKILL. I am sure you did not. It was very insulting to you.

Mr. DEVANEY. I was not there. I did read them later. Of course, I disagree with them.

I have thought about this a lot, and I will go back to what I said earlier. The Committee cannot itself be the body that exercises the final decision on what happens to an IG. We proffered a long, I might add, professional investigation with some recommendations to the appropriate official.

Now, we do that every day at our departments. We do professional, fact-based investigations. We ultimately give them to a Secretary or an agency head for whatever action they deem appropriate. And I would like to think that when that happens, people who have done wrong are held accountable. That does not always happen. I have been disappointed at the Department of the Interior on many occasions on that issue, but that is part of the process. And from my perspective, I just keep coming back and doing the right thing and hoping that sooner or later people get the idea that accountability is important.

Senator MCCASKILL. If those of you who are currently in—and I am certainly aware of your work, Mr. Fine, and it is extraordinary, and your background. I read a long article about you. Along with reading all the reports, I also read about you guys. I would appreciate all three of you, if you could give input as to what we could do to make sure a situation like this does not become more commonplace. I was shocked at the testimony of the Inspector General after the kind of peer review that he had undergone to be as dismissive as he was.

Briefly, let me ask one question, Ms. Hill. I have learned that the Inspectors General in the branches of the military are not really Inspectors General. The Inspectors General within the branches do not have any independence or requirement to report to the Congress or to the public. They are really apples and oranges.

Now, the Department of Defense Inspector General is an Inspector General and has that independence and has that obligation. But we are calling them Inspectors General within the branches, and they have no obligation to anyone other than their commander.

I would like your idea as to whether we should rename those Inspectors General because they are not doing the work that the other Inspectors General in the Federal Government are doing.

Ms. HILL. Well, you are absolutely right, Senator, that they have a very different role than the statutory IGs. But I would venture to guess—as DOD IG, I worked very closely with the military IGs. I oversaw what they did. I met with them regularly. And I will tell you, if you told them that they are misusing the name, they would probably say, "Well, it was our name first."

Senator MCCASKILL. That is exactly what they told me. [Laughter.]

Ms. HILL. Because they are very proud of the military Inspector General concept, which goes back, as the Chairman said, in this country to Baron von Steuben, and even before that into the 17th Century European military. So it has been around for a long time. But it is a very different concept than what Congress did in 1978. The military concept is much more focused on inspections, on assisting military members. They do investigations, but the big difference, as I mentioned in my statement, is their investigations go

up that chain of command, and in the military, the chain of command is not about independence. It is within the chain of command in the very traditional military sense.

That is why the role of any DOD IG, because you do have the statutory independence, is to oversee all the military Inspectors General in the Department and in certain cases to actually take investigations from them. We used to take the very senior military officer investigations because they did not have the independence to do that.

I would also just mention—and you may be interested in this—the military also has Auditor Generals.

Senator MCCASKILL. Oh, I am aware.

Ms. HILL. Each branch of the service has an Auditor General, and it is a very similar thing. They also do audits within that military branch, but they do it up the chain of command and do not have the statutory independence the departmental IG does.

So part of the role of the Defense IG, the statutory IG, is to oversee and routinely meet with all the service IGs and the service Auditor Generals and make sure they are doing good work, oversee what they do, and if they are not doing solid work, to take that work up a level and do it at the statutory level.

Senator MCCASKILL. The problem is we have thousands of auditors within the Department of Defense.

Ms. HILL. Correct.

Senator MCCASKILL. But a huge chunk of those auditors, their work the public never sees, and I think that is a problem because ultimately, as I said in my opening statement, the strength of an audit product lies with the public being aware of it and holding government accountable as a result of those audits.

So I would welcome your input on how we can work within DOD to change some of those things.

Ms. HILL. Right, because you do have—I mean, DCAA, when I was there, had 5,000 auditors, and I am sure they probably have more now.

Senator MCCASKILL. I counted. I think there are 20,000 auditors within the Department of Defense. I think most Americans would be shocked to know that we have 20,000 auditors within the Department of Defense.

Ms. HILL. Right.

Senator MCCASKILL. Especially in light of the fact they have been on the high-risk list now for an awful long time.

Ms. HILL. Forever, right.

Chairman LIEBERMAN. Thanks, Senator McCaskill. Senator Coburn.

OPENING STATEMENT OF SENATOR COBURN

Senator COBURN. Well, first of all, let me thank each of you for your contribution and your service. In the last 2 years prior to this Congress, we used what you did a lot in the Federal Financial Management Subcommittee, and I value your work a great deal.

My criticism is not really of the IG program. It is of Congress because we do not use what you give us, and that is the biggest problem. That has to be the most frustrating thing for you because you

develop it and then we do not highlight it to the American people and then make changes.

If there ought to be anything coming out of this Committee, it is the great work that the IGs most normally do and the fact that it is not acted on by Congress to make a difference for the American taxpayer.

I am impressed by the bill that Senator McCaskill has. I think it needs to be fine-tuned a little bit.

I also would like to spend some time in trying to figure out, if any of you all can tell us—the Defense Department is broken in terms of its procurement, in terms of its auditing, in terms of its oversight. We need to have a skull session on how we get better value. I am convinced, of the $640 billion that we are going to spend this year, we are going to waste $60 billion of it. And we do not have $60 billion to waste.

So I would offer an open invitation to any of you that would want to come into our office to talk about how do we fix—even though we have Inspectors General and we have a statutory Inspector General in the Defense Department, how do we fix that system to where it works and there is accountability? Because I am convinced that there is not any transparency, and without transparency, you are not going to have any accountability.

Other than that, I do not have any additional questions, Mr. Chairman. I thank you for holding this hearing. This is one of the most critical aspects for restoring confidence to the American people in this government, what you all do every day. And I want you to know I, as a Senator, and I think most of us really appreciate what you do. Thank you

Chairman LIEBERMAN. Thanks, Senator Coburn. I agree with you. We will bring forth legislation in this session on the IGs.

I think Senator Coburn makes a good point. Part of the problem is that Congress does not respond comprehensively enough to what the IGs tell us.

This has been a very helpful hearing. I thank each of you for your testimony and for the considerable experience that you brought to the table.

We are going to leave the record of the hearing open for 15 days, either for additional testimony that you or others might want to submit or we may want to ask you another question.

In the meantime, I thank you very much. The hearing is adjourned.

[Whereupon, at 11:50 a.m., the Committee was adjourned.]

APPENDIX

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR
FOR MANAGEMENT

Statement of the Honorable Clay Johnson III
Deputy Director for Management
Office of Management and Budget

before the

Committee on Homeland Security and Governmental Affairs

of the

United States Senate

July 11, 2007

Thank you, Mr. Chairman, Ranking Member Collins, and members of the Committee for allowing me to testify today. Per Executive Order 12805, as Deputy Director for Management at OMB, I am the Chairman of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), the two Inspector General councils.

I believe the general quality and quantity of IG work today is superb, and that IGs are currently held accountable for the quality and quantity of their work, as they should be. In their most recent report to the President, the PCIE and ECIE report that their work has resulted in:

- $9.9 billion in potential savings from audit recommendations;
- $6.8 billion in investigative recoveries;
- 6,500 indictments and criminal informations;
- 8,400 successful prosecutions;
- 7,300 suspensions or debarments; and
- 4,200 personnel actions.

These performance levels are consistent with previous years' efforts: IGs have been and continue to be a primary means by which we identify and eliminate waste, fraud, and abuse.

I believe IGs and Agency leadership currently share the goal of making their agencies successful, as they should. Both want to eliminate waste, fraud and abuse. Both want to identify and fix processes and programs that don't work. I believe IGs are not and should not be treated by agency leadership as the enemy. Like internal auditors in the private sector, IGs are expected to report on and provide recommendations for improvement in those areas where opportunities or deficiencies are identified. They are agents of positive change. IGs are generally respected, not feared, by agency leadership.

I believe IG-agency relationships need to be actively managed to be as independent but still as functional and constructive as they should or could be. I believe the attached *Relationship Principles*, developed by the IG community and me three years ago, should be used by IGs and agency heads to manage their relationship with each other.

WORKING RELATIONSHIP PRINCIPLES FOR AGENCIES AND OFFICES OF INSPECTOR GENERAL

The Inspector General (IG) Act establishes for most agencies an Office of Inspector General (OIG) and sets out its mission, responsibilities, and authority. The IG is under the general supervision of the agency head. The unique nature of the IG function can present a number of challenges for establishing and maintaining effective working relationships. The following working relationship principles provide some guidance for agencies and OIGs.

To work most effectively together, the Agency and its OIG need to clearly define what the two consider to be a productive relationship and then consciously manage toward that goal in an atmosphere of mutual respect.

By providing objective information to promote government management, decision-making, and accountability, the OIG contributes to the Agency's success. The OIG is an agent of positive change, focusing on eliminating waste, fraud and abuse, and on identifying problems and recommendations for corrective actions by agency leadership. The OIG provides the agency and Congress with objective assessments of opportunities to be more successful. The OIG, although not under the direct supervision of senior agency management, must keep them and the Congress fully and currently informed of significant OIG activities. Given the complexity of management and policy issues, the OIG and the Agency may sometimes disagree on the extent of a problem and the need for and scope of corrective action. However, such disagreements should not cause the relationship between the OIG and the Agency to become unproductive.

To work together most effectively, the OIG and the Agency should strive to:

Foster open communications at all levels. The Agency will promptly respond to OIG requests for information to facilitate OIG activities and acknowledge challenges that the OIG can help address. Surprises are to be avoided. With very limited exceptions primarily related to investigations, the OIG should keep the Agency advised of its work and its findings on a timely basis, and strive to provide information helpful to the Agency at the earliest possible stage.

Interact with professionalism and mutual respect. Each party should always act in good faith and presume the same from the other. Both parties share as a common goal the successful accomplishment of the Agency's mission.

Recognize and respect the mission and priorities of the Agency and the OIG. The Agency should recognize the OIG's independent role in carrying out its mission within the Agency, while recognizing the responsibility of the OIG to report both to the Congress and to the Agency Head. The OIG should work to carry out its functions with a minimum of disruption to the primary work of the Agency.

Be thorough, objective and fair. The OIG must perform its work thoroughly, objectively and with consideration to the Agency's point of view. When responding, the Agency will objectively consider differing opinions and means of improving operations. Both sides will recognize successes in addressing management challenges.

Be engaged. The OIG and Agency management will work cooperatively in identifying the most important areas for OIG work, as well as the best means of addressing the results of that work, while maintaining the OIG's statutory independence of operation. In addition, agencies need to recognize that the OIG also will need to carry out work that is self-initiated, congressionally requested, or mandated by law.

Be knowledgeable. The OIG will continually strive to keep abreast of agency programs and operations, and Agency management will be kept informed of OIG activities and concerns being raised in the course of OIG work. Agencies will help ensure that the OIG is kept up to date on current matters and events.

Provide feedback. The Agency and the OIG should implement mechanisms, both formal and informal, to ensure prompt and regular feedback.

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice
before the
Senate Committee on Homeland Security and Governmental Affairs
concerning
Strengthening the Unique Role of the Nation's Inspectors General

I. Introduction

Mr. Chairman, Senator Collins, and Members of the Committee on Homeland Security and Governmental Affairs:

I appreciate the opportunity to testify before the Committee as it considers how to strengthen the independence and accountability of Inspectors General. I am glad to provide my perspective, based on my work in the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) for the last 12 years. I joined the DOJ OIG in 1995, first as a special investigative counsel, and in 1996 became the Director of the OIG's Special Investigations Unit, which is a career Senior Executive Service (SES) position. In 2000, I was honored to be nominated and confirmed as the DOJ Inspector General.

Inspectors General are given broad authorities to perform a challenging job, and I believe that, in general, most Inspectors General have performed their responsibilities independently and effectively. But I also believe that it is useful to regularly assess the responsibilities, authorities, performance, and accountability of Inspectors General, particularly because of the importance of their work and the impact they can have throughout the government. I am grateful that this Committee is examining these issues, as well as potential ways to strengthen the effectiveness of Inspectors General.

My testimony today is divided into three parts. First, I discuss my view of the proper role and functions of an effective OIG. In this section, I discuss the principles that we attempt to follow at the DOJ OIG. I also discuss my view of the need for Inspector General independence and objectivity, as well as the appropriate relationship between an Inspector General and an agency head.

Second, I provide my views on various proposals to strengthen the role of Inspectors General, including proposed amendments to the Inspector General Act (IG Act).

Third, I briefly discuss a limitation on the jurisdiction of the DOJ OIG that I believe is inappropriate and should be changed.

II. The Role of Inspectors General

I believe that for the most part Inspectors General have the necessary tools and authorities to effectively perform their mission. According to the IG Act, the mission of OIGs is to prevent and detect fraud and abuse in government programs and operations, and to improve the economy, efficiency, and effectiveness of agency operations. To perform this role, the IG Act gives Inspectors General significant powers, such as the right of access to all agency documents, the ability to subpoena documents outside the agency, the authority to conduct investigations and reviews that are in the judgment of the Inspector General necessary, and the right to have direct access to the agency head.

Notably, the IG Act describes OIGs as "independent and objective" units within an agency. This is a critical requirement for an effective Inspector General. An Inspector General must be – and must be perceived to be – both independent and objective. Inspectors General are required to walk a difficult line: to keep the agency informed of their work and the problems they find, but to operate independently and never to allow their work to be directed or compromised by the agency in any way.

While the OIG is part of the agency, we are different from other components within the agency. For example, while we listen to the views of the agency and its leadership, we are not directed by them. We make our own decisions about what to review, how to review it, and how to issue our reports. We also independently handle contacts outside the agency. At the Department of Justice OIG, we communicate with Congress independently from the Department's Office of Legislative Affairs, and we respond to any inquiries from the press separately from the Department's Office of Public Affairs.

However, we also try not to blindside the Department with our audits and program reviews. We provide the Department with an opportunity to comment on our reports before they are completed and to inform us if they think something is factually incorrect. But in the end, we independently reach our own conclusions about what the report should contain and where we believe the truth lies.

In performing our mission, I believe it is critically important not only to uncover problems, misconduct, or inefficiencies, but also to propose effective solutions. Ultimately, our goal should not be focused on whether our work makes our agency look good or bad, but whether we help improve its operations.

In my view, an important role of an Inspector General is to provide transparency on how government operates. At the DOJ OIG, we believe it is important to release publicly as much information as possible, without

compromising legitimate operational or privacy concerns, so that Congress and the public can assess the operations of government. We therefore start from the presumption that our reports should be public and we post them on our website the day they are issued publicly. However, this does not mean that we publicly release the report of every review or investigation we conduct. We recognize that some information cannot and should not be publicly disclosed, such as classified material, information that compromises law enforcement techniques, or information that impacts the privacy rights of line employees. Yet, we do not believe that OIG reports should remain secret simply because they expose deficiencies in an agency's operations. Embarrassment is not a legitimate reason to withhold the release of information.

We therefore look with a critical eye on claims that information in a report is too sensitive to be released. Sometimes, we find that notwithstanding a claim that the information is too sensitive to include in a public report, the Department itself has released the same or similar information in another document or in a different forum, such as in a speech or at a congressional hearing. We do not accept blanket claims that an issue is too sensitive for public release. When such claims are raised, we ask the Department to identify which specific information – sentence by sentence or word by word in some cases – that it believes cannot be released and why.

In addition, we believe it is important that our reports provide not only our findings and recommendations, but also the factual bases for our conclusions. It is our obligation to explain and support our findings in a way that is understandable not only to technical experts, but also to the Department's leaders, members of Congress, and the public.

An Inspector General also must be tenacious in addressing the important issues confronting the agency. It is not enough to uncover a problem, issue a report with recommendations, and move on to the next topic. Many of the top management challenges confronting federal agencies require long-term attention. Therefore, OIGs must continue to examine important issues again and again in order to gauge the agency's corrective actions and improvements over time.

At the DOJ OIG, we often conduct follow-up reviews in important areas to assess the Department's progress in implementing corrective action. We do not accept at face value the agency's assertions that remedial measures have been implemented and a problem has been solved. While we do not have the resources to conduct follow-up reviews in every area, it is important to conduct such reviews in critical areas. For example, we are now conducting follow-up reviews of the Federal Bureau of Investigation's (FBI) efforts to upgrade its information technology systems, the FBI's response to our recommendations to improve its internal security after the detection of Robert Hanssen's espionage, the quality of the information in the Terrorist Screening Center's consolidated

terrorist watch list, the United States Marshals Service's efforts to protect the federal judiciary, the FBI's use of National Security Letters, and the DOJ's control over its weapons and laptop computers.

In carrying out our responsibilities as Inspectors General, we also must realize that the job is not designed to make us popular. I am sure that I am not the most popular person in the Justice Department. However, I hope our work is respected, and that we are viewed as being tough but fair.

By the nature of the role, Inspectors General cannot please everyone, nor should we try. We regularly are accused of being either too harsh or too soft, of acting like junkyard dogs or lapdogs, of being out to "get" someone or out to "cover up" a problem, of engaging in a witch hunt or a whitewash. Sometimes we are described in each of these ways by different sides in the same matter. But our role is to be independent, to objectively identify any problems and provide effective recommendations to correct deficiencies, and not to worry about our popularity.

I know there are times the Department or some members of Congress are not thrilled with findings in our reports or disagree with our conclusions. For example, after we issued a report on the mistreatment of aliens detained on immigration charges in connection with the investigation of the September 11 attacks, the Department's spokeswoman initially stated that the Department "makes no apologies" for anything it had done related to the detainees. I also was contacted by several angry congressional staff members who called me contemptible and said I was undermining the country's counterterrorism efforts. However, I believed that despite the sensitivities of the issues involved, we were right to expose the problems we uncovered and to make recommendations for improvement. I was also gratified that, after the Department's initial defensive reaction, it agreed to implement changes in response to every recommendation we made in our report.

To be an effective Inspector General, it is important to develop a professional working relationship with agency leadership. I have been fortunate to have professional relationships with the Department leaders during my tenure as Inspector General. Since I have been the Inspector General, the Department of Justice has had three Attorney Generals (Janet Reno, John Ashcroft, and Alberto Gonzales) and four Deputy Attorney Generals (Eric Holder, Larry Thompson, James Comey, and Paul McNulty). All of them have appreciated the importance and difficulty of the work of the OIG. While they were different in outlook and priorities, each has understood that the ultimate goal of our work is to help improve the Department's operations.

Importantly, I have had access to the Attorney General and Deputy Attorney General whenever I needed it, and I met with them on a regular basis to keep them informed of the reviews we were conducting and to alert them to

significant problems and areas in need of reform. However, none of them ever attempted to direct or interfere with our work. They recognized that, to be effective and credible, the OIG had to be scrupulously independent in our work and how we reported our findings. In addition, each of them communicated the message that cooperation with the OIG was required of Department employees.

In general, I believe the IG Act has worked well and provides Inspectors General with the tools and independence necessary for us to perform our mission. I believe that any variance in the effectiveness of Inspectors General has been less the result of any deficiencies with the statute and more a function of the outlook and practices of particular Inspectors General, as well as the attitude of the agency or agency head towards the Inspector General.

Nevertheless, I believe it is useful to examine proposals to strengthen the role of Inspectors General, and I appreciate this Committee's willingness to consider that topic. I will now turn to various proposals that have been advanced to amend the IG Act, as well as my thoughts on additional changes I believe the Committee should consider. It is important to note, however, that there are differences of opinion about these proposals among Inspectors General, and the OIG community does not speak with one voice. I am glad to provide my personal perspective on these issues, but I am speaking on behalf of myself only – not the Department, the President's Council on Integrity and Efficiency, or any other Inspector General.

II. Proposals to Strengthen the Role of Inspectors General

1. Fixed Term of Office and Removal for Cause

One proposed change to the IG Act would provide Inspectors General a fixed term of office, subject to possible reappointment, and removal during that term only for cause. Different terms of office have been suggested, although a 7-year term appears to be the most common proposal.

In my mind, the need and benefits for this change is a close question. I understand the impetus for it, but I also see problems with the proposal.

The change seeks to strengthen the independence of Inspectors General by giving them more job security, which presumably would enhance their ability to confront the agency when necessary without fear of losing their job.

However, I do not believe that threat of removal currently undermines the independence of Inspectors General. Nor do I believe such a threat has hampered the willingness of Inspectors General to address the hard issues or to confront their agencies when necessary. I also do not think a fixed term or a

"for cause" removal provision would change the conduct of responsible Inspectors General.

The proposal also could create a different problem when an Inspector General is nearing the end of their term of office. If the Inspector General wants to continue in office, he or she would be dependent on the recommendation of the agency head, which could create both a conflict and an appearance of a conflict.

For example, I am now approaching the 7-year mark of my tenure as the DOJ Inspector General. We are in the middle of several sensitive investigations of Department activities, including an investigation of the recent removal of U.S. Attorneys and an investigation of the Department's role in the National Security Agency's "terrorist surveillance program." If I had to seek reappointment to continue as Inspector General, the appearance of a conflict would inevitably arise. The same concern would apply to other experienced Inspectors General throughout the community. Conversely, if experienced Inspectors General were not reappointed, it could disrupt the work of the OIG and the OIG community could lose experienced Inspectors General at a critical time.

Moreover, defining "cause" for termination is difficult and, by its nature, imprecise. Typically, "inefficiency" is included as one of the grounds for removal, but that term is difficult to define or apply. I would also be concerned that the "cause" provision would make it much more difficult to remove a poorly performing Inspector General, which could potentially undermine the important work of an OIG for several years.

In sum, while I understand the intended benefit of the proposed amendment, I am not certain it would significantly enhance the independence or effectiveness of Inspectors General in most circumstances, and I see the potential for it to harm the effectiveness and independence of OIGs in certain contexts.

However, I do support a proposal to amend the IG Act to require the reasons for removal of an Inspector General to be given both to the Inspector General and Congress in advance of removal (such as 15 or 30 days in advance). Currently, the IG Act requires the President to communicate the reasons for removal to Congress, but does not specify when or how that should be done. I believe that it is appropriate if an Inspector General is to be removed, the Inspector General and Congress should be informed, in advance, of the reasons why.

2. Statutory Councils of Inspectors General

Currently, Inspectors General who are Presidentially appointed are members of the President's Council on Integrity and Efficiency (PCIE), and Inspectors General who are appointed by their agency head are members of the Executive Council for Integrity and Efficiency (ECIE). These two Councils are established by Executive Order, not by statute, and do not receive designated funding. They are chaired by the Deputy Director for Management at the Office of Management and Budget (OMB).

Several proposals have been advanced to provide a statutory basis for these Councils or to statutorily create a joint Council. I believe that it would be useful to provide a statutory basis for both Councils, as well as to provide dedicated funding for them. The Councils perform a valuable function in facilitating information sharing among OIGs, coordinating joint or common activities, and establishing minimum quality standards throughout the OIG community.

In the PCIE, of which I am a member, we have been fortunate to have very able Inspectors General take a leadership role as Vice Chair. Currently, the Vice Chair of the PCIE is Department of Energy Inspector General Greg Friedman. Before Greg, the Vice Chair was Gaston Gianni (the former Inspector General at the Federal Deposit Insurance Corporation) and Eleanor Hill (the former Department of Defense Inspector General and a witness on this panel). All performed their PCIE leadership role – often likened to herding cats – effectively and productively. But it is a thankless and time-consuming job, a collateral duty that is in addition to their important Inspector General duties, and it comes without any additional resources. I believe that making the Councils statutory, and providing funding for them, could further enhance the effectiveness of the Councils.

I also believe that accountability, and the perception of accountability, could be enhanced by codifying in the IG Act the role of the PCIE's Integrity Committee. A common question asked about Inspectors General is "Who is watching the watchdog?" In fact, we do not suffer from a shortage of scrutiny. Various entities review our work, including congressional committees, the press, and other government oversight agencies.

However, the entity that most directly handles allegations of misconduct by Inspectors General is the PCIE Integrity Committee. I have had limited dealings with the Integrity Committee, and other witnesses on this panel are more familiar with its work, its procedures, and its products. However, I believe that creating a statutory basis for the Integrity Committee, along with further consideration of the process for disclosure of substantiated allegations of serious misconduct by Inspectors General, could help improve both accountability and the perception of accountability among Inspectors General.

3. Training

Another important issue related to Inspectors General involves training for OIG staff. Because of the lack of dedicated funding, the OIG community has struggled to maintain training academies for its criminal investigators, auditors, and future leadership candidates.

I believe the OIG training academies serve a valuable function by promoting quality training and core standards and competencies across the OIG community. For example, the Inspector General Criminal Investigative Academy, working with the Federal Law Enforcement Training Center, ensures that OIG criminal agents are appropriately trained to perform their mission and to protect themselves in exercising their statutory law enforcement powers. Audit training is similarly important in ensuring quality standards and enhancing the skills of auditors throughout the OIG community. While individual OIGs can attempt to provide training themselves or seek outside training from other sources, I believe joint OIG training can further improve the effectiveness of OIG employees.

However, the training academies depend on OIGs participating and contributing resources, often from tight budgets. OIGs that are in more difficult financial situations sometimes have to cobble together funds to contribute to these efforts, which undermines the ability of the academies to plan or perform their functions. Ensuring stable leadership and staff for the training academies has been a struggle without dedicated funding. I believe that, in the long term, a dedicated funding source for the OIG training academies would be a wise investment, and would strengthen and improve the ability of OIGs throughout the community to perform their unique mission.

4. Resources and Direct Budget Submission

Perhaps the most important issue affecting Inspectors General, which can directly undermine their effectiveness, relates to the adequacy of OIG resources. I believe that adequately funding OIGs is a prudent investment. For example, in pure dollar terms (which reflects only a small part of their value), OIGs obtain much more in civil and criminal recoveries than they cost. According to the most recent PCIE/ECIE annual Progress Report to the President, in fiscal year 2006 OIGs in total cost $1.9 billion to operate, but obtained $6.8 billion in investigative fines, settlements, and recoveries.

However, I believe that, on the whole, OIGs have been under funded, particularly when compared with the growth of their agencies and the increased demands placed on OIGs.

The DOJ OIG provides a salient example of this. The DOJ OIG currently has approximately 400 employees to oversee all Department of Justice

operations. While 400 employees may sound like a lot, the Department has about 110,000 employees in total and an annual budget of approximately $22 billion.

More important, the DOJ OIG has not grown commensurate with the growth of the Department. In the last 15 years, the Department has grown from about 83,000 employees to about 110,000 employees, or a growth rate of about 30 percent. By contrast, the size of the OIG has remained flat during the same period. We had 406 employees in 1992, and we have about the same number today. If the OIG had grown at the same rate as the Department over the last 15 years, we would have 520 employees, or 30 percent more.

In addition, while the size of the DOJ OIG has remained flat, our responsibilities have increased dramatically. Congress has repeatedly called on us to conduct additional reviews, both by incorporating such requirements in statutes and by making specific requests. Over the years, our responsibilities have increased in many important areas, ranging from oversight of computer security and information technology investments, requirements under the Patriot Act to report on civil rights and civil liberties abuses, increased oversight of the FBI, and other mandates to conduct sensitive investigations and audits.

I believe that with the added responsibilities and the growth of the DOJ the OIG should receive a commensurate increase in resources. I am proud of the work of DOJ OIG employees, and the dedication they have exhibited in handling their many important assignments. But our resources are significantly constrained, and I am concerned that inadequate resources can affect both the thoroughness and timeliness of projects that are by necessity staffed more thinly than warranted. I am also concerned that our employees may become burned out when we continually ask them to do more with less.

I raise these issues about the DOJ OIG because I believe our experience is not dissimilar from many other OIGs. I believe that many OIGs have been under funded and are struggling to do all that is being required of them.

As a principle, I believe that OIGs should grow at least commensurate with the growth of their agencies. When resources are added to an agency's mission, a very small part should be allocated for oversight of that mission. For example, when billions of dollars are given to an agency such as the Department of Justice to award in grants, I believe a very small part of that grant funding (less than one-half of 1 percent) should be allocated to the OIG to ensure that the grants are being used effectively and for their intended purpose.

I recognize that this Committee cannot solve the resource issue on its own. However, it can implement a proposed change to the IG Act that would

provide greater transparency on the subject. I agree with the proposal to allow OIGs to submit their budget requests directly to the OMB and Congress and independently make the case for resources.

5. Inspector General Pay

While acknowledging that the issue of Inspector General pay is one in which I have a vested interest, I believe the Committee should address this issue, particularly because it can affect the hiring or retention of qualified candidates for the position of Inspector General.

Most PCIE Inspectors General are paid at the Executive IV level, which currently is $145,400. Inspectors General do not receive bonuses, a limitation that I believe is appropriate. I do not think an Inspector General should be in a position of seeking or accepting a bonus from the agency because that could undermine the Inspector General's independence and create a conflict of interest. I also am not in favor of another group, such as the PCIE or OMB, deciding whether an Inspector General should receive a bonus. Inspectors General should not be in a position of appearing to issue reports to obtain approval or bonuses from anyone because I believe that would undermine the appearance of independence, a bedrock principle for an Inspector General.

Yet, I do not believe that the level of pay for Inspectors General should lag so significantly behind their subordinates. The pay of other federal employees, including SES employees, has significantly increased, while the salaries for Inspectors General have not. SES employees can now be paid up to $168,000. As a result, SES employees in most OIGs are paid significantly more than their Inspectors General. In fact, the average SES employee in the government makes approximately $155,000, or $10,000 more than the salary of Inspectors General.[1]

Within the DOJ OIG, the disparity is clear. Every one of the six DOJ OIG career SES employees, as well as the two senior counsels, is paid from $5,000 to $20,000 more than the Inspector General (before any bonus they receive). I was a career SES employee before I became the Inspector General. What this means is that if I had stayed in my SES position rather than accept the promotion to become the Inspector General, I would be making at least $15,000 more each year (not including any bonus I could have earned). If I had taken the position of Deputy Inspector General rather than Inspector General, I would be making $20,000 more per year (before any bonus). I know that other Inspectors General are in a similar position.

[1] In addition, according to a recent report, 67 percent of SES employees received an annual bonus, which averages $13,000. See OPM report entitled "Report on Senior Executive Service Pay for Performance for Fiscal Year 2006," June 12, 2007.

I raise this not because I am seeking more money for myself. For me, the salary is not the reason I took the job. I could, and I believe many Inspectors General could, make much more money in the private sector. I receive tremendous satisfaction from the work, and I am grateful for the privilege to serve as the Inspector General.

However, I am concerned that we are losing experienced Inspectors General because of the financial disparities between them and their subordinate employees. I am also concerned that the best candidates for Inspector General, both from outside the government and most particularly from among career officials in OIGs and throughout the federal government, will not seek the position because of the pay cut it would entail. For example, my Deputy Inspector General would make a superb Inspector General in the DOJ OIG or in many other OIGs. I think other DOJ OIG employees would also be good candidates. It would be hard for them, however, to accept a promotion to be an Inspector General given the difference between what they make now and the salary of an Inspector General.

I do not think we can completely eliminate the financial disparity, and I believe most Inspectors General are willing to make some financial sacrifice for the privilege of serving as an Inspector General. But the current salary disparities, which have not been addressed in many years, have risen to very significant levels, and I urge Congress to address this issue.

For example, proposals have been advanced to raise the salary of Inspectors General to at least the Executive III level, which currently is $154,600. While this will not eliminate the disparity between Inspectors General and their SES employees, it will reduce it. I favor the approach of setting a uniform Inspector General salary rather than having an outside group determine individual Inspector General salaries and bonuses at variable levels.

6. Selection of Inspectors General

I also want to comment on the selection of Inspectors General. Under the IG Act, Inspectors General must be selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." These are broad criteria and, from my vantage point, successful Inspectors General have come from various backgrounds, both from inside and outside the government.

However, I believe that more effort should be placed on developing and promoting Inspector General candidates from within the OIG community. I recognize that some of the most effective Inspectors General have come from outside the ranks of OIGs. But I know that I benefited enormously from having

worked in an OIG for several years before assuming the job of Inspector General. When I started as the Inspector General, I was aided by having a familiarity with OIG issues, the unique role of the Inspector General, and my experience with the Department itself, both in the OIG and previously as an Assistant United States Attorney.

I think additional focus should be placed on considering candidates from within the OIG community for Inspector General positions. I think the PCIE and ECIE could help in this regard, either through informal communications or by developing lists of appropriate candidates. Congress and the Administration should also encourage the consideration of outstanding leaders from within the OIG community for the position of Inspector General.

7. Miscellaneous Amendments to the IG Act

Several other changes to the Act have been proposed, which I will comment on briefly. I agree with the amendment to allow ECIE OIGs to petition the Attorney General for statutory law enforcement powers. In the Homeland Security Act of 2002, PCIE criminal investigators were given statutory law enforcement authority, including the right to make arrests, carry firearms, and execute search and arrest warrants. Previously, OIG criminal investigators obtained these powers through periodic deputations from the United States Marshals Service. The Homeland Security Act did not extend statutory law enforcement authority to ECIE criminal investigators. I believe that it is appropriate to amend the IG Act to allow ECIE Inspectors General to apply to the Attorney General for law enforcement authority for their criminal investigators rather than having to seek deputation on a case-by-case basis.

I also agree with the proposal requiring all PCIE OIGs to have their own legal counsel rather than relying on agency legal counsel. Independent legal counsel is indispensable to the work of OIGs. However, I would be concerned if the requirement was mandated for all ECIE OIGs, some of which are small and may not have the funds or need for a full-time counsel.

III. Limitation on the Jurisdiction of the DOJ OIG

Finally, in line with the intent of this hearing to consider ways to strengthen the role of Inspectors General, I want to raise an issue that affects the DOJ OIG only, but which I believe is a critical issue that contravenes the principles and spirit of the IG Act. This issue is a limitation on the jurisdiction of the DOJ OIG that is unique in the government and, in my view, inappropriate and in need of change.

Unlike all other OIGs throughout the federal government who can investigate misconduct within their entire agencies, the DOJ OIG does not have complete jurisdiction throughout the DOJ. Rather, the DOJ OIG can

investigate misconduct throughout DOJ with one notable exception: the OIG does not have the authority to investigate allegations against DOJ attorneys acting in their capacity as lawyers – litigating, investigating, and providing legal advice – including such allegations against the Attorney General, Deputy Attorney General, and other senior Department lawyers. Instead, the DOJ Office of Professional Responsibility (OPR) has been assigned jurisdiction to investigate such allegations.

This limitation on the DOJ OIG's jurisdiction arose from the history of the OIG and OPR. Before there was an OIG, OPR was created by an Attorney General Order in 1975 to investigate misconduct of Department attorneys and law enforcement officers. In 1978, when the IG Act was enacted, the DOJ opposed creation of a DOJ Inspector General. The DOJ argued that because of its law enforcement and litigation functions the DOJ was different from other agencies and did not need an Inspector General.

Ten years later, in 1988, Congress amended the IG Act to establish Inspectors General throughout the federal government, including in the DOJ. Section 8E of the IG Act, which specifically addresses the DOJ OIG, referred to the existence of OPR and stated that the DOJ Inspector General should refer to OPR allegations relating to the conduct of Department attorneys and law enforcement employees. However, Section 9(a)(2) of the IG Act also gave agency heads, including the Attorney General, authority to transfer to Inspectors General the authority and duties that the agency head determined were related to the functions of the Inspector General and that would further the purpose of the IG Act. The conference report to the 1988 IG Act amendments made clear that the Attorney General could in the future provide such a transfer of jurisdiction to the OIG.

Thus, when the DOJ OIG began operation in April 1989, it had only limited jurisdiction. Because of the existence of OPR and the opposition of the DOJ to the Inspector General concept, the OIG was not given responsibility for investigating misconduct by DOJ law enforcement agents or lawyers.

In 1994, Attorney General Reno issued an order clarifying and expanding the OIG's jurisdiction. Her order gave the OIG jurisdiction to investigate misconduct by DOJ law enforcement agents, except for agents in the FBI and Drug Enforcement Administration (DEA]. In 2001, Attorney General Ashcroft further expanded the OIG's jurisdiction to cover misconduct involving FBI and DEA employees.[2] But these orders did not change the responsibility for

[2] The OIG now generally investigates allegations against FBI and DEA employees that are criminal, involve high-level employees, or concern matters of significant public interest or those that would present a conflict of interest for the FBI or DEA internal affairs units to

investigating misconduct involving DOJ attorneys or investigators acting at attorneys' direction, which remained with OPR.

In November 2002, this jurisdictional assignment was codified in the DOJ Reauthorization Act.[3] This remains the current jurisdictional framework.

I believe Congress should amend the IG Act and give the OIG complete jurisdiction throughout the DOJ for several reasons. First, the current law treats DOJ attorneys differently from all other DOJ employees and from all other federal employees, including litigating attorneys in other agencies, all of whom are subject to the jurisdiction of their agency's OIG. No other agency carves out a group of its employees from the oversight of its OIG.

Second, the current limitation on the DOJ OIG's jurisdiction prevents the OIG – which by statute operates independent of the agency – from investigating an entire class of misconduct allegations involving DOJ attorneys' actions, and instead assigns this responsibility to OPR, which is not statutorily independent and reports directly to the Attorney General and the Deputy Attorney General. In effect, the limitation on the OIG's jurisdiction creates a conflict of interest and contravenes the rationale for establishing independent Inspectors General throughout the government. It also permits an Attorney General to assign an investigation that raises questions about his conduct or the conduct of his senior staff to OPR, an entity that reports to and is supervised by the Attorney General and Deputy Attorney General and that lacks the insulation and independence guaranteed by the IG Act.

This concern is not merely hypothetical. Recently, the Attorney General directed OPR to investigate aspects of the removal of U.S. Attorneys. In essence, the Attorney General assigned OPR – an entity that does not have statutory independence and reports directly to the Deputy Attorney General and Attorney General – to investigate a matter involving the Attorney General's

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investigate. The OIG normally refers other allegations back to the FBI or DEA internal affairs units for them to handle.

[3] See Public Law 107-273, Section 308 (21st Century Department of Justice Appropriations Authorization Act), codified at 5 U.S. C. App. 3 § 8E (b)(3). Section 308, which mirrored the existing jurisdictional order, states that the OIG has jurisdiction to investigate allegations involving criminal wrongdoing or administrative misconduct by employees of the Department of Justice, except the Inspector General "shall refer to OPR allegations of misconduct involving attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal advice. . . ."

and the Deputy Attorney General's conduct.[4] The IG Act created OIGs to avoid this type of conflict of interest. It created statutorily independent offices to investigate allegations of misconduct throughout the entire agency, including actions of agency leaders. All other federal agencies operate this way, and the DOJ should also.

Third, while the OIG operates transparently, OPR does not. The OIG publicly releases its reports on matters of public interest, with the facts and analysis underlying our conclusions available for review. In contrast, OPR operates in secret. Its reports, even when they examine matters of significant public interest, are not publicly released.

Fourth, dividing oversight jurisdiction within the Department between the OIG and OPR is inefficient and duplicative. In various cases, the OIG and OPR have conducted overlapping, duplicative investigations concerning the same set of events. One example is the case of Brandon Mayfield, a Portland, Oregon, attorney who was detained when the FBI erroneously linked his fingerprints to detonators involved in the March 2004 Madrid terrorist train bombing. Because of the existing jurisdictional framework, two teams of investigators – one from the OIG and another from OPR – investigated a similar set of facts, interviewed many of the same witnesses, and wrote separate reports on the same events. The OIG's report on the FBI's conduct in the Mayfield investigation was publicly released, while OPR's report on the conduct of DOJ attorneys in the same investigation was not.

Fifth, the Department's and OPR's arguments against changing the current jurisdiction are not persuasive. For example, they argue that OPR has special expertise in examining the professional conduct of Department attorneys, and that a specialized office like OPR should exist to examine these issues. Yet, this is similar to the FBI's argument before 2001 against allowing the OIG to investigate misconduct of FBI employees: that the OIG would not understand the circumstances confronting FBI employees, that the FBI has expertise in investigating misconduct against its own employees, and that the FBI should therefore investigate allegations of misconduct against its own employees. That argument was unpersuasive with regard to the FBI and is similarly unpersuasive with regard to DOJ attorneys. The OIG has the means and expertise to investigate attorneys' conduct and can certainly develop any additional expertise that is required. The issues confronting Department attorneys are not so different or special that the OIG could not responsibly handle those matters. Indeed, misconduct involving litigating attorneys in

[4] When the OIG learned of the assignment to OPR, we objected because we believed that the OIG was the appropriate entity to conduct the investigation. Eventually, we agreed to conduct a joint investigation with OPR into the removal of U.S. Attorneys and related matters.

other agencies is handled by the OIGs of those agencies, not by a special internal affairs unit like OPR.

In sum, I believe that the current limitation on the DOJ OIG's jurisdiction is inappropriate, violates the spirit of the IG Act, and should be changed. Like every other OIG, the DOJ OIG should have unlimited jurisdiction within the Department. I believe Congress should amend the IG Act to give the DOJ OIG that authority.

IV. Conclusion

In conclusion, I appreciate the Committee's willingness to hold this hearing and to examine ways to strengthen the unique role of Inspectors General. Inspectors General perform a valuable and challenging mission, but we, like our agencies, should always consider ways to improve. Thank you for examining these issues and for your support of our work.

I would be pleased to answer any questions.

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES SENATE COMMITTEE
ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
JULY 11, 2007

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning about several emerging issues that affect the unique role played by Inspectors General (IG). My hope is that we will have ample time for a long overdue dialog this morning on these important issues. I also want to make it clear that my testimony today reflects my own views, which may or may not be shared by my colleagues.

Mr. Chairman, I believe that the original IG Act and its subsequent amendments have effectively stood the test of time and have served the American public well. I do not think that a wholesale change of the Act is necessary. That having been said, however, I do believe that there are a number of improvements that could be made to enhance the effectiveness and the independence of IGs. In particular, I would like to offer my thoughts about IG independence, IG pay, and IG budget submissions.

Committee staff has informed me that you would also like to hear my views on the appropriate relationship between IGs and their Agency Heads and the role that the Integrity Committee, established in 1995 by a Presidential Executive Order, plays in ensuring that "someone is watching the watchers." Since I have experienced both difficult and excellent relationships with the Secretaries I have served with during my 8 year tenure at Interior, and since I have been a member of the Integrity Committee for over 5 years, I am in a position to informatively discuss these issues and would be pleased to do so.

IG Independence

I believe that an independent IG is someone who possesses both integrity and courage. I personally define integrity as not only being truthful and honest but also consistently doing the right thing for the right reasons. Courage is easier to define, but in this context I am talking about the ability to "speak truth to power." Given the dual reporting obligation that IGs have to both the Congress and the Agency Head, making somebody unhappy is not difficult to do. In fact, trying to make everybody happy is the fastest way I know for an IG to get into trouble. Of course, it goes without saying that IGs should be selected without any regard to political affiliation and solely on the basis of demonstrated integrity and professional abilities related to the roles and responsibilities of the position. For instance, when I was appointed as an Inspector General, I had nearly 30 years of federal law enforcement experience, and no one involved in my nomination process ever inquired about my political affiliation.

Far too often, IGs are categorized as either being lapdogs or some type of attack dog. Aside from the indignity of being compared to a dog, I reject the premise that either is a desirable trait of an independent IG. My own view is that an independent IG needs to strike a balance between being tough on the Department, when called for, and being equally willing to stand up and say that a particular program is running well or that allegations about a senior official are unfounded, when the facts warrant such conclusions. At the end of the day, an IG who consistently proffers professional, fact-based audits and/or investigations, without regard to whom they might offend, will end up meeting the standards of independence that the IG Act envisioned and that the American public deserves.

Mr. Chairman, several pieces of pending legislation in both the Senate and the House would attempt to enhance IG independence by adding a specified term of office for IGs and a removal for cause provision. Personally, while I have no objection to these proposals, I do not think that they would either enhance or detract from my own ability to act independently. I am, however, attracted to the idea that the President should have to provide Congress with prior written notification together with an explanation of the reasons behind the removal of any IG. A reasonable time frame of 30 days would give Congress the opportunity to enter into a discussion with the Executive Branch concerning the circumstances of any removal.

IG Pay

Of greater concern than removal, perhaps, is the recruitment and retention of highly qualified IGs. There is a huge pay disparity affecting the Presidential Appointed and Senate Confirmed (PAS) IGs that needs to be corrected as soon as possible. I cannot overstate the effect this is having on IG morale, the long-term ability to attract the best candidates for IG positions, and the near-term potential for losing some of our best IGs.

PAS IG salaries are currently capped by statute at Level IV of the Executive Schedule ($145,400) and are appropriately excluded from the benefits of the performance-based pay system Congress established with the passage of the 2004 Defense Authorization Act for career senior executives (SES). Of course, PAS IGs have, as a matter of practice, chosen not to accept bonuses from Agency Heads since the early 199's to further preserve their independence.

As a result, virtually all PAS IGs are paid at a level significantly below the average annual compensation of the SES personnel they supervise (currently capped at

$168,000, excluding bonuses). Retirement annuities are equally affected. Considering that the average salary of an SES in FY 2005 was $150,980, and the average SES bonus was $13,814, IGs frozen at the ES-IV level stand to make, on average, over $19,000 less than the average career SES member. Practically speaking, this results in both present and future IGs drawing lesser salaries than many of their SES subordinates. In my case, three of my seven SES subordinates earned more compensation than I did in FY 2006. Obviously, this disparity is a significant concern for current PAS IGs and could soon have an adverse impact on the government's ability to retain its best and most experienced IGs. Perhaps more importantly, however, is the impact this pay disparity has on the willingness of qualified and talented federal career executives to serve as IGs in the larger and more challenging federal departments and agencies.

My understanding is that the Administration has expressed willingness to support a pay raise for all PAS IGs to Level III of the Executive Schedule (currently $154,600). While this would appear generous, and something for which I and many other PAS IGs would be most grateful, I would strongly urge that PAS IG pay be adjusted to mirror the current $168,000 SES cap and match any future increases of the SES cap. Of course, all PAS IGs should, in my opinion, continue to forego any bonus opportunity, and thus would still be left with lesser compensation than their highest-level, highest-achieving subordinates. Bridging the significant salary gap to which PAS IGs are presently subject should, however, enhance the attraction of IG appointments for the most qualified candidates and help prevent the most talented sitting IGs from leaving government service for more lucrative private sector positions.

IG Budget Submissions

While I personally have never experienced any problems with the Secretary regarding my annual budget submission, I can certainly understand the interest by some of my IG colleagues in legislation that would have annual IG budgets submitted directly to the Office of Management and Budget and/or Congress. This would have the obvious benefit of insulating IGs from the potential for an Agency Head to retaliate with personnel and/or other resource cuts. Ironically, despite my propensity for upsetting Secretaries, I have routinely received decent support of my budget at the Department and OMB level with most cuts coming at the Congressional level. In fact, I have often felt that the Secretaries I have served with have gone out of their way to avoid even the appearance of retaliation, regardless of our working relationship.

Relationship between the IG and Agency Head

This leads me to that relationship. A good working relationship between an IG and the Agency Head is essential. The relationship with the Secretary ought to be one built on mutual respect and trust. An IG must be independent, but should never blindside or surprise the Secretary. I have pledged not to surprise any of the three Secretaries with whom I have served and, to my knowledge, none has ever been caught unaware by the findings of our audits or investigations. While more than one Secretary has occasionally requested that I tone down my rhetoric, none has ever tried to tell me what to say. IGs are also responsible to do more than simply identify problems, but rather achieve the balance between criticism and commendation, which I spoke of earlier. Audits, to the extent possible, should highlight Department successes and be as solution-based as auditing standards allow. For example, because most problems we encounter are not

unique to the Department of the Interior, my audit teams routinely include best-practices from other Departments or industry in their audit recommendations. Our investigations often present an opportunity to inform the Department about how to prevent the reoccurrence of a problem underlying misconduct. My view is that IGs have an equal duty to prevent fraud, waste, or abuse as they do in detecting it.

Whether or not an Agency Head is known to respect and value the IG's role and responsibilities has important bearing on how agency employees view an IG and the degree of cooperation they extend to our work.

My office's role in the 4-year-old task force investigation of the Abramoff scandal profoundly tested my relationship with two Secretaries. Quite understandably, my relationship with former Secretary Norton was negatively affected by two separate investigations of Deputy Secretary Griles conducted by my office and our FBI partners, although I will allow his recent conviction and pending prison term to speak to the efficacy of that endeavor. While Secretary Norton and I disagreed about virtually everything concerning Mr. Griles, my relationship with Secretary Norton remained professional. On the other hand, Secretary Kempthorne has used this unfortunate scandal as an opportunity to foster an increased awareness and emphasis on ethics and integrity at the Department. I am impressed with his leadership in this area and I believe that he and I have achieved the desired level of respect and trust for each other.

Secretary Kempthorne has also come to understand that he can count on me to provide him with the facts, whether good or bad, which in turn helps him avoid the risks inherent in the tendency of well-meaning subordinates to over-emphasize the positive.

He and I both understand that it is not an IG's job to tell an Agency Head what he or she wants to hear but rather what he or she needs to hear.

Integrity Committee

As I mentioned earlier, I have served on the PCIE/ECIE Integrity Committee for over 5 years. Although I have dropped several hints that my time on this Committee has been served, I have not found any of my colleagues eager or willing to take my place. The truth is that no one could possibly enjoy sitting in judgment of one's peers; it can be a very difficult role to play.

That having been said, I can, without reservation, commend to you each individual that I have served with on this Committee. To a person, they have been highly professional, impartial, and interested solely at arriving at the truth of each matter that has come before us. I would remind you that the Committee is always Chaired by the FBI Assistant Director of Investigations, staffed by career FBI Agents, and its members consist of three IGs and the Directors of the Office of Government Ethics and the Office of Special Counsel. A staff member of the Department of Justice's Public Integrity Unit attends each meeting in an advisory role.

As I noted earlier, an Executive Order created this Committee in 1995, with its principal mandate being to adjudicate allegations of wrongdoing against IGs. It is important to understand that every allegation is first screened by the Public Integrity Unit for criminal consideration. If the allegation does not rise to the level of a potential crime, it is forwarded to the Integrity Committee for administrative review. From 1997 through June 30 of 2007, the Integrity Committee has received 387 complaints against IGs. Of

those 387 complaints, only 17 have resulted in the Committee ordering a full administrative investigation, usually conducted by another IG's office.

Mr. Chairman, these statistics mirror my personal observation that the overwhelming majority of complaints against IGs are either frivolous or do not meet the standards set forth in the Executive Order. With respect to the complaints that have resulted in full investigations, it has been my observation that those investigations were all done professionally in keeping with federal investigative standards.

I would also suggest that those same professional standards as well as the privacy provisions of the Freedom of Information and Privacy Acts would preclude any effort to build much more transparency into the process, although I personally would support a semi-annual statistical report to the relevant committees of Congress, including this Committee.

Conclusion

Mr. Chairman and members of the Committee, I have had a long and rewarding career in the Federal Government. My years as IG at Interior, however, have been, at once, the most challenging, the most frustrating, and the most gratifying. I sincerely believe in the critical importance of the work IGs do, however, and, although I would welcome a respite from traveling to Capital Hill to testify, I must also say that I greatly appreciate the interest that you and other committees in both the Senate and the House have shown in the work of my office and that of my colleagues.

That concludes my prepared testimony today. I would be pleased to answer any questions you might have.

Statement

by

Ms. Eleanor Hill

Mr. Chairman, Senator Collins, and Members of the Committee:

Good morning and thank you for this opportunity to discuss with you my views on how to strengthen the ability of the Inspectors General to promote "good government" throughout the Executive Branch. While I currently practice law in the firm of King & Spalding LLP, I was privileged to spend the great bulk of my career in public service, which included my tenure as the Inspector General of the Department of Defense from 1995 through 1999 and as the Vice Chair of the President's Council on Integrity and Efficiency (PCIE) from 1998 through 1999. I must add that I am especially pleased to be here today, given my many years of prior service with this Committee's Permanent Subcommittee on Investigations. Although I am no longer in government, I continue to have great respect and appreciation for the work of both that Subcommittee and this Committee - thank you for the chance to return here this morning.

My service in the IG community, coupled with my experience both as a federal prosecutor and as a congressional staffer, have convinced me that the statutory inspectors general play an absolutely critical -- and unique -- role in our federal system. It is a role that Congress must take care to preserve and strengthen. In creating federal civilian inspectors general, Congress was driven by a need to provide objective, independent, and professional oversight, on a sustained basis, throughout the incredibly vast, and complex, operations of the federal government. In today's world, where new issues and new technologies have further complicated those operations, the role of the IGs, with their expertise regarding the particular programs within their departments and agencies, is perhaps more critical than ever before.

Although the "inspector general" concept actually originated in 17th century Europe, the idea of truly "independent" inspectors general, as we know them today, is a relatively modern phenomenon. Congress gets credit for the idea, including statutorily-protected independence as a hallmark of the Inspector General Act of 1978. The Act created something very different than the traditional military "inspector general", as had been described in the Codes of Military and Martial Laws in 1629:

> The Inspector General must have a horse allowed him and some soldiers to attend him and all the rest commanded to obey and assist, or else the service will suffer; for he is but one man and must correct many, and therefore he cannot be beloved. And he must ride from one garrison to another to see the soldiers do not outrage or scathe the country.

Obviously, a lot has changed since 1629. Nevertheless, in recent years, some have suggested that the military IG system, which still exists today, is a model for federal IGs. I believe it is fair to say, however, that Congress went far beyond the traditional military concept in creating Inspectors General within federal agencies and departments.

Military IGs were originally created to lead inspection efforts, something they still do today. By contrast, inspections are a relatively small part of what civilian IGs do. Today's military IGs also conduct investigations, but that is coupled with a substantial focus on providing assistance to members of the military. Audits, a huge part of the civilian IG workload, are handled separately, by the military auditors general or, depending on the nature of the case, by the Defense Department IG or DCAA. The biggest and most critical difference, however, is that military IGs clearly work within their military chain of command -- they do not have the

statutory independence and the dual reporting requirements that, in my view, set the federal civilian IGs completely apart from other military and civilian internal department oversight mechanisms.

As Defense IG, I worked closely with the military IGs and oversaw many of their investigations. My work with them - and with many other administrative Defense Agency IGs - reinforced my belief that independence is absolutely essential for federal statutory IGs. Military IGs often requested that our office conduct top-level, particularly sensitive investigations since they did not believe they had the independence needed to conduct an investigation that would both be and appear to be objective. I had similar conversations with some administrative Defense Agency IGs, who are appointed and serve, without the benefit of statutorily-protected independence, at the pleasure of the Directors of their agencies. All of those IGs recognized that in investigations of very senior officials or in audits of programs dear to the agency head, the statutorily protected independence of the Departmental IG was critical to both the integrity of the inquiry and to the credibility of the findings in the Department, on Capitol Hill, and with the American public. I could not help but recall those conversations when I read reports last year that oversight of what has been referred to as NSA's "terrorist surveillance program" had been handled by the NSA IG, who has limited resources and no statutory independence, and not by the Department of Defense IG. In my view, that is exactly the kind of program where the oversight should have been conducted, from the very beginning, by the independent Defense Department IG.

All of this underscores the fact that, more than anything else, independence goes to the very heart of the IG mission. It is what makes IGs a critical -- and absolutely unique -- link in insuring effective oversight by both the executive and legislative branches of our government. The IG Act, and its method of protecting IG independence, is at least one stroke of Congressional brilliance. The seven day letter requirement; the ban on Secretarial interference with IG investigations and subpoenas; the dual reporting requirements - to the Secretary, but also to Congress; and the required reporting of IG terminations to Congress -- those provisions, taken together, clearly make the IG the most independent - and unfiltered - voice below the Secretary in any federal department. As but one example, IG testimony to Congress, unlike that of other executive branch officials, was not, in my experience, reviewed, edited, or approved by non-IG Departmental or OMB officials before being delivered to Congress.

Bolstered by the statutory protections, as an IG, I never felt forced to sacrifice or compromise my independence. Unfortunately, there have been instances over the years where IG independence has reportedly been questioned or impeded. During my service on the PCIE, I recall that not all IGs felt as secure in their independence as I did. The statutory protections, while an excellent foundation for independence, are not foolproof. Operating under the same statutory scheme, some IGs have been extremely independent, while others have been less so.

Clearly, other factors can and do impact independence. The Department or Agency head's view of the IG role and the relationship that develops between the IG and senior management are, for example, critically important. I was fortunate to work under two Secretaries of Defense who understood, appreciated, and accepted the role and mission of the IG

-- Bill Perry and Bill Cohen. Having served as a Member of this Committee during the early years of the IG Act, Secretary Cohen, for example, fully recognized the constructive role that IGs can and should play in a department.

The IG's own experience and background can also be a factor. I had the benefit of becoming IG only after being schooled for years in jobs where independent, fact-driven investigation was the accepted norm - as a federal prosecutor and as a congressional investigative counsel on inquiries that followed the strong bipartisan tradition of this Committee and its Subcommittees. While statutory protections are very important, it goes without saying that IGs also have to be comfortable with their independence, fully understand its importance, be willing to exercise it, and be prepared to defend it, if necessary. IGs should work constructively within their departments to be "agents of positive change", but they must insist on doing so in an environment where their independence is clearly understood and respected. Congress needs to insure, during the confirmation process, that those who would serve as Department or Agency heads and as IGs understand and accept the IG mission and the statutory independence on which it rests. The success of the statutory provisions, the process, and the mission depends to a large degree on the quality and the judgment of the people entrusted with these positions.

Even beyond the confirmation process, Congress itself can play an important role in assuring independence, excellence, and effectiveness in the work of the IG community. During my term as Defense IG, various Congressional Committees were very interested in, and attentive to, what our OIG was doing in terms of oversight. Solid IG work can significantly ease the burden on Congress in terms of uncovering the facts through professional, in-depth oversight

investigations. Congress, however, still needs to maintain some focus on what the IGs are doing and what it is that they are -- or are not --finding. Both our OIG and the senior management of the Department of Defense were very aware of the Congressional focus on our oversight work. In those circumstances, it would have been very difficult for management to undercut our independence without incurring the wrath of those Committees, a result which most departments want to avoid.

That is precisely the kind of situation envisioned by the IG Act, which relies on the tension that usually exists between Congress and the Executive Branch to reinforce and protect IG independence. The success of the statutory mechanisms depends on Congress remaining attentive to IG findings and engaged in exercising its own oversight authority. For the concept to work, Congress has to be an active player. Congress has to be willing to insist on thorough and objective oversight from the IG, separate and apart from the views of any Department or any Administration. When that happens, the IG must walk a fine line between what may be the very different views of Congress and of the Department: the overwhelming incentive in those situations is for IGs to resist attempts at politicization from either side. The best way for IGs to succeed, when answering to these two "masters", is to conduct independent, professional, and clearly fact-based inquiries.

Some have suggested additional ways in which Congress could amend the IG Act to further strengthen IG independence and effectiveness. The range of proposals has included such things as term limits, prior notice of intended termination to Congress, termination for cause, authorization to submit IG budget requests directly to OMB and to Congress, and statutory

authorization for a permanent council of IGs. While not addressing the specifics of all these proposals, I can say that I have been generally supportive of reforms designed to further bolster IG independence, which I view as the single most important link to IG credibility and effectiveness. Some form of guaranteed tenure and/or specified grounds for termination would, for example, bolster the IGs' ability to withstand efforts to compromise their independence and/or the integrity of their audit and investigative findings.

Let me also briefly address the other essential part of the IG equation: accountability. Unquestionably, independence gives IGs a great deal of power, and, with that power, comes the responsibility to use it wisely and in keeping with the highest legal and ethical standards. While we hope that all IGs take the high road, and use their investigative and audit powers responsibly, the system has to be capable of addressing allegations of abuse of power or other misconduct within the IG community. If the system is to have any credibility, the public must be assured that those who enforce high ethical standards on others are themselves held to those same standards. There must be a clear and convincing answer to the question "who's watching the watchdog?"

The IG community has wrestled for years with the question of how to insure accountability but, at the same time, maintain IG independence. This was an issue of great discussion in PCIE meetings in the mid to late 1990s. There had been a number of initiatives clearly designed to insure quality, professionalism, and accountability among IGs, including training programs, a peer review process, and the development of quality standards for audits and investigations. Those efforts were, however, focused on preventing problems: the IGs clearly

also needed a formalized way to address allegations of problems that had already occurred. In early 1995, just prior to my arrival as Defense IG, the PCIE replaced less formal mechanisms with an Integrity Committee to review and refer for investigation allegations of misconduct by IGs and Deputy IGs. While well intended, the Integrity Committee initiative lacked clear legal or investigative authority, was limited by insufficient personnel resources, and encountered record-keeping problems. As but one example, it was often difficult for a Committee, with no clear mandatory authority, to persuade an uninvolved IG to assign some of his or her already overburdened staff to undertake an investigation of a fellow IG.

Those kinds of problems, and increasing public concerns about accountability, prompted a concerted effort by the IGs, working with OMB, to procure an Executive Order that formally authorized the PCIE, through its Integrity Committee, to receive, review, and refer for investigation allegations of misconduct by IGs and certain IG staff members. Executive Order 12993, issued on March 21, 1996, confirmed the authority of the Integrity Committee, chaired by an FBI official, in the accountability process; designated the Chief of the Justice Department's Public Integrity Section as an advisor to the Integrity Committee; gave the FBI authority to conduct all investigations requested by the PCIE; and authorized the Integrity Committee to request assistance from another IG office in an investigation. The Executive Order, and the formalized process it established, was clearly, in my view, a step in the right direction. In the early years, however, there were still issues in implementation: I recall at least one instance where, despite my formal request that the Integrity Committee investigate allegations regarding senior OIG staff, I had to personally raise and argue the issue more than once before the Committee leadership eventually agreed, albeit reluctantly, to accept the matter for investigation.

Some have suggested statutory consolidation of the PCIE and its counterpart, the Executive Council on Integrity and Efficiency (ECIE) into a single permanent IG council as one way to address accountability. The Executive Order creating the PCIE would be replaced by a statute, which would give not only the PCIE and the ECIE, but also the Integrity Committee, clear, permanent authority.

I served as Vice Chair of the PCIE from 1998 to 1999, when I left the IG community. My experience with the PCIE was, frankly, mixed. The federal IG community is large and, by no means, homogenous: I was always struck by the huge differences in size, in capabilities, and in focus among the various IG offices. The issues that were of paramount importance in some of the large Departmental OIGs often had little relevance to some of the smaller OIGs. Some OIGs were very accustomed to dealing with Congress while other seemed to have little, if any, contact with the legislative branch. The very existence of the PCIE and the ECIE at least provided some forum for the exchange of communication and learning across the community. It also did facilitate some consensus on issues that were internal to the IG community: training programs and quality standards, for example. However, it was often difficult to develop a meaningful IG community position on important cross-government issues of effectiveness and efficiency. As for the Integrity Committee, the lack of committed resources and the differences among IGs in focus and resource levels, also complicated that process.

Statutory authorization of an IG Council, while not eliminating all those problems, would, in my view, be a step in the right direction. A permanent IG Council, bolstered by clear authority and adequate resources, could prove invaluable in the identification and assessment of

issues that cut across a wide range of departments and agencies. Working together, the IGs have tremendous potential for success in the identification of common problems and the search for common solutions. A clear statutory mission for the council, coupled with appropriate funding and resources with which to accomplish that mission, could help the IG community realize that potential. Consistent with the IG Act itself, I think it is important that any statutory IG Council have statutorily-mandated reporting responsibilities, not just to the President, but also to the Congress. The independence that has been so crucial to the work of individual IGs should also be available to support and sustain independent and professional government-wide assessments by an IG Council. Clear authority for the Integrity Committee's accountability process, and the resources needed for the thorough, professional investigation of allegations of IG misconduct, are also important. Not only would that solidify the Integrity Committee's authority, it would also send a very clear message to the departments and agencies in which IGs work, and to the American public, that the law insures that IGs will be held accountable. The IGs' ability to provide credible and effective oversight depends, to a large degree, on the existence of a clear and well-defined accountability process.

In closing, I would only add that I have been genuinely dismayed by reports and suggestions in recent years of less Congressional oversight, coupled with reports of less independence and less professionalism in the IG community. I am no longer in government and, as an investigator, I know better than to prejudge the accuracy of individual reports without access to all the facts. I do not know to what degree all those reports are true. I can only say that, for the good of the country, I hope they are not. My own experience over the years has convinced me that the rigorous, but always objective and fair, exercise of the Congressional oversight power, bolstered by the work of an independent and professional IG community, is clearly the surest way to promote integrity, credibility, and effectiveness in government. The American people deserve, and quite rightly, expect no less. Thank you and I welcome any questions you may have.

Testimony of Danielle Brian, Executive Director
Project On Government Oversight

Chairman Lieberman and Senator Collins, thank you for inviting me to testify today. My name is Danielle Brian, Executive Director of the Project On Government Oversight (POGO). POGO is an independent nonprofit that has, for over 25 years, investigated and exposed corruption and misconduct in order to achieve a more accountable federal government.

The subject of this hearing raises a number of timely issues. Inspector General (IG) offices play a tremendously important role in advancing good government practices, but only if they are led by independent and qualified IGs, and those IGs are allowed to do their job. Next year will be the 30th anniversary of the 1978 Inspector General Act, and this is the perfect time to determine the strengths and weaknesses of the IG system.

As background, there are 57 statutorily-created federal Inspectors General. Of those, 29 are Presidentially appointed, and are members of the President's Council on Integrity and Efficiency (PCIE). The others are appointed by their agency heads, and are members of the Executive Council on Integrity and Efficiency (ECIE).

The intent of Congress in creating these watchdogs was to have an office within agencies that would balance the natural inclinations of agency or department heads to minimize bad news, and instead give Congress a more complete picture of agency operations. That intention is clearly shown by Congress' decision to break with tradition, and create a dual-reporting structure where IGs would report not only to the agency head, but also directly to Congress itself.

It is this independence from the agency the IG is overseeing that gives the office its credibility. Not only the actual independence, but also the *appearance* of independence allows the IG's stakeholders, including Congress, the agency head, the IG's auditors and investigators, and potential whistleblowers, to have faith in the office.

Over the past year, POGO has held monthly bi-partisan Congressional Oversight Training Seminars for Capitol Hill staff. We regularly tell participants that the IGs at agencies within their jurisdiction can be important allies and sources of honest assessments. Unfortunately, we also have to point out that not all IGs are well qualified or appropriately independent.

I have the honor today of sitting on this panel with model Inspectors General. However, in the past few years, the ranks of the nation's IG community have not always been filled with such stars. Investigations of the current NASA and Commerce IGs, and the former Postal Service and HHS IGs, have substantiated allegations of improper conduct by those offices. Some of the improper conduct included illegal retaliation against IG employees, not maintaining the appearance of independence required of an IG, and interfering with IG investigations.

At the same time, several IGs have suffered retaliation for doing their jobs too well. The Special Inspector General for Iraq Reconstruction, the General Services Administration and Legal Services Corporation IGs, and the former Smithsonian and Homeland Security IGs have all suffered some form of retaliation—ranging from budget cuts by their agencies to personal attacks

and even threats to eliminate their office entirely. The House Committee on Oversight and Government Reform has created a Fact Sheet outlining these instances. I request it be submitted for the record.

While POGO believes improvements can and should be made to the IG system, and we applaud the Committee for holding this hearing, any changes to that system need to be very careful and deliberate. The balance between independence and accountability is a difficult one to maintain. On the one hand, an IG must be afforded the opportunity to pursue audits and investigations without fear of reprisal. On the other hand, there needs to be enough accountability that an IG does not pursue a partisan agenda, or become otherwise ineffective. Every legislative change needs to be considered through both prisms to ensure it does not have unintended consequences.

POGO is in the beginning stages of a major investigation into the Inspector General system to determine best practices as well as weaknesses. There are a number of significant unanswered questions, one of which is "Who is watching the watchdogs?" We look forward to presenting you with our results in the future. There are, however, a few improvements to the system that we have already determined make sense.

The first is to better ensure that people chosen to be IGs are of the caliber of those sitting on this panel. The recent improper conduct to which I referred above has made it clear the process of selecting IGs, unique people who can thrive in the unpopular job of being an Inspector General, needs to be improved. During the Reagan Administration, a small group of IGs from the PCIE recruited and screened IG nominees. They then supplied lists of candidates from which the White House could select. This peer review helped ensure that unqualified or partisan people were not placed in the role of IG. Congress should consider recreating and formalizing that model.

The second improvement is that Presidentially-appointed IGs should have their own General Counsel's office. While most do, we know of at least one that has not—the Department of Defense IG. As a result, the DOD Office of Inspector General has relied on lawyers assigned to it by the Pentagon's General Counsel for legal advice. You can see how this would significantly undermine the independence of an IG: a General Counsel's role is to protect the agency, whereas an IG's role is to investigate it if need be. Furthermore, General Counsels have the power to undermine IG investigations because they affect such decisions as criminal referrals and what to redact from documents released through FOIA. I realize that for many of the ECIE IGs, having their own General Counsel would double the size of their office and unnecessarily create a new bureaucracy. One solution to this dilemma might be to allow small ECIE IGs to use the General Counsel's office of a PCIE IG for necessary legal resources, or perhaps to create a General Counsel office to be shared by the smaller ECIE IGs, rather than turning to the counsels at their agency.

Another improvement, and a way to mitigate any possible bias caused by being appointed

by the President or agency head, is to create a term of office longer than four years, and to stipulate that an IG can only be removed for specific cause. This would give IGs some protection if they are operating in an agency whose head is trying to undermine an IG's independence.

A further improvement is to allow IGs to submit their budgets directly to both the Office of Management and Budget and Congress. This would enable Congress to better ensure IGs have resources commensurate with the size of the agency they are overseeing, and that their budgets are protected from agency retaliation. In the case of ECIE IGs, some of their budgets are not even line items in their agency's budget. At the very least, Congress should be made aware of the total amount budgeted for each ECIE IG.

Finally, it is clear that IGs need to be paid in accordance with their position of responsibility. There are a number of problems with the pay system for both PCIE and ECIE IGs. For instance, unlike Senior Executive Service civil servants, IGs cannot and should not accept performance-based bonuses. (Such bonuses, based on the approval of the agency head, are antithetical to the independence of an IG.) For this and other reasons, taking on the difficult job of IG is tantamount to being financially penalized. It appears fixing the pay problems would be more akin to housekeeping than significantly changing policy, and should be addressed quickly so that these issues do not dissuade good, qualified people from becoming IGs.

Legislation introduced by Senator Collins, Senator Claire McCaskill, and Representative Jim Cooper all are important steps toward making the IG system stronger. Even with the perfect legislation, however, the IGs will only thrive when the relevant Congressional committees are actively engaged with their offices, and regularly ask them to report on their findings. I look forward to presenting you with POGO's investigative findings once they are complete, and to working toward implementing our recommendations.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
ORGANIZATION AND PROCUREMENT

CHAIRMAN EDOLPHUS TOWNS

FACT SHEET JUNE 2007

Inspectors General: Questions of Independence and Accountability

Inspectors General in federal departments and agencies are charged with investigating evidence of waste, fraud, and abuse in the Executive Branch. Over the last 25 years, investigations by IGs have saved taxpayers billions of dollars.

To effectively carry out their mission, Inspectors General must be independent and objective, which requires that they be insulated from improper management and political pressure. To preserve the credibility of the office, Inspectors General must also perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.

In 2004 and 2005, Committee staff prepared a report titled "Politicization of Inspectors General," which found that Inspector General appointments have become increasingly politicized since 2000.[1] Over 60% of the IGs appointed by President Bush had prior political experience, such as service in a Republican White House or on a Republican congressional staff, while fewer than 20% had prior audit experience. In contrast, over 60% of the IGs appointed by President Clinton had prior audit experience, while fewer than 25% had prior political experience.

However, politicization is only one element that threatens the independence of Inspectors General. Interference by agency management, the absence of input or control by IGs into their office budgets, and campaigns by management to remove IGs who are aggressive in their investigations all jeopardize the independence of the Inspector General. At the same time, a lack of consistent and credible mechanisms for investigating and resolving allegations of misconduct by IGs may threaten accountability and credibility.

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[1] House Committee on Government Reform, Minority Staff, *Politicization of Inspectors General* (Oct. 21, 2004; revised Jan. 7, 2005) (online at http://oversight.house.gov/documents/20050111164847-37108.pdf).

As part of the Subcommittee's oversight of Inspectors General, Subcommittee staff have reviewed Congressional testimony and correspondence, reports of the President's Council on Integrity and Efficiency, Government Accountability Office, and Office of Special Counsel, and press accounts to identify incidents in the past five years that raise questions about the independence and accountability of Inspectors General.

The following current and recent situations involving Inspectors General demonstrate challenges to IG independence, IG accountability, or both:

NASA

NASA IG Robert Cobb allegedly suppressed investigations and penalized his own investigators for pursuing allegations of theft, safety violations, and other wrongdoing. After a six-month investigation, the Integrity Committee of the President's Council on Integrity and Efficiency determined that Mr. Cobb had abused his authority and created a hostile work environment, and had not maintained an appearance of independence from NASA officials.[2] All members of the committee believed that disciplinary action, up to and including removal, could be appropriate.

At a joint House-Senate hearing, former IG employees testified about Mr. Cobb's abusive behavior and its negative effects of morale and productivity, his close relationship with top NASA officials, and his interference with both audits and investigations, which resulted in either weakening or stopping audit conclusions and investigative work.[3] In testimony before the Integrity Committee, Mr. Cobb stated that he believed that his relationships with NASA officials assisted him in his work, and that he would attempt to have the same relationship with the current NASA Administrator if he had the opportunity.

Mr. Cobb has rejected the findings of the Integrity Committee and the PCIE. In a highly unusual move, NASA's general counsel, who had been meeting with Mr. Cobb to discuss the investigation while it was on-going, performed a *de novo* review of the Integrity Committee's work and determined that there had been no abuse "of the office" and no ethical violations by Mr. Cobb. The NASA administrator recommended that Mr. Cobb attend a management training school and work with an "executive coach" to improve his management style. Mr. Cobb remains in office.

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[2] Letter from James Burrus, Chair, Integrity Committee, President's Council on Integrity and Efficiency to Clay Johnson, Chair, President's Council on Integrity and Efficiency (Jan. 22, 2007) (online at http://democrats.science.house.gov/Media/File/Reports/PCIE%20Report%20on%20NASA%20IG.pdf).

[3] Joint Hearing of the Subcommittee on Investigations and Oversight, House Committee on Science and Technology and Subcommittee on Aeronautics, Space and Related Sciences, Senate Committee on Commerce, Science and Transportation, *Oversight Review of the Investigation of the Inspector General of the National Aeronautics and Space Administration* (June 7, 2007).

Department of Commerce

Commerce IG Johnnie Frazier is under investigation for taking trips with no apparent official purpose at government expense, retaliating against employees who objected and refused to sign the travel vouchers, and destroying emails after he was informed of an investigation into his travel.[4] A report from the Office of Special Counsel recently concluded that he illegally retaliated against employees who challenged his conduct by demoting them.[5] Mr. Frazier is also alleged to have traveled to casinos accompanied by subordinates on government time.[6]

The investigations have had a serious impact on morale in the Commerce IG's office. One employee reports "a continuous and escalating pattern of harassment and retaliation," and the Deputy Secretary of Commerce convened a meeting of all OIG employees to ask them to cooperate with the investigations and report any retaliation or security concerns.[7]

Mr. Frazier recently announced that he will retire at the end of June.[8]

Special Inspector General for Iraq Reconstruction

Special Inspector General for Iraq Reconstruction Stuart Bowen was appointed in 2004 and has identified extensive waste, fraud, and abuse by U.S. government employees and contractors in Iraq.

In 2006, Congress included in a military authorization bill a provision terminating the office effective October 1, 2007.[9] This provision was reportedly inserted at the last minute in a closed-door conference, and "generated surprise and some outrage among lawmakers who say they had no idea it was in the final legislation."[10] Congress quickly repealed the provision after the circumstances surrounding its passage became public.[11]

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[4] House Committee on Energy and Commerce, Press Release, *Committee Opens Investigation into Allegations Of Misconduct by Commerce IG* (May 2, 2007) (online at http://energycommerce.house.gov/Press_110/110nr31.shtml).

[5] Letter from Scott J. Bloch, Special Counsel, to President George W. Bush (May 25, 2007) (online at http://energycommerce.house.gov/Press_110/110-ltr.060707.DOC.Frazier.SCtoPOTUS.pdf).

[6] *Commerce Dept. Inspector General's Casino Trip Probed*, Washington Post (Jun. 9, 2007).

[7] *Commerce Inspector General Broke Whistle-Blower Law, Report Finds*, Washington Post (May 16, 2005).

[8] *Commerce Dept. Inspector General's Casino Trip Probed*, Washington Post (Jun. 9, 2007).

[9] National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364.

[10] *Congress Tells Auditor in Iraq to Close Office*, New York Times (Nov. 3, 2006).

[11] Iraq Reconstruction Accountability Act of 2006, Pub. L. 109–440.

The PCIE and Rep. Tom Davis are currently investigating complaints by employees about management and procurement practices in the office.[12] The allegations under investigation by the PCIE reportedly include "a payment to a contractor that the employees believed was unjustified; a project to produce a type of report on reconstruction that they maintain is outside the Congressional mandate of the office; and what the employees contend is an inflated estimate of how much money investigations by the office have saved American taxpayers."[13]

Environmental Protection Agency

Acting EPA IG Bill Roderick recently announced plans to cut 60 of 360 staff positions in the IG's office due to potential budget cuts. However, the IG office budget increased for FY 2007, and Congress has not yet acted on appropriations for FY 2008. Mr. Roderick also reportedly received a $15,000 bonus last year.[14]

Mr. Roderick became acting IG after the resignation of former IG Nikki Tinsley, who left in part because she was not eligible for bonuses and as a result was paid tens of thousands of dollars less than her subordinates.[15] As Inspector General, Ms. Tinsley issued multiple reports critical of EPA management, including findings that EPA officials made inaccurate statements about air quality in New York City after 9/11 in response to intervention from White House officials.[16]

General Services Administration

GSA IG Brian Miller has investigated allegations of improper procurement practices and potential Hatch Act violations by GSA Administrator Lurita Doan. Mr. Miller states that his relationship with Ms. Doan has been difficult. Ms. Doan reportedly referred to IG audits and investigations as "terrorism," stating: ""There are two kinds of terrorism in the U.S.: the external kind and internally, the IGs have terrorized the regional administrators."[17] Ms. Doan also proposed significant decreases in funding for Inspector General audits, instead reprogramming auditing funds to "surveys" by outside contractors.[18]

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[12] *Inspector of Projects in Iraq Is Now Under Investigation*, New York Times (May 4, 2007); *U.S. inspector general for Iraq under investigation*, Reuters (May 2, 2007).

[13] *Inspector of Projects in Iraq Is Now Under Investigation*, New York Times (May 4, 2007).

[14] Letter from Rep. John Dingell to EPA Administrator Stephen L. Johnston (Apr. 23, 2007) (online at http://energycommerce.house.gov/Press_110/110-ltr.042307.EHM.Roderick.pdf).

[15] *Outgoing EPA inspector general tells of search for accountability*, Govexec.com (Mar. 6, 2006).

[16] Environmental Protection Agency, Office of Inspector General, *Evaluation Report: EPA's Response to the World Trade Center Collapse: Challenges, Successes, and Areas for Improvement*, Report No. 2003-P-00012 (Aug. 21, 2003).

[17] Testimony of Brian Miller, Inspector General, General Services Administration, Hearing of the House Committee on Oversight and Government Reform, *Allegations of Misconduct at the General Services Administration* (Mar. 28, 2007).

[18] *Id.*

Legal Services Corporation

Legal Services Corporation IG Kirt West was considered for dismissal by the LSC board after he issued audit reports questioning spending on travel and expenses for LSC board meetings.[19] While Mr. West was conducting a continuing investigation of board expenses, the board summoned him for "informal feedback" and told Mr. West that he took a prosecutorial stance toward management, issued inflammatory reports and was not a positive help to LSC.[20] Mr. West perceived this feedback as an improper attempt to persuade him to back off his investigation.[21]

After Rep. Chris Cannon introduced legislation to require a supermajority vote for the LSC board to remove the Inspector General and held a hearing on the legislation, the LSC board did not proceed with removal.[22]

Smithsonian Institution

Former Smithsonian Institution Inspector General Debra Ritt stated that former Smithsonian Secretary Lawrence M. Small tried to pressure her to drop an audit of high-ranking officials and their business expenses.[23] Ritt moved ahead with the audit, which found excessive spending on travel and other expenses by top Smithsonian officials and led to Small's resignation.[24] However, Ritt resigned as Smithsonian IG shortly afterward, in response to cuts in the IG office budget.[25]

In response to this situation, the Smithsonian changed its governance structure so that the IG is selected by and reports directly to the Smithsonian Board of Regents, not the Secretary.[26]

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[19] *Gov't Watchdogs Under Attack From Bosses*, Washington Post (Dec. 27, 2006).

[20] Statement of Kirt West, *Legislative Hearing on H.R. 6101, the Legal Services Corporation Improvement Act*, Subcommittee on Commercial and Administrative Law, House Committee on the Judiciary (Sep. 26, 2006).

[21] *Id.*

[22] *Id.*

[23] *Former IG Says Small Asked Her To Drop Audit*, Washington Post (Mar. 20, 2007).

[24] *Id.*

[25] *Id.*

[26] Smithsonian Institution, Press Release, *Sprightley Ryan Named Smithsonian's Inspector General* (Mar. 5, 2007) (online at http://newsdesk.si.edu/releases/si_ryan_named_IG.htm).

Department of Defense

DOD IG Joseph Schmitz resigned in 2005 during a Congressional investigation into whether Mr. Schmitz had blocked criminal investigations of senior Pentagon officials.[27] Sen. Charles Grassley also investigated whether Mr. Schmitz had submitted a report to the White House for review before it was issued.[28] Senior officials in the IG's office reportedly used code names in referring to persons under investigation, out of fear that Mr. Schmitz would tip off Pentagon officials to pending investigations.[29]

Mr. Schmitz also faced allegations of waste and mismanagement, including a charge that he was "obsessed" with researching the history of Baron Friedrich von Steuben, the Inspector General of the Continental Army for General George Washington, and spent months personally redesigning the seal of the DOD IG to include elements of the von Steuben family coat of arms.[30]

Mr. Schmitz left the Pentagon to become general counsel for the parent company of Blackwater USA, a major government and defense contractor.[31]

Department of Homeland Security

Clark Kent Ervin was the first IG at the Department of Homeland Security, moving to the newly-created DHS from his Senate-confirmed post as IG at the Department of State. At DHS, Mr. Ervin issued several reports critical of DHS programs, including findings that the performance of airport screeners in detecting weapons had not improved, the Transportation Security Administration spent $500,000 on an employee awards ceremony and awarded excessive bonuses to executives, and DHS failed to carry out its mandate to consolidate multiple terrorist watch lists maintained by different agencies.[32]

According to Ervin, DHS Secretary Tom Ridge complained that IG reports focused on the negative and called him in "to intimidate me, to stare me down, to force me to back off, to not look into those areas that would be controversial, not to issue critical reports."[33] Ervin

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[27] Letter from Sen. Charles Grassley to Secretary of Defense Donald Rumsfeld (Jul. 27, 2005) (online at http://www.pogo.org/m/gp/gp-2005-Grassley-Schmitz.pdf).

[28] Letter from Sen. Charles Grassley to DOD IG Joseph Schmitz (Aug. 8, 2005) (online at http://www.pogo.org/m/gp/gp-2005-Grassley-Schmitz.pdf).

[29] *The Scrutinizer Finds Himself Under Scrutiny*, Los Angeles Times (Sep. 25, 2005).

[30] *The Scrutinizer Finds Himself Under Scrutiny*, Los Angeles Times (Sep. 25, 2005).

[31] *US: Pentagon's Chief Watchdog Joins Company that Owns Blackwater*, Reuters (Sep. 1, 2005).

[32] *Ex-official tells of Homeland Security failures*, USA Today (Dec. 27, 2004).

[33] *Nightline*, ABC News (May 2, 2006).

served at DHS on a recess appointment. He left office at the end of 2004 after the Senate failed to confirm him and the White House did not renominate him.[34]

Department of Health and Human Services

Former HHS IG Janet Rehnquist, the daughter of late Supreme Court Chief Justice William Rehnquist, resigned in 2003 amid investigations into charges of interfering with an investigation and mismanagement.

Allegations included forcing out senior staff members, improperly storing a gun in her office, questionable travel expenses charged to the government, and delaying an audit of a Florida pension fund until after an election at the request of Governor Jeb Bush's top aide.[35] Rehnquist also bypassed civil service procedures in selecting an individual for a top civil service position.[36] Furthermore, documents potentially related to the investigation by the General Accounting Office were shredded.[37] Investigations by the PCIE and GAO substantiated the allegations against Ms. Rehnquist.[38]

U.S. Postal Service

Postal Service IG Karla Corcoran resigned in 2003 amid Congressional and PCIE investigations of wasteful spending. Ms. Corcoran required employees to attend elaborate team-building and awards programs for which millions of dollars were spent on travel and salaries.[39] IG employees were required to dress up in animal costumes and build gingerbread houses.[40] Videotapes from these sessions show "public servants dressed up as the Village People, wearing cat costumes, doing a striptease, and participating in mock trials – all on official time, all at the public's expense."[41]

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[34] *Ex-official tells of Homeland Security failures*, USA Today (Dec. 27, 2004).

[35] Government Accountability Office, *Department of Health and Human Services: Review of the Management of Inspector General Operations*, GAO-03-685 (June 2003).

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Goofy games cost public millions as stamp prices soar*, N.Y. Daily News (Mar. 9, 2003).

[40] Letter from Sen. Byron Dorgan and Sen. Ron Wyden to Postal Board of Governors Chair David Fineman (May 1, 2003) (online at http://dorgan.senate.gov/newsroom/extras/050103fineman.pdf).

[41] *Id.*

United States Government Accountability Office

GAO

Statement for the Record
Committee on Homeland Security and Government Affairs, U. S. Senate

To accompany the Committee hearing record of Wednesday, July 11, 2007

INSPECTORS GENERAL

Opportunities to Enhance Independence and Accountability

Statement for the Record by David M. Walker
Comptroller General of the United States

GAO-07-1089T

July 11, 2007

Highlights of GAO-07-1089T, a statement for the record to the Committee on Homeland Security and Governmental Affairs, U.S. Senate.

INSPECTORS GENERAL

Opportunities to Enhance Independence and Accountability

Why GAO Did This Study

The federal inspectors general (IG) play a critical role in addressing mismanagement of scarce taxpayer dollars. In the coming years, as we enter a period of escalating deficits and increasingly limited resources, GAO believes that the greatest single source of savings will come from bold, decisive efforts to transform what government does and how it does business, and to hold it accountable for results. Therefore, it is important that an independent, objective, and reliable IG structure be in place to ensure adequate audit and investigative coverage of federal programs and operations.

This statement offers GAO's views on (1) the principles of independence and how they apply to IG offices, (2) leveraging IG work as a part of overall federal oversight, (3) structural streamlining of IG offices for resource efficiencies, and (4) matters discussed in a GAO forum on IG issues.

This statement draws on provisions of the IG Act, professional auditing standards, prior GAO reports and testimony, and information reported by the IGs.

www.gao.gov/cgi-bin/getrpt?GAO-07-1089T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Jeanette Franzel at (202) 512-9471 or franzelj@gao.gov.

What GAO Found

The independence of the IGs is key to the effectiveness of their offices. The IGs, in their statutory role of providing oversight of their agencies' operations, represent a unique hybrid of external and internal reporting responsibilities. The IG Act requires the IGs to report the results of their work both externally to the Congress and internally to the agency head. It also provides certain independence protection to the IGs. This protection includes specifying that agency heads and other officials may not prevent or prohibit the IGs from performing any audit or investigation and that IGs are to have access to all agency documents and records. In addition, IGs are appointed either by the President with the advice and consent of the Senate or by their agency heads with removal only by the President or the agency head.

The work of the IGs is coordinated through the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, which were created by executive order to enhance the work of the IGs. In prior testimony GAO has recommended establishing a statutory IG Council with a permanent mission to address federal oversight challenges and risks. GAO also believes that effective ongoing coordination of the federal audit and oversight efforts of GAO and the IGs is more critical than ever. In May of this year the Comptroller General hosted a meeting with the IGs for the principal purpose of improving federal oversight coordination. The Comptroller General has also suggested the need for creating a more formal mechanism or council for the coordination of audit activities on a governmentwide basis. The structure of this council could be similar in concept to the Joint Financial Management Improvement Program, whose principals meet to discuss issues of mutual concern to promote governmentwide financial management.

In a prior report GAO presented the possible benefits of streamlining the structure of IG offices to increase the use of limited IG resources through consolidation of their offices. The benefits of consolidating the smallest offices of IGs appointed by their agency heads with the larger offices of IGs appointed by the President include immediate access to a broader range of resources to use in dealing with issues requiring technical expertise or areas of critical need. In addition, consolidation would strengthen the ability of IGs to improve the allocation and use of scarce financial resources.

In May 2006, at the request of this committee, the Comptroller General convened a panel of recognized leaders to discuss the possible benefits of proposed legislative changes to the IG Act. The panel members generally supported advanced notification to the Congress of the reasons for removal of an IG, separate IG budget line items, a funding mechanism for an IG Council, the need for IG pay and bonus issues to be addressed, and specific investigative and law enforcement authorities for the IGs.

Mr. Chairman and Members of the Committee:

I am pleased to submit this statement for the record on issues surrounding the important role of the inspectors general (IG) in providing independent oversight within federal agencies. GAO has performed analysis and has issued several reports over the past few years dealing with various independence and effectiveness issues affecting the IGs. Given comments by GAO and others about the independence of certain IG offices, we plan to conduct additional work in the area of IG independence and the reporting relationships of IGs in designated federal agencies with their respective agency heads.

The IG offices were created to prevent and detect fraud, waste, abuse, and mismanagement in their respective agencies' programs and operations; conduct and supervise audits and investigations; and recommend policies to promote economy, efficiency, and effectiveness. In the past almost three decades since passage of the landmark Inspector General Act of 1978 (IG Act), the IGs have played a key role in enhancing government accountability and protecting the government against fraud, waste, abuse, and mismanagement.

The IGs play a critical role in identifying mismanagement of scarce taxpayer dollars. In the coming years, as we enter a period of escalating deficits and increasingly limited resources, we believe that the greatest single source of savings will come from bold, decisive efforts to transform what government does and how it does business and to hold it accountable for achieving real, positive, and sustainable results.

This statement discusses (1) the key principles of auditor independence and how they apply to IG offices, (2) leveraging IG work as part of overall federal oversight, (3) structural streamlining of IG offices to capitalize on available resource efficiencies, and (4) additional issues concerning the IG function discussed at a GAO forum I hosted in May 2006. This statement draws primarily on our previous reports and testimony in this area and on provisions of the IG Act, professional auditing standards, and information reported by the IGs.

Auditor and IG Independence

Independence is the cornerstone of professional auditing. Without independence, an audit organization cannot do independent audits. Likewise, an IG who lacks independence cannot effectively fulfill the full range of requirements for the office. Lacking this critical attribute, an audit organization's work might be classified as studies, research reports, consulting reports, or reviews, rather than independent audits.

Independence is one of the most important elements of an effective IG function. In fact, much of the IG Act provides specific protections to IG independence that are unprecedented for an audit and investigative function located within the organization being reviewed. These protections are necessary in large part because of the unusual reporting requirements of the IGs, who are both subject to the general supervision and budget processes of the agencies they audit, while at the same time being expected to provide independent reports of their work externally to the Congress.

Government Auditing Standards[1] states, "in all matters relating to the audit work, the audit organization and the individual auditor, whether government or public, must be free from **personal, external, and organizational** impairments to independence, and must avoid the appearance of such impairments to independence. Auditors and audit organizations must maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by objective third parties with knowledge of the relevant information." [Emphasis added.]

- **Personal independence** applies to individual auditors at all levels of the audit organization, including the head of the organization. Personal independence refers to the auditor's ability to remain objective and maintain an independent attitude in all matters relating to the audit, as well as the auditor's ability to be recognized by others as independent. The auditor needs an independent and objective state of mind that does not allow personal bias or the undue influence of others to override the auditor's professional judgments. This attitude is also referred to as intellectual honesty. The auditor must also be free from direct financial or managerial involvement with the audited entity or other potential conflicts of interest that might create the perception that the auditor is not independent.

- **External independence** refers to both the auditor's and the audit organization's freedom to make independent and objective judgments free from external influences or pressures. Examples of impairments to external independence include restrictions on access to records, government officials, or other individuals

[1]GAO, *Government Auditing Standards, January 2007 Revision*, GAO-07-162G, Sections 3.02 and 3.03 (Washington, D.C.: January 2007).

needed to conduct the audit; external interference over the assignment, appointment, compensation, or promotion of audit personnel; restrictions on funds or other resources provided to the audit organization that adversely affect the audit organization's ability to carry out its responsibilities; or external authority to overrule or to inappropriately influence the auditors' judgment as to appropriate reporting content.

- **Organizational independence** refers to the audit organization's placement in relation to the activities being audited. Professional auditing standards have different criteria for organizational independence for external and internal audit organizations. The IGs, in their statutory role of providing oversight of their agencies' operations, represent a unique hybrid of external and internal reporting responsibilities.

Under professional auditing standards, external audit organizations are organizationally independent when they are organizationally placed outside of the entity under audit. In government, this is achieved when the audit organization is in a different level of government (for example, federal auditors auditing a state government program) or different branch of government within the same level of government (for example, legislative auditors, such as GAO, auditing an executive branch program). External auditors also report externally, meaning that their audit reports are disseminated to and used by third parties.

Internal audit organizations are defined as being organizationally independent under professional auditing standards if the head of the audit organization (1) is accountable to the head or deputy head of the government entity or to those charged with governance; (2) reports the audit results both to the head or deputy head of the government entity and to those charged with governance; (3) is located organizationally outside the staff or line-management function of the unit under audit; (4) has access to those charged with governance; and (5) is sufficiently removed from political pressures to conduct audits and report findings, opinions, and conclusions objectively without fear of political reprisal. Under internal auditing standards,[2] internal auditors are generally limited to reporting internally to the organization that they audit, except when

[2]The Institute of Internal Auditors, *Professional Practices Framework, International Standards for the Professional Practice of Internal Auditing* (Altamonte Springs, Fla: March 2007).

certain conditions are met, such as when mandated by statutory or regulatory requirements.

The IG Act requires IGs to perform audits in compliance with *Government Auditing Standards*. In addition, much of the act provides specific protections to IG independence for all the work of the IGs. Protections to IG independence include a prohibition on the ability of the agency head to prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation. This prohibition is directed at helping to protect the IG office from external forces that could compromise an IG's independence. The IG's personal independence and the need to appear independent to knowledgeable third parties is also critical when the IG makes decisions related to the nature and scope of audit and investigative work performed by the IG office. The IG must determine how to utilize the IG Act's protection of independence in conducting and pursuing the audit and investigative work. The IG's personal independence is necessary to make the proper decisions in such cases.

The IG Act also provides the IG with protections to external independence by providing access to all agency documents and records, prompt access to the agency head, the ability to select and appoint IG staff, the authority to obtain services of experts, and the authority to enter into contracts. The IG may choose whether to exercise the act's specific authority to obtain access to information that is denied by agency officials. Again, each IG must make decisions regarding the use of the IG Act's provisions for access to information, and the IG's personal independence becomes key in making these decisions.

The IG Act provides protections to the IGs' organizational independence through key provisions that require certain IGs to be appointed by the President with the advice and consent of the Senate. This appointment is required to be without regard to political affiliation and is to be based solely on an assessment of a candidate's integrity and demonstrated ability. These presidentially appointed IGs can only be removed from office by the President, who must communicate the reasons for removal to both houses of Congress. However, this communication is not required to occur prior to removal. *Government Auditing Standards* recognizes the external appointment and removal of the IG as key independence considerations to enable internal IG offices to report their work externally.

In 1988, the original 1978 IG Act was amended to establish additional IG offices in designated federal entities (DFE) named in the legislation. Generally, these IGs have the same authorities and responsibilities as

those IGs established by the original 1978 act, but they have a clear distinction in their appointment—they are appointed and removed by their entity heads rather than by the President and are not subject to Senate confirmation. Organizational independence differs between the offices of presidentially appointed IGs and other IGs who are agency appointed.

The DFE IGs, while they are generally covered by many of the same provisions of the IG Act as the IGs appointed by the President with Senate confirmation, are more closely aligned to independence standards for internal auditors than to those for external auditors. At the same time, *Government Auditing Standards* recognizes that additional statutory safeguards exist for DFE IG independence for reporting externally. These safeguards include establishment by statute, communication of the reasons for removal of the head of an audit organization to the cognizant legislative oversight body, statutory protections that prevent the audited entity from interfering with an audit, statutory requirements for the audit organization to report to a legislative body on a recurring basis, and statutory access to records and documents related to agency programs.

We believe that the differences in the appointment and removal processes between presidentially appointed IGs and those appointed by the agency head do result in a clear difference in the organizational independence structures of the IGs. Those offices with IGs appointed by the President are more closely aligned with the independence standards for external audit organizations, while those offices with IGs appointed by the agency head are more closely aligned with the independence standards for internal audit organizations. The implementation of the IGs' reporting relationships with their respective agency heads can also significantly affect the independence of the IGs. Generally, the IGs represent a unique hybrid of external auditing and internal auditing in their oversight roles for federal agencies.

The IG offices, having been created to perform a unique role in overseeing federal agency operations, have characteristics of both external audit organizations and internal audit organizations. For example, the IGs have external reporting requirements consistent with the reporting requirements for external auditors while at the same time being part of their respective agencies. IGs also have a dual reporting responsibility to the Congress and the agency head.

To illustrate, the IGs' external reporting requirements in the IG Act include reporting the results of their work in semiannual reports to the Congress. Under the IG Act, the IGs are to report their findings without alteration by

their respective agencies, and these reports are to be made available to the general public. The IG Act also directs the IGs to keep the agency head and the Congress fully and currently informed, which they do through these semiannual reports and otherwise, of any problems, deficiencies, abuses, fraud, or other serious problems relating to the administration of programs and operations of their agencies. Also, the IGs are required to report particularly serious or flagrant problems, abuses, or deficiencies immediately to their agency heads, who are required to transmit the IG's report to the Congress within 7 calendar days.

With the growing complexity of the federal government, the severity of the problems it faces, and the fiscal constraints under which it operates, it is important that an independent, objective, and reliable IG structure be in place at federal agencies to ensure adequate audit and investigative coverage of federal programs and operations. The IG Act provides each IG with the ability to exercise judgment in the use of independence protections specified in the act. The act also provides for IGs who, based on their appointment process, are more closely aligned with internal audit organizations, and other IGs who are more closely aligned with external audit organizations. While the IG Act's provisions for IG independence are vital, the ultimate success or failure of an IG office is largely determined by the individual IG placed in that office and that person's ability to maintain personal, external, and organizational independence both in fact and appearance while reporting the results of the office's work to both the agency head and to the Congress.

Leveraging IG Offices as Part of Overall Federal Oversight

One of the challenges facing the federal performance and accountability community today is the need to meet increasing demands and challenges with our current resources. In this regard, Executive Order No. 12805, issued in 1992, directs the IGs to meet and coordinate as two groups to enhance their work. The IGs appointed by the President and confirmed by the Senate are members of the President's Council on Integrity and Efficiency (PCIE), and the IGs appointed by their agency heads are members of the Executive Council on Integrity and Efficiency (ECIE). The purpose of both PCIE and ECIE is to (1) identify, review, and discuss areas of weakness and vulnerability in federal programs and operations with respect to fraud, waste, and abuse; (2) develop plans for coordinated governmentwide activities that address these problems and promote economy and efficiency in federal programs and operations; and (3) develop policies and professional training to maintain a corps of well-trained and highly skilled IG personnel. Both PCIE and ECIE are chaired

by the Office of Management and Budget's (OMB) Deputy Director for Management.

In a prior testimony[3] I recommended establishing an IG Council in statute with a designated funding source. We believe that by providing a statutory basis for the council's roles and responsibilities, the permanence of the council could be established and the ability to take on more sensitive issues could be strengthened. In addition, we believe that effective, ongoing coordination of the federal audit and oversight efforts of GAO and the IGs is more critical than ever as a result of challenges and risks currently facing our nation, including our immediate and long-term fiscal challenges, increasing demands for federal programs, and changing risks.

The IG Act requires that the IGs coordinate with GAO to avoid duplicating efforts. In practice, GAO has largely devoted its efforts to program evaluations and policy analyses that look at programs and functions across government and with a longer-term perspective. At the same time, the IGs have been on the front line of combating fraud, waste, and abuse within their respective agencies, and their work has generally concentrated on specific program–related issues of immediate concern with more of their resources going into uncovering inappropriate activities and expenditures through an emphasis on investigations.

GAO and the IGs are, in many respects, natural partners. We both report our findings, conclusions, and recommendations to the Congress and we share common professional audit standards through *Government Auditing Standards.* Closer strategic planning and ongoing coordination of audit efforts between GAO and the IGs would help to enhance the effectiveness and impact of work performed by federal auditors. Working together and in our respective areas of expertise, GAO and the IGs can better leverage each other's work and provide valuable input on the broad range of high-risk programs and management challenges across government that need significant attention or reform.

Significant and increased coordination is occurring between GAO and the IGs on agency-specific issues and crosscutting issues. In

[3]GAO, *Inspectors General: Enhancing Federal Accountability,* GAO-04-117T (Washington, D.C.: Oct. 8, 2003).

May of this year I hosted a meeting at GAO with the IGs for the principal purpose of improving the coordination of federal oversight. In testifying[4] in October 2003, on the 25th anniversary of the IG Act, I suggested, in light of the increased need for a well-coordinated federal audit community, the creation of a more formal mechanism going forward to include a governmentwide council. The structure of this council could be similar in concept to the Joint Financial Management Improvement Program (JFMIP), whose principals[5] meet at their discretion to discuss issues of mutual concern to promote governmentwide financial management. A similar council focused on accountability could share knowledge and coordinate activities to enhance the overall effectiveness of government oversight and to preclude duplicate actions.

A good example of a strong formalized partnership between GAO and the IGs is in the area of financial auditing. Under the Chief Financial Officers Act of 1990, as amended, the IGs at the 24 agencies covered by the act are responsible for the audits of their agencies' financial statements. In meeting these responsibilities, most IGs have contracted with independent public accountants (IPA) to conduct the audits either entirely or in part. In some cases, GAO conducts the audits. GAO is responsible for the U.S. government's consolidated financial statement audit, which is based largely on the results of the agency-level audits. GAO and the IGs have agreed on a common audit methodology described in the GAO-PCIE *Financial Audit Manual,* which is an audit tool available to all auditors of federal financial statements. In addition, we have established formal ongoing coordination and information sharing throughout the audit process so that both the IGs and GAO can successfully fulfill their respective responsibilities effectively and efficiently.

A practical issue that should also be dealt with is the adequacy of resources to provide for agency financial statement audits. Over the years, a number of IGs have told us that the cost of agency financial audits has taken resources away from their traditional work. In the private sector, the cost of an annual financial audit is a routine business expense borne by

[4]GAO-04-117T.

[5]The principals are the Comptroller General, the Director of OMB, the Secretary of the Treasury, and the Director of the Office of Personnel Management. The JFMIP is authorized by 31 U.S.C. § 3511(d).

the entity being audited, and the cost of the audit represents a very small percentage of total expenditures for the audited entity. We support enacting legislation that would make agencies responsible for paying the cost of their financial statement audits. We also believe that an arrangement in which the agencies pay for their own audits provides them with positive incentives for taking actions, such as streamlining systems and cleaning up their financial records, prior to the audit.

Under the arrangement in which agencies pay the cost of their own audits, we believe the IG should continue in the current role of selecting and overseeing audits in those cases in which the IG does not perform the audit but hires an IPA to conduct the audit. This would leverage the IGs' expertise to help ensure the quality of the audits. We also advocate an approach whereby the IGs would be required to consult with the Comptroller General during the IPA selection process to obtain input from the results of GAO's reviews of the IPAs' previous work and the potential impact on GAO's audit of the consolidated financial statements of the U.S. government. We will continue in our coordination with the IGs to help achieve our mutual goals of providing the oversight needed to help ensure that the federal government operates in a transparent, economical, efficient, effective, ethical, and equitable manner.

Structural Streamlining of IG Offices for Resource Efficiencies

One of the issues facing the IG community as well as others in the performance and accountability community is how to use limited resources most efficiently to achieve the greatest value. In fiscal year 2006, the 64 IG offices operated with total fiscal year budgets of about $1.9 billion and about 12,000 staff. (See encs. I and II for more detail on IG budgets and staff.) Most IG offices for cabinet departments and major agencies have IGs appointed by the President and confirmed by the Senate, and have larger budgets and more staff than those IGs in DFEs who are appointed by their agency heads. While agency-appointed IGs make up about half of all IG offices, the total of their fiscal year 2006 budgets was $267 million compared to $1.66 billion for presidentially appointed IGs. The agency-appointed IGs at the United States Postal Service (USPS), Special IG for Iraq Reconstruction (SIGIR), Amtrak, National Science Foundation (NSF), and Federal Reserve Board (FRB) have budgets that are comparable in size to those of presidentially appointed IGs. When the staffing and budget figures for these IG offices are removed from the DFE totals, the remaining 29 agency-appointed IGs have a total of 239 staff and budgets that make up about 2 percent of all IG budgets. In addition, 19 of those 29 agency-appointed IG offices had 10 or fewer staff.

In a 2002 report,[6] we presented the possible benefits of consolidating the smallest IG offices with the offices of IGs appointed by the President. We also suggested the conversion of agency-appointed IGs to presidential appointment where their budgets were comparable to those of the presidentially appointed IG offices. A benefit of consolidating the offices of agency-appointed IGs with those of presidentially appointed IGs would be to eliminate the differences in organizational independence between their offices. The review of a designated federal entity provided by a consolidated IG office would remove the need for the entity's internal audit organization to report externally, remove the need to apply the independence safeguards in *Government Auditing Standards*, and result in improved independence provided through audits performed by an external audit organization.

In addition, we believe that if properly structured and implemented, the consolidation of IG offices could provide for a more effective and efficient allocation of IG resources across government to address high-risk and priority areas. It would not only achieve potential economies of scale but also provide a critical mass of skills, particularly given advancing technology and the ever-increasing need for technical staff with specialized skills. We believe this point is especially appropriate for the 19 IG offices with 10 or fewer staff. IG staff now in smaller offices would, in large consolidated IG offices, have immediate access to a broader range of resources to use in addressing issues requiring technical expertise or areas of critical need. Consolidation would also strengthen the IGs' ability to improve the allocation of human capital and scarce financial resources within their offices and to attract and retain a more professional workforce with talents, multidisciplinary knowledge, and up-to-date skills. Consolidation can also add flexibility and increase options for IG coverage and help ensure that the IG function is better equipped to achieve its mission. Consolidation would also increase the ability of larger IG offices to provide methods and systems of quality control in the smaller agencies.

We recognize that there are potential risks resulting from consolidation that would have to be mitigated through proactive and targeted actions in order for the benefits of consolidation to be realized without adversely affecting the audit coverage of small agencies. For example, the potential reduction in day-to-day contact between the IG and officials at smaller

[6]GAO, *Inspectors General: Office Consolidation and Related Issues*, GAO-02-575 (Washington, D.C.: Aug. 15, 2002).

agencies as result of consolidation could be mitigated by posting IG staff at the agencies to keep both the IG and the agency head informed and to coordinate necessary meetings. In preparation for consolidation, staff in the smaller IG offices could be consulted in planning oversight procedures and audit coverage for their agencies. There may be fewer audits or even less coverage of those issues currently audited by the IGs at smaller agencies, but coverage by a consolidated IG could address areas of higher risk, value, and priority, resulting in potentially more efficient and effective use of IG resources across the government. Furthermore, consolidation of selected IG offices could be coupled with a decentralized deployment approach that establishes a minimum IG presence or coverage of each DFE entity in order to mitigate risks related to any loss of audit coverage. By providing such coverage from a centralized, external IG organization, independence would also be enhanced.

Also important, consolidation of the IG offices at USPS, NSF, Corporation for Public Broadcasting (CPB), and Legal Services Corporation (LSC) with offices of presidentially appointed IGs may not be necessary to further the independence of these IGs because they are appointed and may be removed by their boards of directors. We believe that by requiring the vote of a majority of board members for such actions regarding their IGs, the potential for the independence of the IG to be impaired through the threat of removal is greatly reduced as compared to appointment and removal by an individual agency head. In addition, we continue to believe that the consolidation of IG offices based on related agency missions could help provide for more efficient use of increasingly scarce IG resources. (See enc. III.) For example, the consolidation of the Amtrak IG with the Department of Transportation IG would be appropriate given the similar transportation–related subjects of their oversight.

Results of the Comptroller General's Forum on IG Issues

In May 2006, at the request of this committee, I convened a panel of recognized leaders of the federal audit and investigative community to discuss proposed amendments to the IG Act. We drew the panel from the current IG leadership, former IGs, knowledgeable former and current federal managers, representatives of academia and research institutions, a former member of the Congress, and congressional staff, including the congressional staff person closely involved in the development of the 1978 IG Act. Among other issues, the panel members discussed terms of office and removal for cause, submission of IG budgets, a proposed IG Council, IG pay and bonuses, and investigative and law enforcement authorities for agency-appointed IGs. In September 2006 we issued the results of the

panel discussion.[7] The overall perspectives of the panel are discussed below.

Terms of office and removal for cause

IGs serve at the pleasure of either the President or their agency heads, depending on the nature of their appointments. The IGs appointed by the President with Senate confirmation may be removed only by the President, while the IGs appointed by their agency heads may be removed or transferred from their offices only by their agency heads. However, for both types of IGs the reasons for removal must be communicated to the Congress after the action has taken place.

The panel members discussed the possible effects of having a 7-year term of office for each IG with more than one term possible, and a removal-for-cause provision whereby an IG may be removed from office prior to the expiration of his or her term only on the basis of permanent incapacity, inefficiency, neglect of duty, malfeasance, conviction of a felony, or conduct involving moral turpitude.

The majority of the panel participants did not favor statutorily establishing a fixed term of office for IGs. The reasons included the panelists' belief that the proposal could disrupt agency management and IG relationships, and that agency flexibility is needed to remove a poor-performing IG if necessary. On the other hand, a statutory term of office and removal only for specified causes was viewed positively by some panelists as a means of enhancing independence by relieving some of the immediate pressure surrounding removal without appropriate justification. The panel members also generally supported a statutory requirement to notify the Congress in writing in advance of removing an IG, with an explanation of the reason for removal. The participants cautioned that this procedure should consist only of notification, without building in additional steps or actions in the removal process.

IG budget submission

The IG Act Amendments of 1988 require the President's budget to include a separate appropriation account for each of the IGs appointed by the President or otherwise specified by the act. In this context, IG budget requests are generally reviewed as part of each agency's budget process

[7]GAO, *Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General*, GAO-06-931SP (Washington, D.C.: Sept. 11, 2006).

and are submitted as a separate budget line item to OMB and the Congress as a part of each agency's overall budget. In contrast, most IGs appointed by their agency heads do not have separate appropriation accounts.

The panel members discussed the possibility of having IGs justify their funding requests directly to OMB and the Congress in addition to being a part of their agencies' budget processes. In addition, the panel members considered having the budget requests submitted by the IGs compared to the funds requested by the agency heads for their IGs and including the comparison in the *Budget of the United States Government*. Overall, the panel members supported additional transparency for the IG budgets and agreed that the funding and other resource needs of the IGs should be clearly identified as a separate account or line item.

IG Council

The panel members considered a combined statutory IG Council with duties and functions similar to PCIE and ECIE which includes an Integrity Committee charged with receiving, reviewing, and referring for investigation, where appropriate, allegations of wrongdoing against an IG and members of the IG's senior staff operating with the IG's knowledge.

Currently, the Integrity Committee receives its authority under Executive Order 12993, signed in 1996, and is chaired by a representative of the Federal Bureau of Investigation. Other members of the committee are the Special Counsel of the Office of Special Counsel, the Director of the Office of Government Ethics, and three IGs representing PCIE and ECIE. Cases investigated by members of the Integrity Committee may be forwarded to the PCIE and ECIE Chairperson for further action.

As called for in prior testimony,[8] I continue to support formalizing a combined IG council in statute, along with the Integrity Committee. We also strongly support the concept behind the Integrity Committee. We believe it is imperative that the independence of the Integrity Committee be preserved and the basic underpinnings not be changed. In contrast, the participants in our May 2006 panel discussion had mixed views about statutorily establishing a joint IG Council but did favor establishing a funding mechanism for the councils.

[8]GAO-04-117T.

IG pay and bonuses

Issues over IG pay and bonuses have arisen over the past few years as a result of recent requirements[9] that rates of pay for the federal Senior Executive Service be based on performance evaluations as part of a certified performance management system. IGs who are subject to these requirements must therefore receive performance evaluations in order to qualify for increases to their pay. The IGs are provided general supervision by their agency heads in accordance with the IG Act. However, independence issues arise if the agency head is evaluating IG performance when that evaluation is used as a basis for an increase in the IG's pay or for providing a bonus. As a result, some IGs have effectively had their pay capped without the ability to receive pay increases or bonuses.

The majority of panel participants believed that the pay structure for the IGs needs to be addressed. The panelists emphasized the importance of providing comparable compensation for IGs as appropriate, while maintaining the IGs' independence in reporting the results of their work, and providing them with performance evaluations that could be used to justify higher pay. However, the panelists' views on IGs' receiving performance bonuses were mixed, mainly because of uncertainty about the overall framework that would be used to evaluate performance and make decisions about bonuses. I believe that an independent framework could be established through PCIE and ECIE, in cooperation with the Office of Personnel Management, to provide IGs with performance evaluations independent of undue influence by agency heads.

IG investigative and law enforcement authorities

The IG Act has been amended by subsequent legislation[10] to provide IGs appointed by the President with law enforcement powers to make arrests, obtain and execute search warrants, and carry firearms. The IGs appointed by their agency heads were not included under this amendment but may obtain law enforcement authority by applying to the Attorney General for deputation on a case-by-case basis. In addition, the Program Fraud Civil Remedies Act of 1986[11] provides agencies with IGs appointed by the President with the authority to investigate and report false claims and recoup losses resulting from fraud below $150,000. The agencies with IGs

[9]National Defense Authorization Act, Pub. L. No. 108-136, 117 Stat. 1392, 1638 (Nov. 24, 2003).

[10]The Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (Nov. 25, 2002).

[11]31 U.S.C. §§ 3801-3812.

appointed by their agency heads do not have this authority. Also, the IG Act provides all IGs with the authority to subpoena any information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to perform the functions assigned by the IG Act. This subpoena authority does not specifically address many forms of data including electronically stored information.

Panel participants overwhelmingly supported the provisions to (1) allow IGs appointed by their agency heads to apply to the Attorney General for full law enforcement authority instead of having to renew their authority on a case-by-case basis or through a blanket authority, (2) provide designated federal entities with IGs appointed by their agency heads the authority under the Program Fraud Civil Remedies Act to investigate and report false claims and recoup losses resulting from fraud, and (3) define IG subpoena power to include any medium of information and data.

Concluding Observations

The IG offices play a critical role in federal oversight. The independence of the IGs through protections in the IG Act, adherence to standards, and personal independence on the part of individual IGs and their staff are key to ensuring the continued overall independence and effectiveness of federal IG offices. As we enter a period where great transformation will be needed in the way government does business, it will be increasingly important to consider the IGs' role in this process and to take advantage of opportunities to make the IG offices more efficient and effective. It will also be critical to ensure IG coordination across government to identify and build on opportunities to better leverage existing resources for achieving effective federal oversight and accountability.

I would be pleased to meet with you or your staff to answer any questions that you may have or to discuss this statement.

Enclosure I: Inspectors General Appointed by the President: Fiscal Year 2006 Appropriated Budgets and Actual FTEs

	Federal departments and agencies	Budgets	FTEs
1	Department of Health and Human Services	$ 222,000,000	1,445
2	Department of Defense	206,772,130	1,370
3	Treasury IG for Tax Administration	131,953,140	838
4	Department of Housing and Urban Development	104,940,000	646
5	Social Security Administration	91,476,000	608
6	Department of Homeland Security	82,187,000	520
7	Department of Agriculture	80,336,000	598
8	Department of Labor	71,445,000	450
9	Department of Veterans Affairs	70,174,000	464
10	Department of Justice	68,000,000	411
11	Department of Transportation	61,874,000	419
12	Environmental Protection Agency	50,241,000	337
13	Department of Education	48,510,000	288
14	General Services Administration	42,900,000	293
15	Department of Energy	41,580,000	262
16	Department of the Interior	38,541,000	261
17	Agency for International Development	36,640,000	172
18	National Aeronautics and Space Administration	32,400,000	203
19	Department of State	30,945,000	186
20	Federal Deposit Insurance Corporation	30,690,000	125
21	Department of Commerce	22,467,000	122
22	Small Business Administration	20,361,080	95
23	Office of Personnel Management	18,216,000	131
24	Department of the Treasury	16,830,000	116
25	Tennessee Valley Authority	14,700,000	90
26	Nuclear Regulatory Commission	8,308,000	49
27	Railroad Retirement Board	7,124,000	53
28	Corporation for National and Community Service	5,940,000	23
29	Export-Import Bank	1,000,000	0
30	Central Intelligence Agency	na	na
	Totals	**$1,658,550,350**	**10,575**

Sources: PCIE and ECIE.

Legend: FTE = Fill-time equivalent; na = not available.

Enclosure II: Inspectors General Appointed by Agency Heads: Fiscal Year 2006 Appropriated Budgets and Actual FTEs

	Federal departments and agencies	Budgets	FTEs
1	United States Postal Service	$158,000,000	916
2	Special IG for Iraq Reconstruction	34,000,000	115
3	Amtrak	16,984,000	87
4	National Science Foundation	11,500,000	62
5	Federal Reserve Board	5,118,740	33
6	Government Printing Office	4,950,200	23
7	Pension Benefit Guaranty Corporation	4,038,990	21
8	Peace Corps	3,064,000	19
9	Federal Communications Commission	2,597,903	20
10	Securities and Exchange Commission	2,507,300	10
11	Legal Services Corporation	2,507,000	18
12	Library of Congress	2,457,000	17
13	National Archives and Records Administration	2,200,000	16
14	Smithsonian Institution	1,938,932	14
15	Equal Employment Opportunity Commission	1,810,307	11
16	National Credit Union Administration	1,764,926	8
17	Election Assistance Commission	1,600,000	1
18	National Labor Relation Board	1,080,327	7
19	Farm Credit Administration	998,248	5
20	Federal Housing Finance Board	959,271	4
21	Federal Trade Commission	917,500	5
22	Corporation for Public Broadcasting	834,264	9
23	Commodity Futures Trading Commission	795,000	4
24	Federal Election Commission	691,584	5
25	National Endowment for the Humanities	589,600	5
26	U.S. International Trade Commission	521,205	1
27	Appalachian Regional Commission	476,000	3
28	Federal Maritime Commission	469,885	2
29	National Endowment for the Arts	402,000	3
30	Federal Labor Relations Authority	284,487	1
31	Consumer Product Safety Commission	241,270	2
32	U.S. Capitol Police	583,000	4[a]

	Federal departments and agencies	Budgets	FTEs
33	Denali Commission	na[b]	1
34	Office of Director of National Intelligence	na	na
	Totals	266,882,939	1,452

Source: PCIE and ECIE and agency information.

Legend: FTE = Fill-time equivalent; na = not available.

[a]Fiscal year 2007 FTEs.

[b]IG budget is not determined separately from the agency's budget.

Enclosure III: Potential IG Consolidations and Related Agency Missions

Illustrative examples of agencies that could consolidate IG oversight	Primary agency missions
Department of Agriculture	Enhance the quality of life by supporting the production of agriculture.
Farm Credit Administration	Promote a safe and sound competitive Farm Credit System.
Department of Commerce	Promote job creation, economic growth and sustain development and improved living standards.
Federal Communications Commission	Regulation of communications by radio, television, mire satellite, and cable.
Corporation for Public Broadcasting	Provide grants to qualified public television and radio stations to be used primarily for program production or acquisition.
Appalachian Regional Commission	Support economic and social development in the Appalachian region.
U.S. International Trade Commission	Administer U.S. trade laws and provide information on trade matters.
Consumer Product Safety Commission	Reduce the risk of injuries and deaths from consumer products.
Department of Housing and Urban Development	Promote a decent, safe, and sanitary home and living environment for all.
Federal Housing Finance Board	Regulate banks that help finance community development needs.
Department of Justice	Enforcement of laws in the public interest.
Legal Services Corporation	Ensure equal access to justice under law.
Equal Employment Opportunity Commission	Enforce federal statutes prohibiting discrimination.
Federal Trade Commission	Prevent monopolies, restraints and unfair and deceptive practices that affect free enterprise.
Department of the Treasury	Responsible for financial, economic, and tax policy, as well as financial law enforcement and the manufacturing of coins and currency.
Securities and Exchange Commission	Administer federal securities laws that seek to provide protection for investors, to ensure that securities markets are fair and honest, and to provide the means to enforce securities laws through sanctions.
Commodity Futures Trading Commission	Protect market participants against manipulation, abusive trade practices, and fraud.
Federal Deposit Insurance Corporation	Contribute to the stability of and confidence in the nation's financial system.
National Credit Union Administration	Regulate and insure federal credit unions and insure state-chartered credit unions.

General Services Administration	Provide quality services, space, and products at competitive cost to enable federal employees to accomplish their missions.
Smithsonian Institution	Hold artifacts and specimens for the increase and diffusion of knowledge.
National Archives and Records Administration	Preserve the nation's history by overseeing and managing federal records.
National Endowment for the Arts	Nurture human creativity and foster appreciation of artistic accomplishments.
National Endowment for the Humanities	Support research, education, and public programs in the humanities.
Federal Election Commission	Disclose campaign finance information, enforce provisions of the Federal Election Campaign Act, and oversee public funding of presidential elections.
Department of Labor	Foster, promote, and develop the welfare of U.S. wage earners.
Federal Labor Relations Authority	Enforce the laws governing relations between unions and employees.
National Labor Relations Board	Enforce the laws governing relations between unions and employees.
Pension Benefit Guaranty Corporation	Encourage the growth and operations of defined benefit pension plans.
Department of State	Promote U.S. interests and the President's foreign policy in shaping a free, secure, and prosperous world.
Peace Corps	Promote world peace and friendship.
Department of Transportation	Develop policies for the national transportation system with regard for need, the environment, and national defense.
Amtrak	Develop modern rail service in meeting inter-city passenger transportation needs.
Federal Maritime Commission	Regulate shipping in foreign U.S. trade.

Source: The United States Government Manual.

Related GAO Products

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Inspectors General: Activities of the Department of State Office of Inspector General. GAO-07-138. Washington, D.C.: March 23, 2007.

Highlights of the Comptroller General's Panel on Federal Oversight and the Inspectors General. GAO-06-931SP. Washington, D.C.: September 11, 2006.

United Nations: Funding Arrangements Impede Independence of Internal Auditors. GAO-06-575. Washington, D.C.: April 25, 2006.

Activities of the Treasury Inspector General for Tax Administration. GAO-05-999R. Washington, D.C.: September 27, 2005.

Kennedy Center: Stronger Oversight of Fire Safety Issues, Construction Projects, and Financial Management Needed. GAO-05-334. Washington, D.C.: April 22, 2005.

Activities of the Amtrak Inspector General. GAO-05-306R. Washington, D.C.: March 4, 2005.

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Inspectors General: Comparison of Ways Law Enforcement Authority Is Granted. GAO-02-437. Washington, D.C.: May 22, 2002

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HUD Inspector General: Actions Needed to Strengthen Management and Oversight of Operation Safe Home. GAO-01-794. Washington, D.C.: June 29, 2001.

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UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

STATEMENT FOR THE RECORD
OF THE HONORABLE PHYLLIS K. FONG
INSPECTOR GENERAL

Before the

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENT AFFAIRS

U.S. SENATE

To Accompany the Hearing Record
Of Wednesday, July 11, 2007

Thank you, Chairman Lieberman and Ranking Member Collins, for inviting me to submit a statement for the record on several issues of interest pertaining to the independence, accountability, and operations of Federal Offices of Inspectors General (OIG). I would also like to express my thanks to Ranking Member Collins for her introduction of S. 680 in this Congress and to Senator McCaskill for her support of the Inspectors General, as reflected in her recent introduction of S. 1723.

I have served as the Inspector General (IG) for the Department of Agriculture (USDA) since December 2002. Prior to that, I served as the IG at the Small Business Administration from April 1999 until December 2002. My entire career in executive-level positions in the Federal IG community spans 19 years, and I am a career member of the Senior Executive Service (SES).

In addition to my service as USDA's IG, I am currently the Chair of the Legislation Committee for the President's Council on Integrity and Efficiency (PCIE). Created in 1981, the PCIE provides a forum for IGs, the Office of Management and Budget (OMB), and other Federal officials to work together and coordinate professional activities. The Legislation Committee consists of IGs from both segments of the IG community---nine presidentially-appointed (PAS) IGs who are members of the PCIE, and three IGs who were appointed by agency heads in Designated Federal Entities (DFEs), and thus are members of the Executive Council on Integrity and Efficiency (ECIE). The ECIE provides a forum similar to the PCIE for the DFE IGs.

The PCIE Legislation Committee serves as the IG community's primary point of contact and liaison on legislative issues with congressional committees, congressional offices, and the Government Accountability Office (GAO). The Legislation Committee is responsible for providing input to and receiving feedback from Congress on legislation affecting the IG community as a whole. The Committee works toward developing consensus within the entire IG community

regarding major legislation impacting IGs; on some issues, however, there may be a range of perspectives that reflect different IGs' experiences and situations.

My statement today is submitted on behalf of the PCIE Legislation Committee and, when appropriate, based upon my experience as an IG at two Federal agencies. I am not representing the views of or speaking for the Administration in my statement.

Provisions Common to Both S. 680 and S. 1723

First, I will address the provisions of S. 680 and S. 1723 that are common to both bills and of particular interest to the IG community.

Advance Notification to Congress of an IG's Removal

Both S. 680 and S. 1723 provide that Congress should be notified 15 days prior to the removal of a DFE IG. There is no mention made, however, of providing advance notification to Congress in the case of the removal of a PAS IG. We recommend that this section apply to all IGs. Moreover, we believe that 15 days might provide insufficient time for effective review by Congress, and we recommend that the notice period be extended to 30 calendar days prior to the proposed action to remove an IG. This should allow sufficient time for congressional review and any discourse with the President as to the reasons for the removal of an IG.

Qualifications of DFE IGs

Currently, the IG Act provides that PAS IGs must be appointed without regard to political affiliation and solely on the basis of their integrity and "demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations." Both S. 680 and S. 1723 would amend the IG Act by requiring similar qualifications for DFE IGs. Although we believe that in practice this usually occurs with appointments of DFE IGs, making these qualification

requirements a statutory prerequisite for DFE IGs would ensure that qualified candidates are recruited and would enhance their immediate credibility within their establishment. The PCIE Legislation Committee supports this provision.

Compensation Issues Involving PAS IGs

Department of Interior IG Earl Devaney and Department of Justice IG Glenn Fine testified on July 11, 2007, that a significant issue for the PAS IGs is the pay disparity they encounter. Currently, a number of PAS IGs are ineligible for locality pay and cost-of-living adjustments, are excluded from the benefits of the performance-based pay system Congress established for career senior executives, must forego potential bonuses to preserve OIG independence, and have their salaries capped by statute at Level IV of the Executive Schedule, without the possibility of promotion. At a time when IG responsibilities are steadily increasing and congressional committees, agency heads, and the public look to IGs to ensure integrity in Government operations, virtually all PAS IGs are paid at a level significantly below the average annual compensation of the SES personnel they supervise. This disparity in compensation is a significant concern for current PAS IGs and could have an increasing impact on the Government's ability to retain experienced IGs. Perhaps more important, however, is the impact on the willingness of qualified and talented Federal career executives to serve as PAS IGs.

Both S. 680 and S. 1723 propose to equitably remedy this situation by simply moving PAS IGs from Level IV of the Executive Schedule pay scale to Level III. While this adjustment would not completely address the pay disparity for PAS IGs, it would be a positive step towards recruiting and retaining well-qualified IG candidates.[1]

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[1] We believe that the issue of DFE IG rank and pay also needs to be addressed. Section 9(b) of S. 1723 would provide that the IG of each DFE "shall, for pay and all other purposes, be classified at a grade, level, or rank designation . . . comparable to those of a majority of the senior staff members of such designated Federal entity (such as, but not limited to, a General Counsel, Deputy Director, or Chief of Staff) that report directly to the head of such designated Federal entity." We understand that the Vice Chair of the ECIE is submitting a statement for the record which will address the position of the DFE IGs regarding pay and bonuses.

Prohibition of Cash Bonuses or Awards

PAS IGs as a matter of long-standing practice do not accept cash bonuses or awards, so as to avoid any potential questions regarding their independence and impartiality. The PCIE Legislation Committee supports this provision with respect to PAS IGs.

PFCRA and Subpoena Authority

Both S. 680 and S. 1723 include provisions that the PCIE Legislation Committee believes would improve the effectiveness of OIG audit and investigative activities. First, the bills would amend the Program Fraud Civil Remedies Act (PFCRA) to allow DFE IGs to utilize the Act's processes to pursue false claims and statements where the loss to the Government is less than $150,000. Presidentially-appointed IGs already can utilize PFCRA to recover the loss of taxpayer dollars due to fraud, and smaller OIGs should also have the ability to pursue lower-threshold fraud cases. DFE IGs are not currently authorized to utilize PFCRA procedures because those IGs had not been created at the time of PFCRA's enactment.

Secondly, the bills would modernize IG law enforcement capabilities by clarifying that IG subpoena authority extends to electronic information and tangible things. This is an important clarification at a time when ever-increasing amounts of information are stored electronically and technological advances are constantly creating new forms of data, computer equipment, and data transmission devices. Amending the IG Act to include this clarification on electronic information and tangible things ensures that the IGs have access to all relevant physical evidence, no matter its particular form, as we perform our duties and responsibilities.

The Provisions of S. 1723

Next, I will address the provisions of S. 1723 that are not in S. 680 that are of particular interest to the IG community.

Term Appointment and Removal for Cause

Section 2 of S. 1723 would establish a renewable term of office of 7 years for both PCIE and ECIE IGs and would authorize removal of an IG prior to the expiration of the term for certain enumerated causes. The IG Act currently provides no specified term of office for IGs; the only limit on the authority to remove IGs is a requirement that Congress be notified of such removal.

We note that individuals occupying a number of other positions with identical or analogous oversight functions in the executive branch may be removed only for cause. For instance, the IG of the U.S. Postal Service and the Special Counsel may be removed only for cause. In the legislative branch, the Comptroller General of the Government Accountability Office possesses removal for cause protection. We believe that removal for cause criteria would further congressional intent to provide IGs with the independence necessary to carry out our responsibilities and would better insulate IGs from undue influence.[2]

We also note that there are a number of analogous functions within the executive branch that have fixed terms of office. For example, the Director of the Office of Government Ethics, the Special Counsel, and members of the Federal Labor Relations Authority all have 5-year terms. Merit Systems Protection Board members have 7-year terms. Other officials with similar duties but broader responsibilities, such as the Comptroller General and the Director of the Federal Bureau of Investigation, have terms of 15 years and 10 years, respectively.

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[2] The removal for cause provisions in Section 2 of S. 1723 are very similar to the removal for cause provisions for the Comptroller General of the Government Accountability Office. See 31 U.S.C. § 703(b).

While the PCIE Legislation Committee understands that some may have concerns about the effectiveness of these provisions, we believe that IG independence would be enhanced by their enactment, particularly when coupled with a provision requiring advance notification to Congress prior to removal of an IG. We would welcome the opportunity to work with the Committee to clarify the removal for cause criteria if there is concern as to their meaning and effect.

Establishment of a Council of the Inspectors General on Integrity and Efficiency

Section 4 of S. 1723 would create a unified IG Council to enhance coordination and communication among OIGs and better serve the executive branch and the Congress. A unified council would promote the independence and unique responsibilities of IGs by creating a forum for more sustained and organized IG initiatives on a Government-wide basis. Just as individual IGs have dual responsibilities to both the executive and legislative branches, so too would a statutory unified council. For example, the Deputy Director for Management of OMB would serve as the council's executive chair and the council would also be responsive and report to Congress, as appropriate. The bill would also establish a necessary funding mechanism for the council's institutional activities, such as publishing an annual progress report; providing essential training programs for OIG audit, investigative, inspection, and management personnel; and providing sessions to orient newly-appointed IGs as well as to keep experienced IGs abreast of current issues.[3] The PCIE Legislation Committee supports statutorily establishing a single IG Council for all executive branch IGs.

We do, however, suggest that the Committee consider requiring the annual progress report called for in proposed subsection 11(b)(3)(B)(viii) be issued jointly to the

[3] With regard to funding the Inspectors General Council's activities, this could be handled through annually appropriated funds or through alternative means. For instance, the Chief Financial Officers Council receives some or all of its funding from rebates on Federal charge cards and other contracts pursuant to Section 629 of Pub. L. 107-67.

President and the Congress. This change would then comport with and mirror the dual reporting requirements that individual IGs have to the head of their agency and to Congress.

In the area of accountability, the unified IG Council provision would permanently establish an Integrity Committee (IC) to handle allegations of wrongdoing on the part of an IG or certain OIG staff. The IC is a response to the question of *"Who is watching the watchdogs?"* The functions of the current IC are set forth in Executive Order 12993. The bill includes several provisions to maintain quality and integrity in IC operations, including a requirement to adhere to the most current Quality Standards for Investigations issued by the IG Council or the PCIE/ECIE and requirements to ensure fairness and consistency in the operations of the committee. The bill would provide, for example, that the subject of an investigation have the opportunity to respond to any IC report.

We have the following suggestions for the Committee's consideration regarding the IC provisions.

1. The bill (proposed subsections 11(d)(4)(A)(i) and (ii) of the IG Act) requires an IG to refer to the IC any allegation against a "staff member" if the allegation cannot be assigned to an executive branch agency and an objective internal investigation is not feasible or an internal investigation may appear not to be objective. The bill would require each IG annually to submit a designation of positions considered "staff members" for the purpose of that section. This seems to be an unnecessary burden that is not currently contained in E.O. 12993. Rather than an annual designation, we would suggest "staff member" be defined as follows in the proposed subsection 11(d)(4):

> (B) STAFF MEMBER DEFINED---In this subsection the term "staff member" means--
>
> (i) any employee of an Office of Inspector General who reports directly to an Inspector General; or

> (ii) any other senior official of an Office of Inspector General when the Inspector General determines the conditions of subsections (4)(A)(i) and (ii) are met.

This definition would afford IGs the opportunity to address situations where the IG does not designate a position, but later determines an allegation against the holder of that position should be referred to the IC.

2. The proposed subsection 11(d)(5)(B) of the IG Act provides for IC review and referral for investigation allegations of "wrongdoing" that are made against IGs, direct reports to IGs, and other designated staff. The bill does not, however, define "wrongdoing." We note that this is a significant departure from the language in E.O. 12993, which currently authorizes the IC to investigate an allegation only if there is a substantial likelihood that the allegation discloses a violation of law, rule or regulation, gross mismanagement, gross waste of funds, or an abuse of authority. The use of the word "wrongdoing" may allow for a broader exercise of the IC's authority than is currently authorized. In addition, it is not clear whether the removal for cause criteria would constitute the universe of "wrongdoing" that the IC would be authorized to investigate.

3. Proposed subsection 11(d)(5)(B) of the IG Act also states the IC shall "refer to the Chairperson of the Integrity Committee any allegation of wrongdoing determined by the Integrity Committee to be meritorious that cannot be referred to an agency of the executive branch with appropriate jurisdiction over the matter." We would suggest some form of modifier be added to the standard of "meritorious," such as "potentially" to mirror the language in E.O. 12993 and to avoid any perception of prejudgment of an allegation.

4. Proposed subsection 11(d)(7)(C) of the IG Act states "The Chairperson of the Integrity Committee shall report to the Executive Chairperson of the Council the results of any investigation that substantiates any allegation certified under paragraph (5)(B)." We believe the word "certified" was taken from E.O. 12993. However, the bill uses the word "refer" rather than "certify" in proposed subsection 11(d)(5)(B).

Accordingly, the word "certified" in proposed subsection 11(d)(7)(C) should be changed to "referred."

Our last comment concerning the creation of a unified IG Council pertains to the treatment of legislative branch IGs. Although not specifically named as members of the ECIE by executive order, we understand that the IGs at the Government Printing Office, the Capitol Police, and the Library of Congress in practice are members of the ECIE. Pending legislation would also create an IG at the Architect of the Capital. Consideration needs to be given to the treatment of these legislative branch IGs: whether to include them within the unified IG Council and whether to extend to them the same statutory independence and operational authorities as are being considered for PAS and DFE IGs.

Separate Legal Counsel for IGs.

Section 2(c) of S. 1723 would require that all IGs appoint a legal counsel that reports directly to the IG. We support the concept of separate legal counsel reporting directly to the IG, believing that this is as critical to an OIG's independence as having independent auditors and investigators. However, there are some DFE OIGs that have only a few employees. Consequently, some of the smaller OIGs could find this provision difficult to implement without additional resources, particularly since there is no requirement that this position constitute an additional position within an OIG. We believe that careful thought needs to be given as to how this provision would be implemented.

Direct Submission of Budget Requests to Congress and Personnel Authorities.

The PCIE Legislation Committee supports Section 3 of S. 1723, which authorizes IGs to submit their annual budget requests directly to OMB and to Congress. Although many IGs receive support from their agency heads in their appropriation requests, this provision would further enhance IG independence, particularly where

an IG and an agency head disagree on the appropriate level of resources for the OIG. This provision should, however, be discretionary with IGs as not all Federal agencies and establishments participate in the annual budget and appropriation process.

Section 9(a) of S. 1723 would provide IGs with certain personnel authority with respect to early out/buyouts, waivers of mandatory separation for law enforcement officers, and OIG SES personnel.[4] While we fully support these provisions, we recommend that Sections 8344 and 8468 of Title 5, U.S. Code also be added to this grant of authority. These provisions deal with reemploying annuitants. At present, an IG cannot go directly to the Office of Personnel Management (OPM) to seek a waiver to reemploy an annuitant. An IG must go through his or her agency and obtain the approval of the agency head. Just like the other proposed provisions that give the IG authority to go directly to OPM for SES allocations and buyout authority, it would be useful and efficient if the IGs were authorized to seek waiver authority directly from OPM. For example, in the context of Hurricane Katrina and the additional oversight responsibilities of the Department of Homeland Security (DHS) OIG, it needed to draw upon the expertise of its retired annuitants (e.g., retired auditors and investigators). The process of getting these people back on board to help in this emergency was slowed down by having to work through DHS rather than being able to go directly to OPM for waivers.

Law Enforcement Authority for DFE IGs

Section 9(d) of S. 1723 would authorize DFE IGs to apply for full law enforcement authority rather than having to apply for such authority on a case-by-case basis. Presidentially-appointed IGs obtained this authority pursuant to the Homeland Security Act of 2002, which allows them to make arrests, execute search warrants, and carry firearms. This authority has been used effectively by PAS IGs. The bill would make it available to those DFE IGs who seek such authority, once approved by the Department of Justice. Of course, those DFE IGs would have to satisfy the

[4] 5 U.S.C. §§ 8335(b), 8336, 8414, and 8425(b).

same requirements and adhere to the same standards regarding law enforcement authorities as the PAS IGs must. We support this provision.

Recommendations on Filling IG Vacancies

The proposed subsection 4(c)(1)(F) of the IG Act contained in Section 4 of S. 1723 would require the unified IG Council to submit recommendations of three individuals for appointment consideration for any IG vacancy. In general, we would support a consultative role for the IGs or the proposed IG Council in filling IG vacancies. It is our understanding that in the past, IGs were consulted from time to time by OMB as to possible candidates for IG vacancies. While we would be willing to serve as one resource for identifying possible IG candidates, it would not be appropriate for us to be the only source of candidates or for the council to be perceived as interfering with or duplicating the extensive background investigation process already in place for PAS appointees.

Information on Web Sites of Offices of Inspectors General

In general, we support enhancements to agency web sites to make links to IG offices more visible. We also support posting many OIG products on the IG web sites. In our view, it is very important for IGs to provide transparency on how Government operates. We believe that the majority of the IGs are currently posting audit and inspection reports on their agency web sites. Accordingly, we have several suggestions and comments concerning Section 12 of S. 1723.

1. The bill should clarify that it is referring to OIG audit and inspection or evaluation reports, not reports of investigations. Traditionally, most reports of investigation are not publicly released because they can discuss law enforcement techniques, prejudice related criminal, civil, or administrative proceedings, or result in unwarranted invasion of privacy or damage to reputation.

Even in the case of reports such as audits or inspections, care must be taken that sensitive information that could jeopardize Government operations is not inappropriately released, such as critical IT processes or operations or confidential business or financial information submitted by outside parties or entities. If such confidential information is not able to be protected, it could jeopardize the Government's ability to collect necessary and relevant information in the future. We therefore recommend that this provision in the bill cross-reference the Freedom of Information Act (FOIA) to make clear that OIGs do not need to post information that is not subject to disclosure under FOIA. We suggest adding the following clause at the beginning of subsection 12(c)(1)(B): "Consistent with such disclosure as is required under 5 U.S.C. § 552a, ..."

2. We are concerned with the requirement in subsection 12(c)(1)(A) that addresses the posting of OIG reports. We believe the 1-day posting requirement may not be realistic, since many OIGs rely on their agencies to post material on agency web sites. We recommend, instead, that the subsection be reworded to require IGs to post audit, inspection, evaluation, or semiannual reports "as soon as is practicable" after their issuance.

3. The proposed subsection 12(c)(1)(B)(iii)(I) requires that IG web sites be in a format "that is searchable, sortable, and downloadable." We have some concern with the requirement that IG web sites or agency web sites have "sortable" capabilities. We do not believe that many OIG or agency web sites have sorting capabilities. This might require significant and costly IT upgrades before implementation is possible, and we recommend that this be explored before becoming statutorily mandated. If such capabilities are cost prohibitive, then we recommend that the word "sortable" be deleted from the subsection.

4. Subsection 12(c)(2) of S. 1723 would require each OIG to offer to the public a service on its web site so that individuals would "automatically receive information (including subsequent reports or audits) relating to any posted report or audit (or

portion of that report or audit)." We believe this would be extremely and unnecessarily burdensome. OIGs have limited staff and resources, and it would be costly and resource intensive to establish and maintain such a database and notification system. We recommend that this provision be deleted. On balance, we think it would be less burdensome for interested individuals to check on web sites from time to time to see if there is a report of interest than to require IGs to maintain such a system.

5. Subsection 12(c)(3)(B) of S. 1723 requires that IGs take such actions as are necessary to ensure the anonymity of any individual making a report of fraud, waste, and abuse through an OIG's website. This requirement does not recognize that there will be instances when the disclosure of such individual's identity is necessary for legitimate law enforcement or remedial purposes. We are concerned, additionally, that it may not be technologically possible to assure anonymity of an individual, given the placement of internet servers in various agencies and the technical capabilities associated with their operations and maintenance. It would be more feasible—and consistent with current IG Act requirements regarding employee complainants—to require an IG to protect the identity of an individual making a report on the web site. We therefore recommend that this language be modified to more closely track the assurances of confidentiality set forth in Section 7(b) of the IG Act --- that the IG of each agency "shall not disclose the identity of any individual making a report under this paragraph without that individual's consent unless the Inspector General determines that such a disclosure is unavoidable during the course of the investigation."

Alternatively, the bill could be reworded as follows:

> "(B) PROTECTION OF IDENTITIES.—The Inspector General of each agency shall take such actions as are practicable to protect the identity of any individual making a report under this paragraph."

This concludes my statement. Thank you for the opportunity to provide the Committee with our views on this important legislation. I look forward to working with the Members of the Committee and your staff to improve the effectiveness of our offices and the departments and agencies we serve.

STATEMENT OF
JANE E. ALTENHOFEN
INSPECTOR GENERAL
NATIONAL LABOR RELATIONS BOARD
for the
U.S. SENATE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTTEE
July 24, 2007

I appreciate the opportunity to provide a statement about strengthening the role of the federal Inspectors General (IGs). Since 1999, I have been serving as the Inspector General of the National Labor Relations Board (NLRB). Prior to serving in my current position, I was the Inspector General at the International Trade Commission from 1989 to 1999.

Removal for cause and term appointments

I am concerned that the provision for term appointments for IGs at the designated federal entities could produce unintended consequences. Unlike the IGs that are appointed by the President, almost all of the IGs at the designated federal entities are career federal employees who serve in positions with civil service status and its corresponding protections. Imposing terms would be likely to deter strong candidates for positions at the designated federal entities because it would require the candidates to give up the security of permanent positions for the uncertainty inherent in limited term appointments.

Direct Budget Submission

The provision that authorizes IGs to submit budgets directly to OMB and to the Congress would significantly enhance the independence and accountability of the IGs at the designated federal entities. This provision removes the risk of an agency improperly influencing an IG by threatening to withhold a funding request. It would also provide transparency to the budget process.

This provision would also enhance IGs authority to exercise independent personal authority in hiring staff. The current lack of direct budget submission puts staffing levels of OIGs at the

designated federal entities at the discretion of the agency rather than the IG. At the NLRB, it has been difficult to impossible to hire staff under the guise of budgetary restraints. Although the OIG budget provides funds for full staffing of the office, the Agency's Division of Administration refuses to process personnel actions such as vacancy announcements. This arrangement allows the Agency to control the OIG staffing level rather than the IG and shift resources that were justified in the Agency's budget submission as for the OIG to other offices.

IG Pay at Designated Federal Entities

The amount and manner of IG compensation are a complex matter because of the different circumstances that may apply at each agency. However, the IGs at the designated federal entities support the provision that would require IGs to be classified for pay and other purposes at the same level as the majority of other senior staff who report directly to the agency head. The IGs were recently surveyed about their compensation and how it compares to their agency peers. The survey results documented that IGs are generally at lower grade levels than other executives who report directly to their agency heads and, on average, are paid 12 percent less.

Program Fraud Civil Remedy Act (PFCRA)

I support a proposal to amend PFCRA to include IGs at the designated federal entities, thereby providing an effective tool to address false claims with dollar amounts of less than $150,000. The ability to use the enforcement provisions of PFCRA would certainly enhance the recovery efforts at the designated federal entities.

Supervision of Inspectors General by an Oversight Board

Several of the designated federal entities are agencies that operate as a Board or Commission. Currently the practice is that the Office of Management and Budget designates who an IG reports to at such agencies. I believe that this works well. At the NLRB, I report to the Chairman. This arrangement insulates my office from the political nature of the Board.

Designated Federal Entity IG Qualifications

I support the notion of statutory qualifications for IGs at the designated federal entities. Although IGs at the designated federal entities are hired under their respective agencies' personnel systems, those systems do not guarantee that the person selected as an IG will possess the necessary skills and abilities for the position. For example, any person in a Senior Executive Service (SES) position can be transferred to an SES IG position without further competition or a review of qualifications. The proposed statutory qualification would eliminate this possibility.

Prohibition of bonuses, awards to IGs

Although prohibiting bonuses to IGs would appear to prevent agencies from improperly influencing IGs and potentially weakening their independence, in practice, for the many IGs at designated federal entities who are career Civil Service employees, the elimination of bonus eligibility with no compensating offset would likely result in a substantial reduction in pay. Moreover, if the intent of the legislation is to ensure that IGs are compensated at a level comparable to their peers in the agency, the IGs should not be penalized by being ineligible for bonuses that those peers may receive. Several IGs have come to arrangements with their agencies that appropriately address this issue. I believe that the practice of allowing individual IGs to resolve this issue with his or her agency should be continued.

15-day advance notification to Congress for Designated Federal Entities IGs

I support requiring formal notification to the Congress of an impending removal of an IG, thereby providing the Congress with time to review the circumstances, should it choose to do so, and to intervene if appropriate. A 30-day advance notification requirement to Congress would provide a greater opportunity for review and possibly corrective action.

Thank you for the opportunity to submit this statement. I am available to respond to any questions that you may have.

TESTIMONY OF
DR. CHRISTINE BOESZ
INSPECTOR GENERAL
NATIONAL SCIENCE FOUNDATION
submitted for the
U.S. SENATE
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTTEE
July 24, 2007

I appreciate the opportunity to provide testimony about strengthening the role of the federal Inspectors General (IGs). As you know, the IGs coordinate their professional efforts through two Councils: the President's Council on Integrity and Efficiency (PCIE), and the Executive Council on Integrity and Efficiency (ECIE). The primary difference between the two is that PCIE IGs are presidentially appointed with Senate confirmation, while ECIE IGs are appointed by their agency heads. Since 2000, I have served as the IG of the National Science Foundation, and in May of this year I was honored to be appointed Vice-Chair of the ECIE.

The ECIE consists of IGs from 33 agencies with diverse missions and operations. Some have high public profiles, such as the U.S. Postal Service, the Federal Reserve Board, and Amtrak, while others are smaller but still important, such as the Election Assistance Commission and the National Endowment for the Arts. A number of these agencies are headed by boards or commissions, and three are legislative branch organizations serving the Congress.

While the IG Act has been successful in establishing an effective means for promoting good government and combating fraud, waste and abuse, any effort to strengthen the role of the federal IGs warrants broad support, and I thank the committee for the consideration it is giving to this subject. Based on extensive discussions with my colleagues, I would like to offer the following observations on behalf of our ECIE membership about various proposals being considered by the Congress.

Removal for cause and term appointments

It is not clear that the proposal that IGs serve a fixed term of office and be removed only for specific causes listed under law would in fact enhance IG independence. We are concerned that it could instead produce some unintended consequences. Unlike the PCIE, most ECIE members are career federal employees who serve in positions with civil service status and its corresponding protections and sanctions. Imposing terms would be likely to deter strong candidates for most ECIE IG positions because it would require them to give up the security of permanent positions for the uncertainty inherent in limited term appointments. The job of an IG is difficult enough, and if we want to attract the best people, we need to make sure that taking an IG position will not be perceived by qualified federal employees as putting their careers at risk. Further, since there is no assurance that an IG's term would be renewed, 7-10 years may fall short of the time necessary to oversee and complete important work. For example, large infrastructure projects at NSF frequently take in excess of 10 years from beginning to end, and being forced to hand off oversight in the middle of an ongoing monitoring effort could diminish its continuity and effectiveness. Finally, developing a list of specific causes for which an IG could be removed, while conceptually appealing, may pose significant risks if it is either incomplete or in any way ambiguous in defining the causes. The legislative challenge is to ensure that the causes provide valid grounds for removal while also giving the IGs assurance that they will not be removed for political or other inappropriate reasons. The tenure and removal of an IG are, therefore, a delicate matter, and any changes to the law need to be carefully crafted to avoid impairing the IG role or making it unattractive to the caliber of people we seek to serve as IGs.

Direct Budget Submission

ECIE members strongly support the provision that IGs be authorized to submit budgets directly to OMB and to the Congress. This would significantly enhance the independence and accountability of the ECIE IGs and remove the risk of an agency improperly influencing an IG by threatening to withhold a funding request. It would also provide more transparency to the budget process.

Establishment of an IG Council

We support the proposal to replace the PCIE and ECIE with a unified IG council that has its own appropriation and to establish an Integrity Committee within the Council to review and refer allegations against IGs and certain OIG staff for investigation. A unified council with its own funding would enable the IG community to support needed initiatives in interagency training and in such government-wide efforts as the tracking of A-133 audit reports and the monitoring of their quality.

Offices as Discrete Agencies

We are strongly in favor of making each IG office a separate federal agency for purposes of applying certain personnel authorities, such as buyouts and provisions relating to the SES, and believe that it would be an effective measure for increasing the independence of our members.

ECIE IG Pay

The amount and manner of IG compensation are a complex matter because of the different circumstances that may apply in each case. However, our ECIE members strongly support a provision by which IGs would be classified for pay and other purposes at the same level as the majority of other senior staff who report directly to the agency head. The ECIE recently surveyed its IG members about their compensation and how it compares to their agency peers. We found that our IGs generally had a lower grade level than other executives who report directly to their agency heads, and on average are paid 12 percent less.

Law Enforcement Authority for ECIE IGs

ECIE IGs should be able to apply to the Department of Justice for law enforcement authority. This adjustment would end the inefficient and often disruptive process of having to keep renewing their authority, whether on a case-by-case basis or through periodic blanket authority. It is strongly supported by our ECIE members.

Program Fraud Civil Remedy Act (PFCRA) for ECIE IGs

We support a proposal to amend PFCRA to include ECIE IGs, thereby providing an effective tool to address false claims with dollar amounts of less than $150,000. The ability to use the enforcement provisions of PFCRA would certainly enhance the recovery efforts of those agencies, and has been a high priority for ECIE members for years.

Consideration for Legislative Branch IGs

The ECIE includes three legislative branch IGs: the Government Printing Office, the Library of Congress, and the Capitol Police. Since their offices were not established by the original IG Act, neither the Act nor its amendments apply to these offices unless referenced in the statutes that established them. These offices should be considered for inclusion, as appropriate, in any legislation that affects the broader IG Community. For example, all legislative branch IGs would benefit from being able to use the enforcement provisions of PFCRA in performing their work. They are available to discuss these matters with the committee.

Supervision of Inspectors General by an Oversight Board

Some ECIE members, including myself, are under the general supervision of an oversight board that acts as the agency head. At the National Science Foundation, this arrangement works well and provides me with additional independence from the senior managers

responsible for NSF's day-to-day operations. I believe that the key to the success of this reporting structure is to make certain that the IG is supervised by the entire Board, and not simply by one specific Board member. This helps to ensure that the IG is acting in the best interests of the agency, as represented by the full Board, and not one individual. We would, therefore, support legislation to clarify that the term "head of the Federal entity" for the purposes of the IG Act refers to a Board or Commission for those agencies that have such governing bodies.

DFE Qualifications

Currently ECIE IGs are hired under their respective agencies' personnel systems. In my case all Senior Executive Service rules and reviews applied. If changes are considered, we suggest that they be carefully considered to avoid creating conflicting personnel procedures.

Prohibition of bonuses, awards to IGs

In principle, prohibiting bonuses to IGs has appeal as a measure to prevent agencies from improperly influencing IGs and potentially weakening their independence. However, as a practical matter, for the many ECIE IGs who are career Civil Service employees, the elimination of bonus eligibility with no compensating offset could result in a substantial reduction in pay. It would also make it considerably more difficult to attract strong candidates to ECIE IG positions. Most federal employees with the kind of performance record we look for are accustomed to receiving bonuses. If IGs are made ineligible, the best candidates for ECIE IG vacancies, and perhaps some of the best incumbents as well, will be inclined to look elsewhere for positions that offer a more competitive total pay package. Moreover, if the intent of the legislation is to ensure that IGs are compensated at a level comparable to their peers in the agency, the IGs should not be penalized by being ineligible for bonuses that those peers may receive. For the PCIE IGs, the lack of bonuses is being offset by a raise in pay to Executive Level III. To be equitable to ECIE

IGs, a way should be found to compensate them for loss of the opportunity to earn a bonus, which in many cases is a significant part of the individual's total compensation.

15 day advance notification to Congress for DFE IGs

We strongly support requiring formal notification to the Congress of an impending removal of an IG, thereby providing the Congress with time to review the circumstances, should it choose to do so, and to intervene if appropriate. Receiving advance notification would enable the Congress to have a voice in the process, rather than simply being a passive observer. The ECIE believes that 30 day advance notification, rather than 15, would provide a more adequate time frame for effective review by Congress.

Requirement for Counsel to IG

We support requiring IGs to hire separate legal counsel, with one caveat. Some ECIE IGs oversee a small staff and do not have the resources to add a counsel position. Funds should be provided so that the smaller OIGs do not have to sacrifice necessary audit and investigative staff to hire a counsel. Shared services with larger OIGs may be feasible, provided resource availability.

Unfunded Mandates

Finally, we would respectfully caution the committee that as we move into an increasingly harsh budget environment, where much is already expected of OIGs, to be wary of adding any new responsibilities to those that we already shoulder. The costs and benefits of any new duties or mandates that do not come with additional funding must be carefully weighed against the possibility that they will degrade more mission critical activities.

Thank you for the opportunity to submit this testimony. I am available to respond to any questions that you may have.

Statement of Susan Khoury
Former Special Agent
Office of the Inspector General
US Nuclear Regulatory Commission

Committee on Homeland Security and Government Affairs
United States Senate

July 23, 2007

I consider it a missed opportunity that the distinguished panel who spoke at the July 11, 2007 Hearing before the Senate Homeland and Government Affairs Committee on "Strengthen the Unique Role of the Nation's Inspectors General," did not include any members from any Office of the Inspector General (OIG) staffs because it is the OIG employees who deal with the day-to-day guidelines set forth in the IG Act. As a former Special Agent with the Nuclear Regulatory Commission's (NRC) Office of the Inspector General (OIG), I believe some loopholes in the current IG Act has place OIG staff (investigators, auditors, and administrative personnel) in peculiar situations. Those situations impact investigations, audits and personnel practices among Agency/Department and OIG employees.

The unchecked powers of an IG, under no term time limits and with no real Congressional oversight, have produced behavior that has never been challenged. Given the arrival of the 30th anniversary of the IG Act, Congress has an obligation to the public, agency/department employees and OIG staff to take a hard look at the Act and make changes that would not only correct existing problems with the power of the IGs, but set precedence by establishing an independent Congressional OIG oversight entity.

As an NRC Special Agent, I personally experienced and other times observed numerous violations of rules and regulations, ethical misconduct, and discriminatory behavior by my OIG managers. Those violations have and will continue in the NRC OIG and other OIG's until Congress actually takes a hard look at powers given to IGs in the IG Act.

The IG Act was created because Congress felt that Agencies could not police themselves. The IG Act provides an essential program to detect and deter fraud, waste and abuse of Agency employees which is a valuable yet powerful tool. Any additional strengthening of the powers of the OIG's need careful consideration because when Congress gives that much power to an organization without proper checks and balances, the potential for OIG's abuse of power, and

internal fraud and waste is phenomenal. Additionally, it is hypocritical to institute an OIG in every Agency but allow them to essentially investigate themselves.

The President's Council on Integrity and Ethics (PCIE) is an Executive Branch committee that appears to be merely an organized gathering for IGs rather than an actual oversight committee. The PCIE has no reporting requirements to Congress nor is it statutory. Its functions are not transparent nor is its authorities or decision-making process. For example, the PCIE may or may not investigate an IG - one does not know how that decision is made. Additionally, the PCIE does not investigate other IG office staff. Therefore, the PCIE, the only OIG oversight group, leaves an enormous gap open for abuse of power, fraud and waste in all of the OIGs. Currently, any Agency employee can file a complaint with their respective OIG about any agency program, an employee/manager, and even the Agency Head. But Agency employees and OIG employees have nowhere to turn with regards to filing a complaint about an OIG employee or the IG.

I respectfully submit that OIG employees should not have any less rights than Agency employees when it comes to the ability to file a complaint involving abuse of power, fraud, waste and regulations. When a public citizen, government employee or OIG employee files a formal complaint about any OIG staff, including the IG, that complaint should be handled in the same fashion and with same transparency as a complaint filed with the OIG against an Agency person.

I believe that the following changes would make the IG Act stronger and would require every OIG to conform to the same standards as Agency/Department employees:

Congressional Oversight

It is imperative that Congress create an independent entity (essentially an IG for all OIGs) that has the same authority and power as the IGs. That entity whatever it is named would report directly to Congress and be able to investigate any OIG staff member including the IG. That entity should also have the power to audit and review any OIG investigation, audit, and/or personnel practices.

Congress should establish guidelines for which a Congressional panel would have the right to review OIG findings on any IG disciplinary report.

Standard Policy and Procedure

Since all OIGs perform the same function, it is important all OIGs have the same published standards and procedures. Once established, each OIG can add Agency/Department policies to the standards and procedures that may reflect specific Agency/Department rules or regulations. But each OIG must be required to provide each OIG employee with the published regulations.

Currently, IG Special Agents attend the Federal Law Enforcement Training Center (FLETC) for their criminal investigations basic training and then attend the Inspector General Academy

training. By that action, IGs have consented to the fact that all Special Agents should be held to the same standards regardless of which IG office an Agent may work for. Therefore, all reports, affidavits, search warrants, arrests warrants etc., should be standardized across all OIGs. By standardizing all OIG reports, any Congressional member, US Attorney, or Agency Head could review a report from any OIG to determine its credibility and sufficiency of the support.

Additionally, OIG auditors have a "yellow book" standard applicable to all auditors regardless of Agency worked for, so standardizing audit reports would not be difficult. Having standardized policies, procedures, and reports would make it very simple for any IG investigator or auditor to provide assistance to other Agency OIGs.

More important, there should be across the board the standards for all OIG Agents regarding **firearms**. My experience with the NRC OIG has shown how the lack of published standards and procedures can lead to abuse by OIG management. During my years with the NRC OIG, there were no published policies or procedures regarding what should occur when an Agent discharges his/her firearm. What policies and procedures get instituted could be relevant to a life or death situation. At a minimum, an individual's career is at stake, not to mention someone's civil rights.

Currently, each OIG can either select to establish its own policies and procedures or adopt their respective Agency's policies and procedures. In my experience, the NRC OIG did not establish its own OIG policies. Instead, NRC OIG claimed it used the Agency's policy and procedures. In reality, my OIG management picked which NRC policies they wanted to follow and they made up the rest as they went along. The NRC OIG claimed that since they were not actually part of the Agency they did not have to follow all NRC's policies and procedures. That is only partially true since an OIG can choose to establish its own policies. However, regulations also say that absent specific OIG policies, an OIG will follow its agency's policies.

Therefore, if OIGs auditors and investigators were held to one standard, a newly established Congressional oversight entity would be able to investigate any OIG staff based on the standard policies and procedures.

IG Selection and Term Limits

When the IG Act was initially established, a 6-year term limit was set for an IG term. However, at some point Congress abolished the time limits and now IGs can be appointed for life just like the US Supreme Court justices. An unlimited term, without any checks or balances, is extremely dangerous for many reasons, including the potential for abuse of power. Most IGs are currently political appointees that have not received extensive scrutiny from Congress.

I believe that the 6-year term is important to be able to review and evaluate the effectiveness of an IG. Furthermore, I believe that a two-term appointment limitation for an IG would allow for new ideas and maintain the integrity of an OIG. Even the rotation of IGs from one

Agency/Department to another would be beneficial to the IG staff and maintain the appearance of independence.

During the July 11, 2007 Hearing, Ms. Brian, Executive Director for the Project on Government Oversight, stated that during the Reagan Administration, an IG pool was screened and maintained in order to ensure the highest caliber and most qualified persons are nominated and selected. That suggestion may provide Congress with a better forum for selecting IGs than the current practice.

With regards to pay increases, a good IG is worth his pay, but an outstanding IG is worth his pay in gold. An IG should be paid the same as Agency/Department Heads. However, Congress may want to reconsider if they want to allow IGs to "double-dip" (receiving Federal retirements from other agencies while also receiving an IG salary on a different pay scale).

IG Independence

Currently, there is great ambiguity between the independence of the IGs and the reporting requirements to the Agency/Department Heads. If Congress really wants IGs to be independent, the IG Act should clarify that independence with regards to a separate IG budget, the reporting requirements and the relationship with the Agency/Department Head.

EEO

Currently, any OIG staff who wants to report an EEO complaint must speak with their respective Agency/Department EEO counselor. However, it is possible that the EEO counselor may have been investigated by someone in OIG at some given time. The Agency EEO office reports to the Agency Head, who may use this complaint to his/her advantage over the IG. The appearance of a conflict of interest alone should cause Congress enough concern to justify establishing a separate, independent EEO office for the IG community. That independent EEO office could also be part of a newly formed Congressional oversight entity.

In my experience, the EEO complaint sat on someone's desk for almost a year without being accepted or denied. Title VII requires that an EEO complaint is accepted or denied, investigated, and a decision made within 180 days of receipt of the complaint. Was the delay in processing the EEO complaint caused by the Agency/Department being intimidated by my own OIG? One may never know!

Thank you for your attention and consideration of my comments.

Post-Hearing Questions for the Record
Submitted to the Honorable Clay Johnson III
From Senator Daniel K. Akaka

"Strengthening the Unique Role of the Nation's Inspectors General"
July 11, 2007

1. Inspectors General (IG) offices save taxpayers billions of dollars by promoting efficiency and rooting out waste, fraud, and abuse, so ensuring that IG offices are adequately funded is a wise investment of taxpayer money. That is one reason that I support giving IGs authority to submit budget requests directly to Congress. The other is to ensure that agencies cannot limit IGs' independence.

   I understand, however, that you have opposed proposals to have IGs submit budget requests directly to Congress. Please describe in detail the basis for your position.
   Answer: I oppose proposals to have IGs submit budget requests directly to Congress. In general, I believe IG budget requests should be considered in the context of an agency's overall budget. IG budgets should compete for resources just like all other components or priorities of an agency. If an IG believes that budget decisions are impinging on their ability to perform their duties fully and independently, he or she can appeal to officials within the Executive Branch or the Congress. Additionally, the Department of Justice has raised Constitutional concerns with provisions in bills that seek to give IGs authority to submit budget requests directly to Congress. For your information, attached is a recent letter from Brian A. BenczkoGski, Principal Deputy Assistant Attorney General to Members of Congress outlining these and other concerns.

2. As Ms. Hill, former IG at Department of Defense, testified, the success of Inspectors General depends to a large degree on the quality and judgment of the people entrusted with these positions.

   Do the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) play any role in identifying and vetting possible high-caliber candidates for IG nominations? If not, could the Councils play a productive role?
   Answer: Members of the PCIE and ECIE do not currently have a formal role in identifying and vetting IG candidates. However, members of the councils are often consulted informally when IG vacancies arise. I do not believe there is a gap in the skills currently held by IGs, and therefore do not think a more formal role for the PCIE or ECIE in identifying or vetting IG candidates is necessary.

   What opportunities do the PCIE and ECIE provide new IGs and their staffs for mentoring and training? Is there adequate support for new IGs?
   Answer: PCIE and ECIE members are a valuable resource for new IGs to look to for mentoring, training, and other support. I am not aware that support for new IGs is inadequate, but will continue to look to the PCIE and ECIE for ways such support can be even stronger.

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 1, 2007

The Honorable Henry A. Waxman
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 928, the "Improving Government Accountability Act." H.R. 928 is a bill to "amend the Inspector General Act of 1978 to enhance the independence of the Inspectors General, to create a Council of the Inspectors General on Integrity and Efficiency, and for other purposes." We have several constitutional and policy concerns.

I. Constitutional Concerns

For the reasons that follow, we conclude that Sections 2 and 3 of the bill raise grave constitutional concerns.

1. Removal Restrictions. H.R. 928 would amend the Inspector General Act of 1978 ("the Act") to provide that the President may remove inspectors general only "for cause," which section 2(a) of the bill defines as "permanent incapacity," "inefficiency," "neglect of duty," "malfeasance," or "conviction of a felony or conduct involving moral turpitude."

We have consistently raised separation of powers objections to legislative restrictions on the President's authority to remove Inspectors General. In 1977, when the Act was first considered, we objected to "the requirement that the President notify both Houses of Congress of the reasons for his removal of an Inspector General" as "an improper restriction on the President's exclusive power to remove Presidentially appointed executive officers." *Inspector General Legislation*, 1 Op. O.L.C. 16, 18 (1977) (citations omitted). We steadfastly have adhered to the basic separation of powers principles underlying our 1977 comments in objecting,

during both Democratic and Republican administrations, to proposed amendments to the Act that would further restrict the President's removal authority.

Because inspectors general function within the Executive branch in a manner that distinguishes them from independent agency officials and typical "inferior" executive officers whose core functions are subject to supervision by other appointees, legislative restrictions on the President's ability to remove inspectors general implicate the constitutional separation of powers concerns that have animated our concerns since 1977 and informed Supreme Court precedent on removal restrictions from the Court's 1926 decision in *Myers v. United States* through its 1988 decision in *Morrison v. Olson*.

Although the Supreme Court's articulation of the separation of powers principles relevant to the current bill has evolved in recent decades, the constitutional barrier these principles pose to legislative restrictions on the President's ability to remove inspectors general has not. Historically, the Court drew a distinction between Congress's authority to limit the President's power to remove "quasi-judicial" or "quasi-legislative officers," and Congress's inability to limit the President's power to remove a subordinate appointed officer within one of the "executive departments" in analyzing the constitutional problem with such removal restrictions. 1 Op. O.L.C. at 18 (concluding that inspectors general fall in the executive category); *compare also Humphrey's Executor v. United States*, 295 U.S. 602 (1935) (upholding removal restrictions on members of an independent agency who exercised "quasi-legislative" and "quasi-judicial" functions); *Wiener v. United States*, 357 U.S. 349 (1958) (upholding removal restrictions on members of War Claims Commission charged with "adjudicatory" functions); *with Myers v. United States*, 272 U.S. 52, (1926) (emphasizing that "there are some 'purely executive' officials who must be removable by the President at will if he is to be able to accomplish his constitutional role"); *Bowsher v. Synar*, 478 U.S. 714, 732 (1986) (holding that an officer (the Comptroller General) over whom Congress has "removal authority" "may not be entrusted with executive powers").

In its 1988 opinion in *Morrison*, the Supreme Court upheld congressional restrictions on the President's ability to remove Government officers (independent counsel) who indisputably exercised "executive" power. *Morrison*, 487 U.S. 654, 691-96-97 (1988). In so doing, the Court explained that its use of the terms "quasi-legislative" and "quasi-judicial" to describe officers whose removal Congress may restrict did not conclusively limit the class of officers constitutionally amenable to such restrictions, but was simply a shorthand for distinguishing the officers at issue in *Humphrey's Executor* and *Wiener* from "executive" officers the President must be able to remove at will. *See id.* at 689-90. However, the Court emphasized that its decision to avoid what it termed "rigid categories of officials who may or may not be removed at will by the President" was *not* designed to undermine the separation of powers principles implicated by the removal restrictions in H.R. 928. *Morrison*, 478 U.S. at 689-90. On the contrary, the Court stated that its decision to divorce the constitutional inquiry in *Morrison* from the descriptive categories in prior cases was intended to help "ensure that Congress does not interfere with the President's exercise of the 'executive power' and his constitutionally appointed

duty to 'take care that the laws be faithfully executed' under Article II." *Id.* at 690. It is this principle, and not the Court's terminology in *Morrison* or other decisions, that renders the removal restrictions in H.R. 928 constitutionally objectionable.

As we concluded in 1994, the addition of a "for cause" removal restriction to the Inspector General Act would "interfere with the President's exercise of the 'executive power' and his constitutionally appointed duty to 'take care that the laws be faithfully executed' under Article II." *Morrison*, 487 U.S. at 689-90. This is so because statutory inspectors general affect the President's ability to discharge his Article II authority in a manner that renders inspectors general constitutionally distinct from the officers (executive or otherwise) whose removal the Court has held Congress may restrict.

As noted, on a case-by-case basis, the Court has upheld legislative limits on the President's ability to remove Government officials in only two contexts: (i) in cases involving certain officials who serve in independent agencies, *see Humphrey's Executor*, 295 U.S. at 628 (FTC); *Wiener*, 357 U.S. at 356 (War Claims Commission); and (ii) in cases involving certain officials whose exercise of executive power was, in the Court's view "supervised" in all but the most trivial respects by an Executive branch officer other than the President, *see Myers*, 272 U.S. at 160-62; *Morrison*, 487 U.S. at 691. Inspectors general do not fall within either category, but instead perform functions that trigger the constitutional concerns with removal restrictions the Court has consistently recognized from *Myers* through *Morrison*.

Inspectors general are not analogous to the independent agency officials for whom the Court sustained removal restrictions in *Humphrey's Executor* and *Wiener*. In upholding congressional limits on the President's removal of FTC Commissioners in *Humphrey's Executor*, the Court emphasized that the officials at issue served "an agency of the legislative and judicial departments" and were thus "*wholly disconnected from the executive department*." *Humphrey's Executor*, 295 U.S. at 630 (emphasis added); *see also Wiener*, 357 U.S. at 352 (upholding removal restrictions on members of special War Claims Commission charged with "adjudicatory" functions). By contrast, inspectors general occupy permanent, continuing offices within Departments and agencies of the Executive branch. *See* 5 U.S.C. app. §§ 3, 9 (creating an "Office of Inspector General" within several Executive branch agencies).

The position inspectors general occupy within the Executive branch is significant because it fundamentally distinguishes them not only from the independent agency officials in *Humphrey's Executor* and *Wiener*, but also from the executive officers —independent counsel — at issue in *Morrison*. The Court in *Morrison* did not just rely on the independent agency cases in framing the constitutional inquiry in that case. *Morrison*, 487 U.S. at 691 (citing *Humphrey's Executor* and *Wiener* in stating that the "real question" is not whether independent counsel perform executive functions, but whether restrictions on their removal "impede the President's ability to perform his constitutional duty"). The Court in *Morrison* also relied heavily on the independent agency cases in concluding that removal restrictions on independent counsel were constitutional, because they applied only to "inferior" executive officers whose

"temporary," "limited" and "supervised" exercise of their primary executive (prosecutorial) power made them "analogous" to the FTC officers in *Humphrey's Executor*. *Id.* at 691-93 nn.31-32 (emphasizing that FTC officers wield "analogous" "executive" "civil enforcement powers").

The "analogy" the *Morrison* Court drew between independent counsel and independent agency officials does not extend to inspectors general. Because the parties in *Morrison* did not dispute that independent counsel were vested with some measure of "executive" power, the Court's decision to uphold legislative restrictions on their removal hinged on the Court's determination that independent counsel exercised their most important executive power in a "temporary" and "limited" way pursuant to the "supervision" of another Executive Branch officer (the Attorney General). *Morrison*, 487 U.S. at 691-92. As the Court recognized, this determination was critical to reconciling its decision with the "undoubtedly correct" determination in *Myers* that "there are some 'purely executive' officials who must be removable by the President at will if he is to be able to accomplish his constitutional role.'" *Id.* at 690 (quoting *Myers*, 272 U.S. at 132-34).

Many of the factors the *Morrison* Court relied upon in upholding removal restrictions on independent counsel— particularly the "temporary" nature of their office, their "limited jurisdiction and tenure," their lack of "ongoing responsibilities" beyond a single, externally defined investigation, and their lack of "authority to formulate policy for the Government or the Executive Branch"—simply do not apply to inspectors general. Unlike independent counsel, inspectors general occupy permanent offices within the Executive branch and enjoy wide-ranging jurisdiction to review, investigate, and report to Congress on practically every aspect of an agency's "programs and operations." 5 U.S.C. app. 3, §§ 4, 6-7. The 1978 Act gives them the power to define the scope and duration of their own investigations, *see id.* § 3(a), as well as the power to "recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by [their agencies] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, [agency] programs and operations." *Id.* § 4. In addition, H.R. 928 would give individual occupants of each office of inspector general a seven-year term (a term nearly double that enjoyed by, for example, United States Attorneys, *see* 28 U.S.C. § 541(b)), and would expand the many "ongoing responsibilities" of each officer to include membership on a council, *see* H.R. 928 §§ 4, 11, that would "formulate policy" not just for individual departments, but "for . . . the Executive Branch." *Morrison*, 487 U.S. at 671-72. For these reasons alone, the *Morrison* Court's rationale for upholding legislative removal restrictions on independent counsel does not apply to inspectors general.

H.R. 928's removal restrictions raise grave separation of powers concerns because inspectors general do *not* exhibit the characteristics that the Supreme Court has consistently relied upon in upholding such restrictions as constitutionally permissible with respect to certain types of officers. The reason removal restrictions on typical "inferior" executive officers do not jeopardize the political accountability required by the Appointments Clause or infringe the

President's Article II authority is that the core aspects of such officers' work is "directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate," *i.e.*, "directed and supervised by" individuals who are politically accountable to the President. *Edmond v. United States*, 520 U.S. 651, 663 (1997) (citing *United States v. Perkins*, 116 U.S. 483 (1886)); *see also Morrison*, 487 U.S. at 661 n.4, 671, 691-92 n.31, 696 (describing independent counsel as "inferior" to the Attorney General on the basis that the existence and scope of their prosecutorial (executive) power was subject to his "authority," "supervision" and "control"). Because the most important work inspectors general perform as Executive branch officers — the conduct of investigations — is not supervised by an agency head or other individual subordinate to the President, the only political accountability within the Executive branch for an inspector general's handling of investigations comes in the form of Presidential supervision.

Removal is the ultimate form of presidential supervision because it provides the President with the means to control subordinate officers who do not obey directives that the President issues "in order to secure that unitary and uniform execution of the laws" necessary to the discharge of his obligations under Article II. *Myers*, 272 U.S. at 135. The removal restrictions in the current bill threaten the President's ability to perform this constitutional duty. By limiting the President's ability to remove inspectors general except "for cause" as defined in the bill, H.R. 928 would limit the President's ability to remove inspectors general whose investigations could impede the President's discharge of his constitutional functions in any number of ways, including by hampering Executive branch agencies with inquiries the President does not deem necessary or consistent with the "unitary and uniform execution of the laws," or by conducting investigations in a manner that did not comport with Presidential directives and priorities relating to matters ranging from the disclosure of sensitive information to the President's own judgments about when, and how, subordinate executive officers should address allegations of wrongdoing within the Executive branch.

It is no answer to argue that the foregoing restrictions on the President's ability to remove inspectors general are necessary to avoid a conflict between the President's political interests and his obligations as Chief Executive. The Constitution does not contemplate or allow a legislative solution to such a "conflict," which is not a problem for Congress to fix, but rather a consequence of the Constitution's deliberate vesting of all executive power in an elected President. Put another way, the responsibility to "take Care that the Laws be faithfully executed" — which Article II vests solely in the President — *includes* the responsibility for controlling how Executive branch officers investigate and respond to allegations of wrongdoing within the Executive branch. Inspectors general assist the President in discharging this important function with respect to individual agencies, and already have the independence necessary to perform this function — independence from supervision by the agency head in the conduct of their investigations — under the 1978 Act. H.R. 928's attempt to extend this "independence" to include independence from presidential supervision does not enhance the function of inspectors general within the Executive branch; it renders it constitutionally suspect. As the founders and the Supreme Court recognized, the President's right to exercise his Article II authority is

infringed, and the Executive's "unity may be destroyed," by subjecting the exercise of this authority to "the control and cooperation of others." The Federalist No. 70, at 424 (A. Hamilton) (Clinton Rossiter ed., 1961) *see also Myers*, 272 U.S. at 117.

Because the removal restrictions in H.R. 928 threaten the President's Article II authority to "take Care that the Laws are faithfully executed" by impairing his ability to supervise Executive branch officers (IGs) in conducting investigations that may implicate issues and information over which the President has constitutional authority, and that are not subject to supervision by other Executive branch officers, section 2 raises grave constitutional concerns under settled separation of powers doctrine.

2. Budget Requests. Section 3 of the bill would authorize inspectors general to submit budget requests directly to Congress (in addition to submitting them to the Office of Management and Budget and the relevant agency head). The bill then complements this authorization with a provision requiring the President to include each inspector general's request as a separate line item in the President's annual budget request. There is no question that an Executive branch budget request qualifies as a legislative recommendation to Congress. It is a "measure" that the Executive branch asks Congress to consider and adopt in an appropriations bill.

The Constitution provides that the President shall "recommend to [Congress's] consideration such Measures as he shall judge necessary and expedient." U.S. Const., art. II, § 3. We long have objected to legislation that purports to direct the President or his subordinates to submit legislative recommendations, including budget requests, to Congress because such legislation infringes upon the President's exclusive authority under Article II to decide whether, and when, to make such recommendations. Moreover, the Department's Office of Legal Counsel specifically has opined that "to permit Congress to authorize or require an Executive Branch officer to submit budget information . . . directly to Congress, prior to [its] being reviewed and cleared by the President or another appropriate reviewing official, would constitute precisely the kind of interference in the affairs of one Branch by a coordinate Branch which the separation of powers is intended to prevent." *Authority of the Special Counsel of the Merit Systems Protection Board to Litigate and Submit Legislation to Congress*, 8 Op. O.L.C. 30, 36 (1984); *see also Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. O.L.C. 632, 639-41 (1982). By authorizing inspectors general to circumvent the President's control over his budget requests, and by purporting to require the President to make budget recommendations whether or not he agrees with them, section 3 of the bill violates the Recommendations Clause and the constitutional separation of powers.

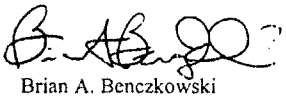
II. Policy Concerns

While we are unfamiliar with the bases leading to the perceived need for these proposals (beyond news reports regarding concern that certain inspectors general are viewed as being too close to their respective parent agency's management), we note that the bill may affect sensitive

information protected witnesses that is maintained in the files of the Department's Federal Witness Security Program. In particular, it is critical that disclosure protections regarding this program apply to the Department of Justice's inspector general's internal investigative procedures and release of information, since the inspector general's maintenance or disclosure of information related to this program — if specifics are not subject to redaction by Witness Security Program officials — could endanger the program's means and methods, personnel, and the continued safety of the program's protected witnesses. We also note that the bill does not contain protections to ensure that subsection 5(c) of the bill would not be used to subpoena highly sensitive information in its entirety if redacted documents would achieve the inspector general's investigative or audit mission without increasing the risk to witnesses. Information relating to involvement in the Federal Witness Security Program generally is protected under current law, and the exercise of additional inspector general authorities should not defeat that statutory goal.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Brian A. Benczkowski
Principal Deputy Assistant Attorney General

cc: The Honorable Thomas M. Davis III
Ranking Minority Member

The Honorable Edolphus Towns
Chairman
Subcommittee on Government Management, Organization, and Procurement

The Honorable Brian Bilbray
Ranking Minority Member
Subcommittee on Government Management, Organization, and Procurement

Answers to Post-Hearing Questions for the Record
Submitted to the Honorable Glenn A. Fine
From Senator Daniel K. Akaka
on
"Strengthening the Unique Role of the Nation's Inspectors General"
Hearing held on July 11, 2007

1. Your written testimony states that the Inspector General (IG) community has struggled to maintain training because of the lack of dedicated funding. Is training for IGs and their staffs adequate? If not, would funding for training directed to individual IG Offices or to the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), or a future statutorily-recognized council, be preferable?

Answer: I believe that training for Office of the Inspector General (OIG) staff is adequate but could be improved. Each OIG has to fund training from its own limited budget, and the OIG community has struggled over the years to maintain joint audit, criminal investigator, and leadership training academies that can provide quality training throughout the OIG community. I believe that direct funding for these OIG training academies, through statutorily created PCIE and ECIE councils, would help ensure that dedicated, quality training is available for all OIGs.

2. Your written testimony states that you believe that there should be more effort placed on developing and promoting IG candidates from within IG Offices. Describe in detail what you believe could be done to develop and promote IG candidates within IG offices.

Answer: I believe that this could be accomplished in several ways. First, the PCIE and ECIE could create and maintain lists of qualified candidates from senior members of OIG offices who are interested in being considered for IG vacancies. I also believe that the leaders of the PCIE and ECIE should be consulted, whenever there is an IG vacancy, for recommendations on appropriate candidates to be considered. A joint PCIE/ECIE leadership development academy, as part of the community-wide training academies discussed in response to the previous question, could pursue as one of its missions training for potential IG candidates to prepare them to become an IG. Finally, I believe that Congress should encourage the Administration to give strong consideration to qualified candidates from within the OIG community for vacant IG positions.

3. The Department of Justice has federal employees covered by whistleblower provisions outside of the Whistleblower Protection Act, such as the separate protections for FBI employees.

   What action is taken to ensure that whistleblower investigations at DOJ, regardless of the law providing whistleblower protections, follow the same standards?

Answer: FBI employees, while not covered by the Whistleblower Protection Act, are covered by separate regulations that protect them from retaliation for whistleblower disclosures. See 28 C.F.R. Part 27. These regulations are similar but not identical to the requirements under the Whistleblower Protection Act. Under these regulations, the OIG and the Department of Justice Office of Professional Responsibility share jurisdiction to investigate allegations of retaliation against whistleblowers. We take seriously our responsibilities under these regulations, and the OIG views an allegation of retaliation as a serious matter. Moreover, even in cases where the FBI employee does not qualify for whistleblower protection under the regulations, the OIG can investigate any allegations of reprisal. For example, in a matter involving Sibel Edmonds, an FBI contract linguist who did not qualify for whistleblower protection under the regulations because she was not a permanent FBI employee, the OIG conducted an investigation and concluded that her allegations of misconduct were at least a contributing factor in why the FBI terminated her services. The OIG also concluded that by terminating her under these circumstances, the FBI's actions could have the effect of discouraging others from raising similar concerns. We also have investigated other cases involving alleged retaliation that did not involve protected disclosures under the FBI whistleblower regulations, including allegations of retaliation raised by John Roberts, a former Unit Chief in the FBI's Office of Professional Responsibility.

For a detailed description of the standards and processes the OIG applies when investigating allegations of retaliation against FBI Whistleblowers, see my testimony before the House Committee on Government Reform Subcommittee on National Security, Emerging Threats, and International Relations on February 16, 2006, entitled, "The Office of the Inspector General's Role in Investigating Whistleblower Complaints in the Federal Bureau of Investigation," available on the OIG's website at http://www.usdoj.gov/oig/testimony/0602/index.htm.

4. Inspectors General are part of a large network of resources – including IGs, whistleblowers, and the Office of Special Counsel – aimed at eliminating waste, fraud, and abuse in the federal government.

   What role do you believe IGs play in protecting federal employees from retaliation for blowing the whistle? What authority do you have to prevent or deter retaliation, especially if the whistleblower disclosed wrongdoing to the IG?

Answer: As noted in the previous answer, the Department of Justice OIG takes its obligations regarding whistleblowers seriously. We believe whistleblowers can provide important information exposing waste, fraud, and abuse in government, and that retaliation against a whistleblower is a serious offense. We therefore expend significant resources to investigate such allegations. It is especially egregious if the whistleblower is retaliated against for disclosing wrongdoing to the OIG or for cooperating with an OIG investigation, and we investigate these matters aggressively when credible allegations are brought to our attention.

Post-Hearing Questions for the Record
Submitted to the Honorable Earl E. Devaney
From Senator Daniel K. Akaka

"Strengthening the Unique Role of the Nation's Inspectors General"
July 11, 2007

Question: Inspectors General are part of a large network of resources – including IGs, whistleblowers, and the Office of Special Counsel – aimed at eliminating waste, fraud, and abuse in the federal government.

What role do you believe IGs play in protecting federal employees from retaliation for blowing the whistle? What authority do you have to prevent or deter retaliation, especially if the whistleblower disclosed wrongdoing to the IG?

Answer: I believe that Inspectors General play an essential role in protecting federal employees from retaliation for blowing the whistle.

In my office, for example, I designated a full-time employee to serve as Associate Inspector General for Whistleblower Protection. This individual serves as a single point of contact in the Office of Inspector General (OIG) for potential whistleblowers and other employees to bring their complaints, concerns and allegations of retaliation, or anticipated retaliation. The Associate IG for Whistleblower Protection spends a considerable amount of time weeding through these contacts, many of which do not rise to the level of retaliation for whistleblowing, but advance legitimate concerns, nonetheless.

Although rare, there have been instances in which potential whistleblowers provided credible evidence of anticipated retaliation. In these instances, I have personally intervened on the employees' behalf with their senior management to prevent retaliation. Other instances in which it appeared that retaliation had, in fact, occurred in response to a protected disclosure, the Associate IG for Whistleblower Protection has worked closely with employees to understand their rights and, if appropriate, refers them to the Office of Special Counsel. In limited instances of high visibility or controversy, I will proactively advise the Secretary or other senior officials that the OIG views certain disclosures as protected, and suggest that we will carefully watch management's actions in response.

Post-Hearing Questions for the Record
Submitted to the Honorable Eleanor J. Hill
From Senator Daniel K. Akaka

"Strengthening the Unique Role of the Nation's Inspectors General"
July 11, 2007

1. *The Department of Defense (DoD) has federal employees covered by whistleblower provisions outside of the Whistleblower Protection Act (WPA), such as the Military Whistleblower Protection Act and the Intelligence Community WPA. What action is taken to ensure that whistleblower investigations at DoD, regardless of the law providing whistleblower protections, follow the same standards?*

Since I left the position of DoD Inspector General in 1999, I cannot identify what actions are currently taken by the Office of Inspector General (OIG) with regard to DoD whistleblower investigations. During my tenure as DoD IG, however, there were several factors that helped insure that whistleblower investigations, whether relating to military or contractor personnel, met appropriate investigative standards. DoD IG investigators, like those in other IG offices, followed the Quality Standards for Investigations issued by the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), and endorsed by all statutory IGs. DoD OIG investigators were also trained in professional investigative procedures. Although whistleblower complaints were initially received by the DoD OIG, either via the DoD OIG Hotline or by referral from other DoD components, some of those complaints were referred for investigation to other DoD components, such as the Military IGs. To insure that appropriate investigative standards were met in such cases, a DoD IG Guide to Military Reprisal Investigations was issued to the investigative offices handlings those reprisal cases. In such cases, DoD OIG personnel would also oversee and review the reprisal investigation to insure that the investigation was conducted appropriately.

2. *The Military Whistleblower Protection Act, 10 U.S.C. 1034, requires the DoD Inspector General (IG) to review and approve reports and investigations of component IGs in whistleblower cases. How often did you reject or reopen a case, and under what circumstances would you do so?*

Since I left the position of DoD Inspector General in 1999, I no longer have access to the OIG internal files and records that would identify the numbers of component IG whistleblower cases that were rejected or reopened by the DoD OIG, and the reasons for such action, during my tenure as the IG (1995-1999). Although I do not currently have precise numbers and factual detail on whistleblower cases that were rejected or reopened during those years, I do recall that DoD OIG personnel were in contact with the component IGs handling such cases, monitored the course of those investigations, and reviewed the investigative results and reports. In cases where an adequate investigation was not conducted, the component IG would be required to conduct

additional investigation or DoD OIG personnel would themselves conduct additional investigation.

3. *Inspectors general are part of a large network of resources - including IGs, whistleblowers, and the Office of Special Counsel - aimed at eliminating waste, fraud, and abuse in the federal government. What role do you believe IGs play in protecting federal employees from retaliation for blowing the whistle? What authority do IGs have to prevent or deter retaliation, especially if the whistleblower disclosed wrongdoing to the IG?*

Whistleblower protection is a key part of IG efforts to combat waste, fraud, and abuse in government programs and operations. Whistleblowers can and do provide the kind of information that is so critical to IG investigative efforts. Under the IG Act, IGs are well equipped to protect whistleblowers who provide such information: IGs are authorized to protect the confidentiality of employees who make complaints and reprisals against such employees are clearly prohibited. During my tenure at the Department of Defense, the IG was also involved in investigating reprisals against four specific categories of statutorily-protected whistleblowers: members of the Armed Forces; DoD employees of nonappropriated fund instrumentalities; employees of defense contractors; and employees of the Intelligence Community. Within the Department of Defense, the OIG Hotline provided whistleblowers with a safe and authorized method for reporting allegations of fraud, abuse, inefficiency, and reprisal. I recall that, during my tenure, the Hotline received whistleblower complaints numbering in the hundreds during an average year.

Post-Hearing Questions for the Record
Submitted to Danielle Brian
From Senator Daniel K. Akaka

"Strengthening the Unique Role of the Nation's Inspectors General"
July 11, 2007

1. As you know, some federal agency Inspector General offices, like the Department of Defense, have dedicated staff addressing employee whistleblower issues.

   Do you believe that other IG offices should have similar dedicated staff to address whistleblower retaliation claims?

Answer:

This question gets to one of the important issues we at POGO are currently investigating: How to best establish accountability within the Inspectors General offices. While having a person specifically responsible for working with IG whistleblowers is something worth looking into, it won't completely solve the problem in those cases where whistleblowers are raising concerns about the IG him- or herself. While the IG Act specifies that such concerns be raised with the PCIE, experience has shown that the PCIE does not have the authority to enforce its findings of wrongdoing.

We are respectfully requesting that you allow us more time for thoughtful inquiry as we continue our investigation into the Inspector General system, through which we intend to identify recommendations that will address your question.

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