OVERSIGHT OF INVESTIGATIVE PRACTICES OF INSPECTORS GENERAL

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

JUNE 24, 1997

Serial No. 105–71

Printed for the use of the Committee on Government Reform and Oversight

U.S. GOVERNMENT PRINTING OFFICE

45–951 CC WASHINGTON : 1998

For sale by the Superintendent of Documents, U.S. Government Printing Office
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OVERSIGHT OF INVESTIGATIVE PRACTICES OF INSPECTORS GENERAL

TUESDAY, JUNE 24, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Davis of Virginia, Sununu, Maloney, and Davis of Illinois.

Staff present: J. Russell George, staff director and chief counsel; Mark Uncapher, counsel; John Hynes, professional staff member; Andrea Miller, clerk; and Mark Stephenson, minority professional staff member.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

Inspectors General serve to protect the integrity of Federal programs and resources. Through their audits and investigations, Inspectors General seek to determine whether program officers, contractors, Federal workers, grantees, and others are conforming with regulations and laws.

The Offices of Inspectors General were established by the Inspector General Act of 1978. To carry out their responsibilities, the Offices of Inspectors General have broad investigative authority. They have access to documents relating to programs and operations within their area of responsibility. They have the ability to administer oaths, affirmations, or affidavits and the power of subpoena.

Recently, questions have been raised about investigative techniques used by some Inspectors General. These concerns will be presented here today by Representative Hamilton, a very distinguished colleague, who is scheduled to testify on the first panel. We are fortunate to be joined by a talented group of witnesses who can help us examine the concerns and evaluate proposed changes. We will discuss standard investigative practices by Inspectors General, including types of investigations, cooperation with other law enforcement bodies, and arrest authority. We are particularly interested in communications with witnesses and witness access to counsel.

As we engage in this discussion, it is worth observing that next year will mark the 20th anniversary of the Inspector General Act. We should seize this opportunity to broadly assess the act and re-

assess it. Our focus today must be the investigations and law enforcement role of Inspectors General, but we also would be wise to step back and view the larger picture: How well is the Inspector General Act working? What strengths and weaknesses have been revealed during the past 19 years? What improvements could be made?

We will hear from two panels today. First, Representatives Lee Hamilton of Indiana and Porter Goss of Florida will discuss their thoughts and actions on this issue.

Second, we will hear from four Inspectors General, as well as the Assistant Director of the Criminal Investigative Division of the FBI. Jacquelyn Williams-Bridgers is Inspector General of the Department of State; Eleanor Hill is Inspector General, Department of Defense, and chair of the legislation committee of the President's Council on Integrity and Efficiency; Michael Bromwich, who is Inspector General, Department of Justice; Patrick McFarland, who is Inspector General, Office of Personnel Management and chair of the Investigations Committee of the President's Council on Integrity and Efficiency; Mr. Robert M. Bryant, Assistant Director of the Federal Bureau of Investigation, Criminal Investigative Division, and chair of the Integrity Committee on the President's Council on Integrity and Efficiency. We welcome all of our witnesses.

We are delighted to see two of the most respected Members of the House before us. I believe we will start with Mr. Hamilton of Indiana.

[The prepared statements of Hon. Stephen Horn and Hon. Danny K. Davis follow:]

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"Oversight of Investigative Practices of Inspectors General"

June 24, 1997

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)

Chairman, Subcommittee on Government Management,
Information, and Technology

Inspectors General serve to protect the integrity of Federal programs and resources. Through their audits and investigations, Inspectors General seek to determine whether program officers, contractors, Federal workers, grantees, and others are conforming with regulations and laws.

The Offices of Inspectors General were established by the Inspector General Act of 1978. To carry out their responsibilities, the Offices of Inspectors General have broad investigative authority. They have access to documents relating to programs and operations within their area of responsibility. They have the ability to administer oaths, affirmations or affidavits and the power of subpoena.

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As we engage in this discussion, it is worth observing that next year will mark the 20th anniversary of the Inspector General Act. We should seize this opportunity to broadly reassess the Act. Our focus today must be the investigations and law enforcement role of Inspectors General, but we also would be wise to step back and view the big picture. How well is the Inspector General Act working? What strengths and weaknesses have been revealed during the past 19 years? What improvements could be made?

We will hear from two panels today. First, **Representatives Lee Hamilton** of Indiana and **Porter Goss** of Florida will discuss their thoughts and actions on this issue.

Second, we will hear from four Inspectors General as well as the Assistant Director, Criminal Investigative Division of the FBI. **Jacquelyn Williams-Bridgers**, is Inspector General, Department of State; **Eleanor Hill** is Inspector General, Department of Defense, and Chair, President's Council on Integrity and Efficiency Legislation Committee; **Michael Bromwich** is Inspector General, Department of Justice; **Patrick McFarland** is Inspector General, Office of Personnel Management, and Chair, President's Council on Integrity and Efficiency Investigations Committee; **Mr. Robert M. Bryant** is Assistant Director, Federal Bureau of Investigations, Criminal Investigative Division, and Chair, President's Council on Integrity and Efficiency Integrity Committee.

BACKGROUND INFORMATION FOR HEARING:

"Oversight of Investigative Practices of Inspectors General"

June 24, 1997

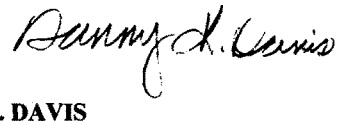
The Offices of Inspectors General were established by the Inspector General Act of 1978. There are currently 59 departments and agencies with Inspectors General. Of those, 28 are appointed by the President and subject to Senate confirmation; 31 are picked by the agency head. The presidentially appointed Inspectors General have staffs totaling about 10,000 employees, with annual budgets totaling $900 million.

What do the Inspectors General accomplish? In fiscal year 1995, the most recent year for which information is available, Inspectors General:

- conducted investigations and audits that led to $1.5 billion in fines and reimbursements from individuals and companies who had defrauded the Government;
- made recommendations that led agency managers to cancel or seek reimbursements of $2.3 billion from contractors or grantees in 1995;
- made recommendations that inspired Federal managers to improve plans for spending $10.4 billion;
- carried out investigations leading to 14,122 successful prosecutions, 2,405 personnel actions, and 4,234 suspensions and debarments of persons or firms doing business with the Government.

The activities of the Offices of Inspectors General are coordinated by two councils: the President's Council on Integrity and Efficiency for presidentially appointed Inspectors General and the Executive Council on Integrity and Efficiency for Inspectors General appointed by agency heads. Both councils are chaired by the Deputy Director of the Office of Management and Budget and have several committees that focus on specific aspects of Inspectors General work. For example, an Investigations Committee develops quality standards for investigations and assists in communications among Inspectors General investigators.

The Integrity Committee of the President's Council on Integrity and Efficiency provides a forum for allegations of wrongdoing against an Inspector General or senior Inspector General officials. The Associate FBI Director for Investigations generally chairs the committee.

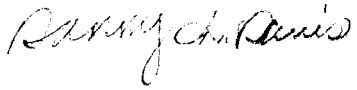


STATEMENT OF DANNY K. DAVIS
"The Government Reform and Oversight Subcommittee on Government Management Information, and Technology"
June 24, 1997

Thank you Mr. Chairman and Madam ranking member for convening this hearing regarding the investigative procedures of Federal Inspectors General. I would also like to acknowledge the distinguished panels of witnesses for coming here today and sharing with us their expertise and knowledge.

The Inspectors General (IGs) protects the integrity of the Federal programs and resources. Through their audits and investigations, the Offices of Inspectors General (OIGs) seek to determine whether program offices, contractors, Federal workers, grantees, and others are conforming with regulations and laws. The Congress enacted the Inspector General Act of 1978, to ensure access to high level officials; and to ensure coordination and independence in conducting investigations. There are currently 59 Inspectors General (IG); 28 are presidentially appointed and subject to Senate confirmation and another 31 are appointed by their agency heads.

In FY 1995, Inspector General investigations and audits led to $1.5 billion dollars in "recoveries" (fines and reimbursements from individuals and companies that defrauded the Government). This investigative work resulted in 14,122 prosecutions of wrongdoers and 4234 debarments, exclusions, and suspensions of firms doing business with the government. In addition, IG recommendations led agency managers to cancel or seek reimbursements of $2.3 billion from contractors or grantees in



1995. Unquestionably, Mr. Chairman the IG has served a significant role in our government.

I support the IG and its ability to investigate government fraud and uncover abuse. However, I also support the notions of fundamental fairness and fair play when conducting investigations. The notions of fundamental fairness and due process are cornerstones of our great democracy. Mr. Chairman, in short fundamental fairness and fair play are nothing more than justice.

Mr. Chairman, recently Rep. Lee Hamilton introduced an amendment that would have required the IG at the Department of State to provide adequate notice to individuals who are targets of criminal investigations; and to provide information to employees on their rights to counsel in context of an investigation and provide guidelines on The IG policies and procedures with respect to such investigations. As you may know, the amendment was deleted on the House floor by an amendment offered by Rep. Goss which passed 214-211. I support fundamental fairness and due process. The notice requirements seem to afford an opportunity for fundamental fairness and justice.

Perhaps Robert F. Kennedy said it best in 1964, when he said "justice delayed is democracy denied." Therefore, Mr. Chairman I look forward to hearing theses distinguished witnesses and their testimony regarding the investigative practices of Inspectors General. Finally, I am confident that we will be able to reach a consensus on fundamental fairness without disturbing the integrity of the IGs office or impeding their investigative ability.

Again, thank you Mr. Chairman and madam ranking member for this opportunity.

STATEMENT OF HON. LEE H. HAMILTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. HAMILTON. Thank you very much, Mr. Chairman.

I appreciate your extending an invitation to me to testify, and I want to say at the outset how pleased I am here to be with my friend and colleague, Congressman Goss. He and I tilted different ways on an amendment before the House the other day, but I think we basically approach this problem in the same manner, and recognize the difficulties of it.

I am very pleased that your subcommittee has chosen to focus on this issue at this time. We had an amendment on the floor. I think it is not necessary for me to go into the details of that amendment, unless you invite me to do so. But let me talk more generally about the problem.

I appreciate that there are different and expedient equities involved in balancing the effective and thorough investigative ability of the Inspectors General with fair process for individual employees who are the subject of these investigations. I think we can find that balance, but I don't think we have it right now, at least not with respect to the Office of the Inspector General at the Department of State.

I can speak here to what I understand of the investigative practices and operations of the Office of the Inspector General and the Department of State. I understand that the objective of your hearing is broader and you may want to look at the similarities that may exist or not exist with the Inspector General community across Washington; what problems, if any, may be specific or particularly acute in particular offices.

We are dealing, of course, with a State Department authorization legislation. So my amendment was confined to the Department of State. I am aware of many complaints about the investigative conduct of that office. These complaints come from political appointees of both parties, as well as from career Foreign Service officers and civil service employees.

It is not my intention to limit the IGs' investigative authority. My provision was intended to provide individuals basic information in a timely manner, notice of basic rights, identification of who will be present at a formal interview, and an opportunity to talk to counsel. Without going into specific cases, and certainly not using names, let me just summarize a couple of these cases.

In one case that has come to my attention, the Inspector General's office, again at the State Department, carried out a hurried investigation of the individual's actions, reached conclusions about the need for disciplinary action, referred the matter to the Department of Justice, and released its report to the press.

At each step along the way, the individual under investigation was provided inadequate notice and opportunity to review and/or to respond to the serious allegations against that person. None of the allegations against that person were substantiated by the independent counsel's review.

In another case, again summarizing and not using any names, we had an individual who is placed under investigation and called to an interview as a target, without receiving advanced notice and where the prosecutor, rather than the IG, conducted the interview.

That prosecutor also confirmed to the newspaper most sensitive to the individual in his position at the time that the individual was under criminal investigation. The spokesperson for the Inspector General seconded that confirmation, despite policy guidance that the Office of the Inspector General did not comment in any way on pending investigations.

In another case involving a Foreign Service employee, the IG had the individual under investigation, a physician, called to a medical review board as a pretext to elicit information and later used against him the statements he made before the board. The IG's office also devoted extensive staff and financial resources to overseas travel in the course of that investigation. In the end, the case was settled administratively with a de minimis financial penalty imposed on the individual.

The pattern has been similar in other cases. For example, individuals will appear voluntarily for an interview with the IG staff, having no indication that there is an investigation of a criminal nature against them pending. They enter the room to find a criminal prosecutor from the Justice Department who will conduct the interview or, in several cases involving career officers, Virginia Department of Taxation Criminal Division representatives. They generally do not arrive for the scheduled interview with an attorney or even a union representative.

There are several other cases which have been called to my attention, cases involving career officers and selective prosecution, varying methods of dealing with press requests and other aspects of the operation of the IG office at the State Department that have a dramatic effect on the lives of individuals under investigation. Several of them have been forced to incur thousands of dollars in legal bills just to clear their names.

Criminal investigations and prosecutions involve a balance between the basic fair process for individuals under investigation and sufficient authority to investigate and prosecute criminal actions. Inspectors General are in a gray zone. They appear to view themselves as identical to Federal law enforcement agencies, but they are not prosecutors. They are not statutory law enforcement, although incrementally, through executive branch agreements and other means, they have gained broad investigative authority in recent years. So finding the appropriate balance in the IG context is a delicate task.

Most State Department employees do not anticipate a criminal interview with prosecutors when they are asked to attend an IG meeting because they may come in contact with IG employees on a variety of administrative matters. In fact, over 80 percent of the State Department IG office is dedicated to noncriminal matters: Audits, administrative investigations, and Embassy inspections.

Upon finding himself in an unanticipated criminal investigation, the employee may realize that he may insist that the interview be halted until he has an attorney present. In practice, individuals, and I think this is understandable, are often too intimidated at that point in the process to recall and/or to exercise their right to counsel, particularly when they are not specifically informed that such a right exists. They can reasonably think that if they do not cooperate, it could jeopardize their careers.

So I see a problem when the State Department Inspector General sees her agents as equal in all respects to FBI agents in requirements for notice and other aspects carrying out interviews. It seems to me that if the prosecutor or police officer calls an individual for an interview, the average person should be alerted to bring his attorney. That is simply not the case with the IG. The average employee called to the IG's office is not likely to bring counsel. Certainly if he is not informed of what is happening.

In effect, the IG office gives cover to prosecutors on some occasions to expand on their normal investigative activities and authorities by allowing them to confront suspects without warning. I understand that the same IG seems to object to what she views as undue restrictions on her powers. I read her correspondence, as well as letters from other agencies' Inspectors General. These letters describe my position as attempting to grant special rights to the State Department employees, setting a dangerous precedent, severely undermining the authority of the Inspectors General to carry out responsibilities.

These are very strong words. I think these words seriously mischaracterize my intent and the impact of the provision I have proposed. I am not trying to restrict anybody's investigation, and I do not understand how giving individuals basic protections in the process should impede investigations. All we are asking is fair process, a process that reflects the ordinary components of due process.

My experience in leading investigations, the product of an investigation will be seen as credible and enduring only when the process that leads to it can be perceived as fair by all of the parties involved.

Let me conclude.

With respect to the Office of Inspector General at the Department of State, during the entire investigation, the IG gathers evidence for prosecution and receives guidance from prosecutors of what evidence to gather and how to structure the investigation. I do not seek to halt that practice.

The IG conducts undercover investigations with the Justice Department. I am not trying to stop this kind of cooperative investigation within the guidelines that govern undercover investigations. Certain investigations and interviews involve national security matters for which the law already provides greater investigative freedoms. I do not intend to limit the U.S. Government's ability to properly carry on intelligence investigations.

I am very pleased that you are turning your attention to this issue. An individual who is the target of an IG criminal investigation should receive notice of what is happening before he or she walks into an interview where a prosecutor could be interrogating him or her. The individual should have that kind of basic information.

The information pamphlet developed several years ago by the IG's office is inadequate in content and in availability. It does not inform the employee of his or her rights, and it is not available in a timely manner. It needs significant updating and far better and more regular distribution to State, USIA, and ACDA employees.

The press operations and policy of the State IG need a much closer look. I would hope that requiring a one-time report to Congress would be one way of ensuring such an internal review of policy guidance and practice.

Thank you very much.

Mr. HORN. We thank you.

[The prepared statement of Hon. Lee H. Hamilton follows:]

Statement of Lee H. Hamilton
Ranking Democrat on the House International Relations Committee
before the House Government Reform Committee
Subcommittee on Government Management, Information, and Technology

Chairman Horn, Congresswoman Maloney and Members of the Subcommittee, I appreciate your extending an invitation to me to testify on the subject of Oversight of Investigative Practices of the Inspectors General.

I am pleased that your subcommittee had chosen to focus on this issue at this time. As you know, the subject of the oversight practices of the State Department Office of the Inspector General (OIG) received considerable attention in the Committee on International Relations and on the House floor as we debated the authorization bill for the Department of State and Related Agencies.

In markup, the Committee adopted an amendment I offered that placed certain notice and report requirements on the Inspector General for the State Department, which also has responsibility for USIA and ACDA.

Three elements to the Hamilton provision

(1) In the case of a formal interview where the employee is a likely subject or target of an IG criminal investigation, it required the Inspector General to make all best efforts to provide adequate notice to individuals under investigation about the full range of their rights, including the right to counsel, as well as the identification of those attending the interview.

(2) It required the IG to provide information to employees about their rights during investigations and on the IG policies and procedures with respect to investigations.

(3) Finally, it required the IG to submit to Congress a one-time report on its internal press guidance with respect to public disclosure of any information related to an ongoing investigation of any employee.

That provision was stripped from the House bill -- on a very close, and may I say somewhat irregular, vote -- by an amendment offered by Congressman Goss. The bulk of the provision is also in the Senate counterpart authorization bill, so it is an issue that we will be addressing in conference.

I seek to address the investigative practices and operations of the Office of the Inspector General at the Department of State.

There are different and competing equities involved in balancing the effective and thorough investigative ability of the Inspectors General with fair process for individual employees who are the subject of these investigations. We can find that balance. But we don't have it right now -- at least not with respect to the Office of the Inspector General at the Department of State.

I can speak here to what I understand of the investigative practice and operations of the Office of the Inspector General at the Department of State. The objective of this hearing may be to see what similarities exist and might be addressed across the Inspector General community, and what problems, if any, may be specific to or particularly acute in certain offices.

I offered the IG amendment at the International Relations Committee markup to address my concerns that the Inspector General at the State Department was not sufficiently attentive to the due process rights of individuals under investigation.

I am aware of numerous complaints about the investigative conduct of that office. These complaints come from political appointees of both parties, as well as from career foreign service officers and civil service employees. I do not want to limit the IG's investigative authority. My provision was intended to provide individuals basic information in a timely manner: notice of basic rights, identification of who will be present at a formal interview, an opportunity to talk to counsel.

Without using individuals' names, I can describe the specific problems or situations a few individuals encountered.

(1) In the early part of the first Clinton administration, a Republican appointee was caught up in an IG investigation involving a search of the President's passport records.

-- The Independent Counsel, appointed pursuant to the IG's findings and referral to the Department of Justice for criminal proceedings, cleared the individual entirely in his report. The report strongly criticized the work of the Inspector General, stating "the Inspector General's recommendations generally proceeded from a woefully inadequate understanding of the facts and a blithely naive view of the job responsibilities at the State Department."

-- The IG had recommended that the individual be subject to "appropriate disciplinary action" for "serious lapses in judgment" that "helped to politicize" an otherwise "non-partisan administrative process."

- This IG recommendation, which carried a conclusion that the individual had probably violated the Hatch Act, was reached because the individual, in his capacity as Assistant Secretary of State for Legislative Affairs, a position in which he was obligated to respond to Congressional requests for information, had helped a Member of Congress to redraft a letter seeking information so that the letter would comply with the Privacy Act.

-- The Independent Counsel rejected the conclusion of the Inspector General with respect to the individual's conduct, and stated that "disciplinary actions based on this conduct were inappropriate."

-- The Independent Counsel further stated that he doubted "the accuracy of the

suggestion by the Inspector General that [the individual] was misleading in his responses to agents."

- The Independent Counsel reports describes two parallel requests regarding the same issue that were handled simultaneously by the Consular Affairs bureau. The report states that in questioning the individual, the IG agents confused the requests, leading to confused responses from the individuals being questioned.

-- The report by the Independent Counsel was issued two years after the Inspector General's findings, recommendations, and referral had been made public.

- The individual in question was given an opportunity to review the findings of the IG only 30 minutes before the IG's office released the findings to the press.

In summary, the Inspector General's office carried out a hurried investigation of the individual's actions, reached conclusions about the need for disciplinary action, referred the matter to the Department of Justice, and released its report to the press. At each step along the way, the individual under investigation was provided inadequate notice and opportunity to review and/or respond to the serious allegations against him. None of the allegations against him were substantiated by the Independent Counsel's review.

(2) In another recent case involving a Democratic appointee who was being investigated for sharing intelligence information with a Member of Congress, the IG's office gave no notice about the type of interview to which the individual would be subject.

-- *While the investigation was ongoing*, the IG's office confirmed to the Miami Herald that the individual -- who at the time was a senior advisor on U.S. policy toward Cuba -- was under investigation and "that her office had forwarded the matter to the Justice Department, even though her own office had not completed its own investigation, [stating], 'It's still a very open review.'"

-- The Justice Department prosecutor, who had effectively taken over the case, also disclosed to the Miami Herald that "'a criminal referral [was] sent over, and I'm investigating it."

-- It is my understanding that when the prosecutor was questioned by this individual's attorney as to why he would make such a statement to the press, he responded, "You live by the leak, you die by the leak."

-- Such a statement would indicate that the prosecutor already had determined the outcome of the investigation, the culpability of the individual under investigation, and was acting on his conclusions, absent any appropriate process steps. The IG's office appeared to follow his lead at every turn, including speaking to the press

about an ongoing investigation.

--- Neither the appointee under investigation nor his attorney had made any public statements to this point; the appointee made no public statements for a full year following these disclosures by the IG's office.

-- In this case, the spokesman for the Department of State was forced to cite the guidance of the Office of the Inspector General that there was to be no comment on whether or not a particular investigation was pending while acknowledging that the IG office had not followed its own guidance.

Here we have an individual who was placed under investigation and called to an interview as a target without receiving advance notice and where the prosecutor rather than the IG conducted the interview. That prosecutor also confirmed to the newspaper most sensitive to the individual in his position at the time that the individual was under criminal investigation. The spokesperson for the Inspector General seconded that confirmation, despite policy guidance that the OIG did not comment in any way on pending investigations.

(3) In another case involving a civil service employee, the IG had the individual under investigation, a physician, called to a medical review board as a pretext to elicit information, and later used against him the statements he made before the board. The IG's office also devoted extensive staff and financial resources to overseas travel in the course of the investigation. In the end, the case was settled administratively with a de minimis financial penalty imposed on the individual.

The pattern has been similar in other cases: for example, individuals will appear voluntarily for an interview with the IG staff, having no indication that there is an investigation of a criminal nature against them pending. They enter the room to find a criminal prosecutor from the Justice Department who will conduct the interview, or, in several cases involving career officers, Virginia Department of Taxation Criminal Division representatives. They generally do not arrive for the scheduled interview with an attorney or union representative.

There are several other cases which have been called to my attention, cases involving career officers and selective prosecution, varying methods of dealing with press requests, and other aspects of the operation of the IG office that have a dramatic effect on the lives of individuals under investigation. Many of these individuals are forced to incur thousands of dollars in legal bills, just to clear their names.

A balance of individual rights and investigations.

Criminal investigations and prosecutions involve a balance between basic fair process for individuals under investigation, and sufficient authority to investigate and prosecute criminal actions.

Inspectors General are in a grey zone. They appear to view themselves as identical to

federal law enforcement agencies. But they are not prosecutors or statutory law enforcement, although incrementally -- through executive branch agreements and other means -- they have gained broad investigative authority in recent years. So finding the appropriate balance in the IG context is a delicate task.

Most State Department employees do not anticipate a criminal interview with prosecutors when they are asked to attend an IG meeting because they may come in contact with IG employees on a variety of administrative matters. In fact, over eighty percent of the State Department IG office is dedicated to non-criminal matters -- audits, administrative investigations, embassy inspections.

Upon finding himself in an unanticipated criminal investigation, the employee may realize that he may insist that the interview be halted until he has an attorney present. In practice, individuals often are too intimidated at that point in the process to recall and/or exercise their right to counsel, particularly when they are not specifically informed that such a right exists. They can reasonably think that if they do not cooperate, it could jeopardize their careers.

So I see a problem when the State Department Inspector General, for example, sees her agents as equal in all respects to FBI agents in requirements for notice and other aspects of carrying out interviews. It seems to me that if a prosecutor or police office calls an individual for an interview, even before Miranda or Garrity-type protections apply, the average person would be on alert to bring his attorney. This is simply not the case with the IG. The average employee called to the IG's office is not likely to bring counsel, certainly if he is not informed of what is happening.

In effect, the IG office gives cover to prosecutors to expand on their normal investigative activities and authorities by allowing them to confront suspects without warning. There is an appropriate place for undercover law enforcement investigations -- with the attendant safeguards that courts have required. The IG's office should not be used to carry out investigations that are undercover in all but name. I do not believe an IG's unique position should be used to expand prosecutors' activities without appropriate review.

I understand that the State IG objects to what she seems to view as undue restrictions on her powers. I have read carefully through the correspondence she has sent, as well as the letters from other agencies' inspectors general. These letters have described my provision as attempting to grant "special rights" to State Department employees, as setting a "dangerous precedent" and as "severely undermining" the authority of the Inspector General to carry out her statutory responsibilities. These are very strong words. I think these words seriously mischaracterize my intent, and the impact of the provision I have proposed.

I am not trying to restrict any investigations. And I do not understand how giving individuals basic protections in the process should impede investigations. In fact, in my experience in leading investigations, the product of an investigation will be seen as credible and enduring only when the process that leads to it can be perceived as fair by all parties involved.

To review my position with respect to the Office of the Inspector General at the Department of State:

-- During the entire investigation, the IG gathers evidence for prosecution and receives guidance from prosecutors on what evidence to gather and how to structure the investigation. I do not seek to halt such practices.

-- The IG conducts undercover investigations with the Justice Department. I am not trying to stop this kind of cooperative investigation, within the guidelines that govern undercover investigations.

-- Certain investigations and interviews involve national security matters, for which the law already provides greater investigative freedoms. I did not intend to limit the U.S. Government's ability to do proper intelligence investigations.

The bottom line

I am very pleased that this issue is getting such a close review.

-- An individual who is the target of an IG criminal investigation should receive notice of what is happening before he walks into an interview where a prosecutor could be interrogating him. The individual should have that kind of basic information.

-- The information pamphlet developed several years ago by the IG's office is inadequate in content and in availability. It does not inform the employee of his rights -- and it is not made available in a timely manner. It needs significant updating and far better and more regular distribution to State, USIA, and ACDA employees.

-- Finally, the press operations and policy of the State IG need a much closer look. I would hope that requiring a one-time report to Congress would be one way of ensuring such an internal review of policy guidance and actual practice.

Thank you once again for giving me the opportunity to speak with you on this subject. I am happy to take any questions you may have.

Mr. HORN. Mr. Goss, the gentleman from Florida.

STATEMENT OF HON. PORTER J. GOSS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. GOSS. Thank you very much, Mr. Chairman.

I, too, am very grateful that you have convened this hearing on this subject, and I am also very grateful to my colleague, Mr. Hamilton, for whom I have huge respect, as he knows. I have had the pleasure of working with him on what used to be the Foreign Affairs Committee, which is now the HIRC committee. I have served with him a number of times and circumstances, and I think that we are both here on the same issue.

In addition to congratulating you for focusing in on this subject, I want to make sure that we, who live in a system of checks and balances, are doing our job of watching the watchdogs, because I think that is what this really is about. As chairman of the House Permanent Select Committee on Intelligence, I rely very heavily on the IG not just at CIA, but at State, Justice, Defense, Energy and elsewhere, where there are intelligence matters.

The reason obviously is that much of intelligence goes on behind the curtain and we have to be able to assure the American people that there are no excesses or improprieties happening there. We regard the IG's as allies in that effort.

Any time there is a possibility that we are going to pass a regulation or take an action here that might impede their ability to do the job to the greatest degree appropriate, I think it is very important that we look at that. And that is what we are doing today.

I think we should look at it across the board, not just at one agency, and I know that Mr. Hamilton has come forward with a series of particulars on three cases. I am familiar with one of those cases quite well, but not as familiar with the other two cases. And I would ask that you would accept my full prepared statement which deals with those cases, which I will not go into now in the interest of time.

I would also ask that you accept for the committee's consideration the written correspondence which accompanies that, which, in fact, is the same as Mr. Hamilton referred to, conversations and letters that went back and forth over that.

Mr. HORN. Without objection, they will all be put in the record at this point.

[The information referred to follows:]

U. S. Department of Justice

Office of the Inspector General

June 3, 1997

The Honorable Porter Goss
Chairman
House Permanent Select Committee on
Intelligence
H-405 Capitol Building
Washington, D.C. 20515-6415

Dear Chairman Goss:

The purpose of this letter is to express the grave concerns of the Inspector General community about an amendment that has been included in the State Department authorization bill concerning the investigative functions of the Inspector General for the State Department, Arms Control and Disarmament Agency and the United States Information Agency. Congressman Hamilton's proposal would amend Section 209(c) of the Foreign Service Act of 1980 (22 U.S.C. Section 3929) to provide special rights to employees during the course of a criminal investigation that are inconsistent with the practices of the rest of the federal law enforcement community. Even as revised during the House International Relations Committee mark-up, this provision would have the effect of placing the State IG outside of standard federal law enforcement policies and procedures and, as such, would severely undermine the authority of the State Department/ACDA/USIA's Inspector General to carry out her statutory investigative functions. As a result, the ability of this Inspector General's office to hold individuals accountable for criminal wrongdoing would be significantly diminished.

In effect, this provision, by mandating advice of certain rights in situations not recognized by case law or Justice Department policy, is granting to employees of the State Department, the Arms Control and Disarmament Agency and the United States Information Agency, rights that no other citizen of the United States has during the conduct of a criminal investigation. This is especially troublesome given the large number of Presidential appointees and other senior-level officials in the Department of State and the perception of special treatment which could arise as a result of such legislation.

Our concern about this legislation is that it not only impedes the ability of one Office of Inspector General to conduct criminal investigations in accordance with community-wide law enforcement standards in the agencies that fall within her jurisdiction, but also is at odds with existing case law. As such, this proposal sets a dangerous precedent that could have an adverse impact on other Inspectors General throughout the government. The OIG community

conducts investigations pursuant to standards established as a result of judicial decisions handed down by the Supreme Court and the Federal appeals courts, as well as policies and procedures adopted by the U.S. Department of Justice. The proposed legislation would require different standards for the State/ACDA/USIA OIG than those applicable to other law enforcement entities including other OIGs. Consistency of investigative standards is imperative to a well-functioning federal investigative effort. Passage of this amendment would seriously impede effectively and timely criminal investigations.

We respectfully request your attention to our concerns as the State Department authorization bill moves forward for consideration on the House floor.

Sincerely,

Michael R. Bromwich
Inspector General
U.S. Department of Justice

Frank DeGeorge
Inspector General
U.S. Department of Commerce

Eleanor Hill
Inspector General
U.S. Department of Defense

cc:

The Honorable Benjamin A. Gilman
Chairman
Committee on International Relations
2170 Rayburn House Office Building
Washington, D.C. 20515-6128

The Honorable Dan Burton
Chairman
House Government Reform and Oversight
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

The Honorable Henry Hyde
Chairman
House Committee on Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

The Honorable Gerald B.H. Solomon
Chairman
House Rules Committee
H-312 Capitol Building
Washington, D.C. 20515-6269

Department of Energy
Washington, DC 20585

June 3, 1997

The Honorable Porter J. Goss
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515-6415

Dear Mr. Chairman:

The purpose of this letter is to express concerns about an amendment that has been included in the State Department authorization bill concerning the investigative functions of the Inspector General for the State Department, Arms Control and Disarmament Agency and the United States Information Agency. Congressman Hamilton's proposal would amend Section 209(c) of the Foreign Service Act of 1980 (22 U.S.C. Section 3929). Even as revised during the House International Relations Committee mark-up, this provision appears to place the State Department's Office of Inspector General (OIG) outside of standard Federal law enforcement policies and procedures.

The standards followed on advice of rights by the OIG's are governed by Department of Justice policy applicable to all Federal law enforcement officers. OIG's also routinely obtain guidance from the Department of Justice concerning investigative strategies. The proposed legislation would require different standards for the State OIG than those applicable to all other law enforcement entities. We are concerned about the potential impact of this amendment on effective and timely criminal investigations.

Sincerely,

John C. Layton

John C. Layton
Inspector General

Central Intelligence Agency

Washington, D.C. 20505

Inspector General
703-874-2555

3 June 1997

The Honorable Porter Goss
Chairman
House Permanent Select Committee on Intelligence
H-405, the Capitol
Washington, D.C. 20515-6415

Dear Chairman Goss:

I am writing to express my concern about an amendment to Section 209(c) of the Foreign Service Act of 1980 (22 U.S.C. Section 3929) that has been included in the Foreign Policy Reform Act of 1997. Section 1329 of the Foreign Policy Reform Act would require the State Department Inspector General (IG) to provide special, vaguely-worded rights to employees during the course of a criminal investigation that are inconsistent with the practices of the rest of the federal law enforcement community. This amendment would have the effect of placing the State IG outside of standard federal law enforcement policies and procedures and, as such, could undermine the authority of the IG to carry out her statutory investigative functions.

I am very concerned that such an amendment would be a dangerous precedent that subsequently could be made applicable to other IG offices, including the IG at the Central Intelligence Agency. In effect, it grants to employees of the State Department rights that no other citizen of the United States in similar circumstances has during the conduct of a criminal investigation. I know of no justification for treating State Department employees differently.

This amendment is at odds with existing case law and policies and procedures set forth by the Department of Justice (DOJ). My office generally follows DOJ policy and procedures during the course of criminal investigations and it has been our experience during the course of joint investigations with the State IG that the State IG has also followed such policy and procedures. Because the proposed amendment would establish different standards for the State IG than for all other IGs, it could impede the ability of my office to conduct effective joint investigations with State IG.

The Honorable Porter Goss

I respectfully request your attention to my concerns as the Foreign Policy Reform Act moves forward for consideration on the House Floor.

Sincerely,

Frederick P. Hitz
Inspector General

cc: The Honorable Norman Dicks

PRESIDENT'S COUNCIL on INTEGRITY & EFFICIENCY

Honorable Porter Goss
Chairman
House Permanent Select Committee
on Intelligence
H-405, The Capitol
Washington, D.C. 20515

JUN 12 1997

Dear Mr. Chairman:

I am writing on behalf of the President's Council on Integrity and Efficiency (PCIE) to express our appreciation for your amendment to HR 1757 which struck language from the State Department authorization bill, as reported from the House International Relations Committee that would have adversely affected the investigative processes of the Office of Inspector General for the State Department, USIA, and ACDA. The PCIE is an organization which includes all Presidentially appointed Inspectors General and representatives from Office of Management and Budget, Federal Bureau of Investigation, Office of Special Counsel and Office of Government Ethics.

Your amendment was critical because it removed a provision that would have placed the State Department OIG outside of standard Federal law enforcement policies and procedures to which Inspectors General must adhere, and could have thus severely undermined the State Inspector General's authority to carry out statutory investigative functions.

The OIG community conducts investigations pursuant to standards established as a result of Supreme Court and Federal appeals court decisions, as well as pursuant to policies and procedures adopted by the U.S. Department of Justice. We are committed to protecting the rights of the individuals whom we must investigate. We are also committed to fulfilling the mandate of our office to maintain accountability in the agencies we serve. Your amendment ensured that all Offices of Inspectors General are able to conduct criminal investigations in accordance with community-wide law enforcement standards, and in accordance with existing case law. Your amendment removed a precedent that could have had an adverse impact on other Inspectors General throughout the Government. It also was crucial to maintaining effective and timely criminal investigations by the Inspector General Community.

We thank you for your considerable efforts on our behalf.

Sincerely,

Eleanor Hill

Eleanor Hill
Chair, Legislation Committee
President's Council on Integrity
and Efficiency

Mr. HORN. As you know, your full statements are automatically submitted in the record.

Mr. GOSS. I understand.

The question of creating new rights also comes up here. You can interpret what was going on in a number of ways as you get into facts. I think that what we are looking for here is a consistent, predictable understanding between the IG and the people that the IG has oversight over, and I think that that can be worked out.

I have not read the handbook or the brochure, and I don't know how far it goes. My view is that Mr. Hamilton is right that if you are going to be confronted by the prosecutor, you probably should have some kind of clue that that is going to happen. On the other hand, I wouldn't want that to happen in such a way that it would frustrate the ability of the IG to conduct an investigation, because if you go out and tell everybody that they are under suspicion of doing something wrong, it could foreclose serious, serious opportunities to catch wrongdoers. And I am familiar with enough cases that have gone on in intelligence and surrounding areas that I would be concerned about that.

So that is the balancing act that I think we are both asking you to find today: What is the proper dimension of this broad investigative authority? And when you determine what it is, I hope it will apply to all IG's or at least all IG's that come across matters on my radar scope.

That basically is the essence of what I wanted to say, Mr. Horn. Thank you.

[The prepared statement of Hon. Porter J. Goss follows:]

STATEMENT OF CHAIRMAN PORTER GOSS ON "OVERSIGHT OF INVESTIGATIVE PRACTICES OF INSPECTORS GENERAL"
HOUSE SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
JUNE 24, 1997

Chairman Horn, Ms. Maloney, I am pleased to be able to testify this morning before the Subcommittee on Government Management on oversight of the investigative practices of our Government's Inspectors General.

Before I get too deeply into the text of my statement, I want to offer a little truth in testimony: I am by no means an expert on the day-to-day procedures and activities of the approximately 60 Inspectors General offices throughout the government. As Chairman of the House Permanent Select Committee on Intelligence, however, I have a very strong interest and commitment to government accountability to the American public. In any number of instances in recent years, such as the Aldrich Ames investigation, the Guatemala review, and the so-called "Contra Crack" inquiry, the House Intelligence Committee has worked closely with the Inspectors General of the Departments of Defense, State, and Justice as well as the Inspector General of the Central Intelligence Agency.

The work of these Inspectors General and their staffs has been critical to enhancing government accountability and attacking waste, fraud and abuse. In my view, the oversight committees and the Inspectors General should properly function as partners

and watchdogs, so as to ensure that the Government and its employees are acting appropriately and fully within the scope of their legislated authorities.

I was asked to testify before this Committee due in some part to my recent proposal to preserve the investigative and oversight authorities granted to the Office of the Inspector General at the Department of State. During the consideration of the 1997 Foreign Relations Authorization bill by the House International Relations Committee, language was adopted which would have had significant and unfortunate consequences for the State Department's Office of Inspector General, and potentially, for all other inspectors general across the Federal Government. The language adopted by HIRC would have placed the State Department's Inspector General outside of standard law enforcement policies and procedures and would have severely undermined the IG's ability to carry out investigative functions. The proposed language would have significantly diminished the State Department IG's ability to hold departmental employees accountable for criminal wrongdoing. If enacted, the provision would have required the IG's office to provide special privileges to State Department employees that are inconsistent with the rest of the Federal law enforcement community. If enacted, the proposal would have imposed reporting and notice requirements on the State Department's Inspector General that are not applicable to any other Inspector General in the Government.

Let me briefly address some of the specific problems that I found with the proposed limitations on the State Department's Inspector General. During the floor

debate on this proposal, it was asserted that investigative targets were deprived of their 6th Amendment rights – most specifically, their legitimate right to counsel. The right to have an attorney present for questioning does not attach until formal charges have been returned. The right to remain silent against self-incrimination only applies to those interrogations that occur in custody – that is under arrest – and one has a right to have an attorney present for such questioning, simply to protect one's right against self-incrimination. Formal interviews such as those conducted by the Office of Inspector General, are "non-custodial" by definition. The employee can simply refuse to sit for the interview or walk out at any time. The employee is not under arrest, although administrative penalties may result from his refusal to be interviewed.

Federal prosecutors and other law enforcement agents are not required to advise subjects of criminal investigations --even those being conducted with grand jury authority—of their Miranda rights when simply conducting an interview of an individual. Of course, the interview must stop whenever the person wishes to go no further, and the person can bring an attorney if he so desires, and the person can answer or not answer any question. The person can also demand to know the identity of all interviewers and other parties in the interviewing room at the time of the interview. But – and this is the key – no law enforcement questioner is required to advise the person of these rights.

Obviously, were these additional interview requirements to be imposed on the State Department Inspector General, joint interviews involving State, the FBI, the IRS Criminal Investigation Division, or other law enforcement officers would likely not

occur. State IG interviews will inevitably become less than productive. Moreover, such a requirement, if enacted, could create an unfortunate precedent that other disaffected federal employees in other departments will start agitating for. This provision bestows "rights" on State Department employees, who mainly face administrative discipline, that the Constitution does not even require for criminal suspects.

The original HIRC language also imposed a further reporting requirement on the State Department Inspector General that is unwarranted and unnecessary. The provision would have required the Inspector General at State to prepare and submit a report to the relevant oversight committees providing detailed descriptions of any disclosure of information to the public by an employee of the Inspector General's Office about an ongoing investigation.

It is my understanding that the State Department's Inspector General makes no such disclosure of information to the public about any ongoing investigations. And this is thoroughly appropriate, given that an individual's privacy concerns are at stake. I am further informed that the only disclosure that the State Department Inspector General actually makes concerning ongoing investigations are to the Secretary of State, the Deputy Secretary of State – as appropriate – the Department of Justice, and other cooperating law enforcement agencies, if in fact, there is an ongoing investigation.

Mr. Chairman, prior to the floor debate on this proposal, I received various letters from the Inspectors General of the Departments of Defense, Justice, Commerce, and

Energy as well as the Inspector General for the Central Intelligence Agency. In all of these letters, the Inspectors General clearly expressed their opposition to efforts to impose unique constraints on the State Department Inspector General's authorities. I would ask that these letters be included in the record of this hearing.

Chairman Horn, I want to thank you again for holding this hearing. The subject matter is more than timely as it is clear that there is a fair degree of confusion among many as to what the Inspectors General can and cannot do in the course of their oversight and investigative work. I believe that the various Inspectors General who will be testifying today during the subcommittee's second panel will provide further information and assurances that their offices function with proper investigative safeguards and with due concern for the constitutional rights of all Federal employees. I don't in any way wish to minimize the concerns that have been raised by Mr. Hamilton and others about the management of 3 specific cases involving State Department employees that were investigated by that Department's Inspector General. At the same time, though, I strongly believe that the Congress should not attempt to strip the Inspectors General of essential investigative authorities. Doing so could result in unintended consequences – creating a system of toothless watchdogs which is unable to ensure the accountability of all Federal employees.

Mr. HORN. Well, let's try to look at some of the pieces. We will take 10 minutes for each Member. We have three other Members with us. We are glad to see some of the vigorous people on the committee here this morning.

Mr. DAVIS OF ILLINOIS. Mr. Chairman, before you begin, I know that I am going to have to——

Mr. HORN. Insert the opening statements?

Mr. DAVIS OF ILLINOIS. Yes, I would like to.

Mr. HORN. We will insert them after mine as read.

Mr. DAVIS OF ILLINOIS. All right. I know that I will have to leave.

Mr. HORN. All right. Without objection. Sure.

In terms of your opinion here, should investigators to the Offices of Inspector General be held to the same procedural standards as other Federal law enforcement investigators? Is there any difference here we can point out that investigators in an Office of Inspector General has that other investigators do not have, whether you take some of the agency services or the FBI, U.S. attorneys?

Mr. HAMILTON. Well, Mr. Chairman, I don't pretend to be any kind of expert on that, but I don't think it is clear that the Office of the Inspector General, at the State Department or any other department, is the equivalent of the Federal law enforcement officers or of the FBI. And under any circumstances it doesn't seem to me that an agency can take liberties with due process.

I understand that investigations are very important, and I want to emphasize I do not want to cut down on investigative capabilities, but I don't think it is correct to say that an Office of the Inspector General is equivalent to a Federal law enforcement agency. Now, maybe they would like to be, but I don't think they are.

Mr. HORN. Is there any reason that other Inspectors General should not have the same rules apply to them that Representative Hamilton is seeking to apply to the Department of State? Should it be all or nothing?

Mr. GOSS. My view is it is very important that it be across the board. Because there is inevitably collaboration between agencies, an unevenness will create some working difficulties, if not perhaps frustrate the pursuit of justice in some of these cases. So I think it is extremely important that what you are doing here today looks at it generically.

Mr. HAMILTON. Mr. Chairman, I certainly would agree with that. I want to emphasize the point that I think is obvious to everybody, and that is the amendment that I offered was offered in the context of a State Department authorization bill, and I have no experience with the Inspector General offices in other departments. But you would want uniformity. I think Mr. Goss is exactly right about that.

Mr. HORN. Mr. Hamilton, in his testimony, mentioned that the rules in the Department of State were that you do not leak investigations to the press. Yet a member of the Inspector General staff did just that. What kind of punishment? Firing on the spot?

Mr. GOSS. Let me put it this way: If I had my opportunity to correct one thing in this town and exact a penalty for it, it would be to stop the leakage that goes on. I am very sensitive to it in the responsibilities that I have. I know Mr. Hamilton is very responsive to this problem as well, because we have suffered the damage

and it has hurt the U.S. interest. Irresponsible release of information, in fact, has caused the death of some American citizens in the employ of the U.S. Government serving their country.

It is a very serious matter. It is a daily occurrence in this city. People apparently trade on those relationships with the press. I don't know whether the leakage is worse in the executive branch or on the Hill. I am told it is worse in the executive branch. And I think that may be true.

I think that there should be a very clear understanding that when you are out of bounds on privileged information, whether it is classified or in executive session or personnel matters that should not be released, tax information, any type of matter which is privileged. If that is leaked out and we catch the person, I would say yes, that would be a job to eliminating circumstance. I feel that strongly about it.

Mr. HORN. Any comment on that, Mr. Hamilton?

Mr. HAMILTON. Again, my focus on this is a very narrow one, and in the particular case that I have in mind here, the State Department IG's office confirmed to State that the individual who was then a senior advisor on U.S. policy, that that individual was under investigation, and that her office had forwarded the matter to the Justice Department, even though her own office had not completed its own investigation.

The Justice Department prosecutor, who had taken over the case, disclosed to a major newspaper that a criminal referral was sent over and I am investigating that, I am quoting him now precisely, and then when that prosecutor was questioned by the individual's attorney as to why he would make such a statement to the press, he responded by saying, "you live by the leak, you die by the leak."

Now, this is grossly inappropriate behavior by the Inspector General or by the prosecutor. But I am not interested in prosecuting these people or penalizing them. I am interested in the future. And I think we need to write into the law basic protections for people under investigation.

Mr. HORN. Since we have no caution light, I see in this hearing room, we will make it 11 minutes to a side. My last question is to Mr. Goss.

If you walked into a room where the Inspector General has people from the U.S. attorney or the FBI or whatever, shouldn't you be notified who is in that room and warned about possible criminal action?

Mr. GOSS. I think that that would be very reasonable and very fair. The question of how much responsibility lies on the individual and what the individual is told that actually would motivate the individual to get into that room seems to me is part of that process, but I don't believe in ambushes. I think that is a very bad idea.

There are investigations, that is one thing, that may be done quietly or surreptitiously, but ambushing, certainly not, I would not agree that that is a good practice.

I would like to add one point and a further thought with regard to the leaks.

Part of the problem in dealing with leaks in this town is when you are in good faith doing your job and then somebody else leaks information and the press comes to you to say, what do you have

to say about this, we have got information that your committee is doing this, et cetera, you know how difficult it is to protect your committee or your activity that you are doing.

The right answer is, I can neither confirm nor deny that, but the tendency as human beings is, boy, you are so far wrong and that is outrageous somebody has leaked that, and I am afraid there is a little bit of distinction in human nature. When you are talking about leaks you have to look at the whole ripple across the pond.

Mr. HORN. Thank you. I now yield to the ranking minority member, Mrs. Maloney of New York, 11 minutes.

Mrs. MALONEY. Thank you very much, Mr. Chairman.

First of all may my opening statement be put in the record?

Mr. HORN. Without objection, and anybody else's can come in, all without objection.

[The prepared statement of Hon. Carolyn B. Maloney follows:]

DAN BURTON, INDIANA
CHAIRMAN

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Statement of Carolyn B. Maloney
Hearing on Oversight of Investigative Practices of Inspectors General

June 24, 1997

Thank you Mr. Chairman.

I am pleased that you have called today's hearing on the investigative practices of the Inspectors General. The Inspectors General play a vital role in reducing waste, fraud and abuse in the federal government's programs and agencies. In fiscal year 1995 the 59 Inspectors General recovered $1.5 billion from companies and individuals who had defrauded the government. An additional $2 3 billion in reimbursement is being sought in questioned costs. Recommendations from the Inspectors General also dramatically affected agency spending plans, causing $10.4 billion to be reprogrammed for more efficient use.

We place a heavy burden on the Inspectors General. We ask them to take the lead in ferreting out waste, fraud and abuse and at the same time to recommend improved management practices that would prevent fraud and waste before it happens. We ask them to operate independently from their colleagues, and at the same time to work with them as colleagues.

This hearing is particularly timely given the recent floor debate we had on Representative Hamilton's provision which would have established certain procedural and reporting requirements on the Inspector General at the Department of State. I have the highest respect and admiration for both Mr. Hamilton and Mr. Goss and look forward to hearing from them on the possible advantages and disadvantages of this proposed provision. I think we can all agree that government employees deserve the same rights and privileges as the general public when they are involved in a criminal investigation. I am also not sure that creating special procedures for a particular Department's Inspector General is a wise thing to do. I believe that investigative policies should apply to all Inspectors General equally.

Thank you again Mr. Chairman. I look forward to hearing from Rep. Hamilton and Rep. Goss, as well as from our distinguished witnesses from the Inspectors General offices.

Mrs. MALONEY. Mr. Hamilton, I understand it is not your intent to stop the Inspectors General from carrying out investigative activities such as reviewing records, interviewing witnesses, and conferring with the prosecutor. Nor, I understand, is it your intention to stop undercover investigations. Do I understand the position correctly?

Mr. HAMILTON. You do understand it correctly. I have nothing in the amendment that I had that goes to the question of the power of investigation of the Inspector General. It simply goes to the question of the rights of the person who is under investigation.

Mrs. MALONEY. Why do you think it is important for the State IG to provide notice to an individual of his or her right when they are going to be interviewed as the likely subject or target of a criminal investigation, especially since the FBI and Justice Department may not provide such notice?

Mr. HAMILTON. To me, it is just a simple matter of fairness. Look, if you walk into a room without being notified that you are under investigation, and you are confronted with a prosecutor from the Department of Justice, it would scare you to death, most people. And I just think that is grossly unfair, Mrs. Maloney. If there is a criminal investigation going forward, a person has every right to know that so that he or she can come into that room with an attorney, prepared to respond or not respond as he, the person under investigation and the attorney, see fit.

Mrs. MALONEY. I would like to ask, really, Congressman Goss the same question that I asked Mr. Hamilton. Do you disagree with him on this point?

Mr. GOSS. No, I don't disagree at all. It is a question of fair play. There are a couple of different answers.

Mrs. MALONEY. But only providing notice before going into the room, do you agree notice should be provided to an individual of his or her rights when they are going to be interviewed as a likely subject of a target of an investigation?

Mr. GOSS. The answer is yes. I think that the individual should know what is going on. The question is, what his or her rights is is a very difficult issue here. We are talking about creating some new rights. Criminals do not have rights unless they are in custody or in a certain part of a pathway of due process has taken place. For instance, before we go through that gateway, and the question of whether you are going so far as to frustrate an investigation, an inquiry as it were, or whether or not you are providing due process, is one of the things that you are going to be examining.

Right now, if you have your whits about you and you walk into a room and you see a bunch of people and an inquiry, let's say you got into the room because you got a telephone call that said, please come to that room—it depends on who made the telephone call or you got a notice or however you got there—you know you are doing something. You may not have enough information about what it is. Well, you have the right to walk out. You can turn around and walk out and say, I don't like this. Who are these people? You have that right. Those rights are there, and I think it is fine to make those rights known to the individuals if they get put in this kind of a position.

Another thing that happens, and this is true in one of these cases and I don't want to refer to specifics because I think you are dealing in a generic manner, but one of the things that happens is some of these cases are very celebrated. They are much discussed in the public. They are in the newspaper. There is no secret here that there is something going on, and for somebody to walk into a room who has been the subject of much newspaper discussion or a case that has been discussed in the newspaper and suddenly say, gee, I can't believe the sky is falling, when the papers have been screaming for days, it seems to me that is a little disingenuous as opposed to somebody who is just ambushed outright, which I would be terribly opposed to. So it is hard to answer your question specifically.

Mrs. MALONEY. I would like to ask Mr. Hamilton, do you agree with Mr. Goss' statement in his testimony that, one, our procedures for our IG's should be consistent, predictable, clearly understandable, and applied across the board? Would you agree with that statement?

Mr. HAMILTON. Yes.

Mrs. MALONEY. Then, Mr. Goss, what is confusing about this is that when you talk, you seem to agree. You seem to think that there shouldn't be an ambush, that people should have notice, if it is truly, in fact, a criminal investigation.

As one who worked in city and State government, in fact wrote the IG law for the city of New York, we were always taught in Government, elected or not, to cooperate with IG's; they were the watchdogs on Government.

Mr. GOSS. Absolutely.

Mrs. MALONEY. It was not unusual for IG's to call any employee in the city or State and ask for information about a particular problem. And it would not be unusual for a person to think that they were cooperating with making Government work better and not a target themselves.

If there is a problem—IG's often say there is a problem with the Parking Violations Bureau; do you know anything about it? I mean, I agree that you should provide notice, and you say you should provide notice.

Mr. GOSS. Absolutely.

Mrs. MALONEY. And I agree with you completely that it should be consistent, predictable, and understandable, and I don't see how it can be consistent, predictable, and understandable unless you have clear guidance to employees that, No. 1, you are supposed to cooperate with IG's, they are trying to make our Government work better; No. 2, if you are the subject of a criminal investigation, you will be so notified. I mean, I think that you have to let people know what is going on, and you agree with that.

Mr. GOSS. Yes, I do.

Mrs. MALONEY. So I don't quite see where you two disagree. You probably said you need notice and he is saying you need notice.

Mr. GOSS. It is really a question of how the process is carried out and what the circumstances of each case are, which is why this is going to be difficult to do.

I think that if you are going to summon somebody in——

Mrs. MALONEY. But may I ask one question then. When you said you have to know each case is different.

Mr. GOSS. Uh-huh.

Mrs. MALONEY. But if you are going to change the rules for each case——

Mr. GOSS. No, we aren't going to change the rules.

Mrs. MALONEY. It won't be consistent, predictable, and understandable, as you said.

Mr. GOSS. I am not talking about changing the rules. I am talking about having consistency in the rules. I am very definitely talking about applying the same rules to different circumstances fairly, and the point is you have different circumstances.

We are talking here about investigation, not prosecution, and that is the line that you are looking at. When you get into the prosecutorial area, then you are dealing with one set of circumstances. You start getting into Miranda and you have got custody and you have got rights and all kinds of different things.

When you are going around doing an investigation, who stole the light bulb, who is putting light bulbs in their purse and walking out of here at night it is a very different thing. And I think the ground rule I would give on that is that you cannot ambush somebody. They need to know, obviously.

Now, I don't want to go so far as to say in order to stop the ambush, let's add additional rights for employees of the Federal Government to protect them from the IG, rights that criminals do not have in criminal proceedings in terms of notice and warning. That is the difference.

Mrs. MALONEY. Would you respond to this statement, Mr. Hamilton? Earlier, Mr. Goss said we share the same goal but it is a balancing act. Is there some balance that we could work out that would address the concerns that you have so eloquently put forward?

And I must add that I am very sorry you are retiring from Congress. It is a loss, I think, to this body.

Mr. HAMILTON. Well, the balance that has to be addressed is on the one hand, and Mr. Goss emphasized this, the power of the Inspector General to investigate, and that is a very important power. I don't want to undermine that power. I know the importance of it, and I think the Inspectors General have to be able to carry out their responsibilities. They have very, very serious responsibilities. But on the other hand, you have to carry out those responsibilities with due regard for the rights and the privileges of an individual who may be the target of the investigation. So that is the balance that has to be struck.

Now, let me say that when we drafted the amendment in the committee, the committee adopted it. It was defeated on the floor. I recognize that this is a kind of a first cut at drafting language here. I don't pretend for a moment that we have the exact, correct language there, but we do convey, I think, the basic thought that we want to get across. And it is that balance that you now have the responsibility of trying to strike in legislative language.

At the end of the day here, I suspect our Inspectors General are going to testify that they will emphasize not doing anything that

will undercut their powers of investigation, and I don't want to do that.

I am just impressed with the fact of a person coming into a room and having a Federal prosecutor in that room, and that prosecutor is not there for fun and games. That prosecutor is there to do his or her job. His or her job is to see whether or not any criminal activity has taken place, and every statement that is made in that room is going to be noted by that prosecutor. Every word is going to be analyzed and weighed to see if a crime has been committed, and a person coming into that situation has every right to be put on alert that the games are over; that this is a serious business; that you are under investigation and anything you say can be held against you.

Mrs. MALONEY. Mr. Goss, my time is up, but would you agree with his final statement that there should be notice if there is a Federal prosecutor in the room?

Mr. GOSS. Yes, I would, absolutely.

Mrs. MALONEY. OK, thank you.

Mr. GOSS. I think that is appropriate.

Mr. HORN. Thank you, gentlelady. I now yield to the gentleman from New Hampshire, Mr. Sununu.

Mr. SUNUNU. Thank you, Mr. Chairman.

I would like to continue the discussion a little bit about notice, and there does seem to be quite a bit of agreement between the two of you. I am looking at a—I think it is a State Department pamphlet on the OIG process. And I assume this is provided to all State Department employees. And I just wanted to talk about the issue of employee rights, notification, and better understand how this may be different than what you may be proposing, Congressman Hamilton.

It says, when interviewed, the State Department employee has the right to be advised whether you are the subject of a criminal investigation, whether you are being interviewed simply as a witness, informed of the nature of the inquiry, told whether this could lead to criminal or civil action, advised of your Federal constitutional rights, et cetera, allowed to furnish a voluntary statement. And I hope they will provide you with a copy of it.

It is pretty straightforward, and I would assume it is provided as a part of the employee's orientation. That does seem like a pretty clear notice, at least of the provision in your proposed amendment that would give employees the information detailing their right to counsel, right to the policies, and the priorities of the OIG's office.

My question is: How is what you had proposed with regard to information different than this notice of rights that seems to be or at least should be provided as a matter of course to State Department employees currently?

Mr. HAMILTON. I have not examined that manual carefully, but there is a big difference in—look, this manual is given to a State Department employee, presumably, when they become a State Department employee. My impression is that it is not made available to them on a regular basis repeatedly over and over again. And I understand that they themselves are dissatisfied with it and are now in the process of redrafting it, and I commend them for that.

The sentence you read to me sounds fine. But, of course, it is one thing to put it in a manual; it is another thing to implement it. And in the cases that I am aware of, I don't think it was implemented.

Now, they may say, well, this was available when he became a Foreign Service officer or whatever, but that might be years prior to an investigation by the OIG. The problem I have is not so much the language, certainly not the language you cited, but how it is carried out and how it is implemented, I think.

Mr. SUNUNU. Did your amendment call for a certain period of timeliness or certain period of presentation to the employees?

Mr. HAMILTON. Let's see. I think we said that the Inspector General will make all best efforts to provide the employee with notice of a full range of his or her rights, including the right to retain counsel and the right to remain silent, as well as the identification of those attending the interview.

I think you probably raise a good point. The timeliness of that information might very well be a part of any such amendment. It is one thing to be told of it when you became a Foreign Service officer 15 years ago. It is another thing to be told of these rights just before you walk into that room. And what is important, seems to me, is that you be told those rights just before you walk into that room.

Mr. SUNUNU. Well, I would certainly agree that implementation is an enormous part of the success of the process. It is easy enough to come up with good language.

My personal opinion would be that best effort doesn't necessarily provide the driving force, that we would want to make sure that this is being provided to State Department employees in a timely manner.

Mr. HAMILTON. Mr. Sununu——

Mr. SUNUNU. And I hope what you say is correct and I hope they are updating it.

Mr. HAMILTON. I think you are right about the phrase "best efforts." That was actually an accommodation I made to the Inspector General at their request in the committee in order to soften it a little bit. But I am not entirely satisfied with that language, either.

Mr. SUNUNU. Mr. Goss, any comment about the language or is there any familiarity that you have with the OIG process, the kind of information that is at least currently provided to State Department employees?

Mr. GOSS. Most of what I have filed away in my mind is either from personal experience or from talking to colleagues or former colleagues when I worked in the executive branch of Government. I am not familiar with this piece of paper, and I don't want to characterize that I am.

But I do know that when I was inducted into the Federal Government certain things stand very stark in my mind today. One is, I go to jail if I violate the National Security Act. Those kinds of things were made abundantly clear to me, that I had an extra responsibility—I had the extraordinary privilege of knowing the Nation's secrets. I had the extraordinary responsibility of protecting them.

And this is an area there that is a little specialized to what is going on here, as a general background. If we are worried about the disappearing light bulbs and the parking places and that type of in-house administrative minor malfeasance and those kinds of things, which the IG also does, that is one set of affairs. But if we are talking about the national security of the people, who are well aware that they are dealing with important matters, it seems to me that they have a different level of cognizance required of what it is they are about. That is why I think it is going to be very hard to make a generalized statement.

When you are conducting an investigation of what point in the investigation do you go from we think we have got enough to go forward to we are not sure we have enough to go forward, where does that line come in the investigation? When does the investigation get to the point where you turn it over to a prosecutor? I don't know all of those little details or all of the provisions that are set out under the various agencies, each one.

I can tell you my experience with each agency is that the IG's are doing a good job. Yes, there are complaints. The IG's are very unpopular, just like serving on the Ethics Committee in the House, sometimes it is very unpopular. It isn't fun. But they have a job to do.

And I have heard a few complaints, and I think that Mr. Hamilton is on to something in this area of letting people fairly know, and the problem I think you all have is letting people fairly know what is going on without frustrating an investigation. When does fairly know become tipping off somebody who is getting away with something so they are going to be able to cover their tracks? That is really the problem I have.

Mr. SUNUNU. Could I ask you both to comment on—I guess building on that, your point that this can be a pretty strong system—comment on what does work about the system. What are the stronger aspects of this system and maybe the aspects that we ought to be most conscious about encouraging and supporting?

Mr. GOSS. Well, I will take a shot right off the bat and tell you that I am very satisfied that these folks in the IG offices are very conscientious allies in going after wrongdoing that is brought to their attention. I think there are many, many pluses in what they accomplish.

I can think of some very, very high profile matters in the intelligence community where we have relied on the IG's to make reports to us, and we have looked at those reports very carefully, and we have generally been quite satisfied with the very thoughtful work they have done without any prejudice for or against their own agency. It seems to me to be very evenhanded.

I think it is a check and balance process that was wisely put in, that does work. I have worked under it in part. I have seen the results of it in part. And I think it is appropriate to have these hearings to make sure there are never excesses. Always you have to keep doing that to make sure that the power doesn't get too great, and I think that these pauses to look at that are very appropriate.

But I would say there are many more pluses than there are minuses in the system, and I will tell you that I think we would be very much diminished in our oversight capability on the Hill

without the working cooperation of the IG's in the executive agencies.

Mr. HAMILTON. Mr. Sununu, I am focusing on a very narrow problem, and the problem is what I consider to be insensitivity to the rights of employees at the Department of State. That is my universe here. I agree with Mr. Goss' comments, the Inspectors General's offices play a very important role in our Government, and so far as I know they do a good job. I think I have had occasion to rely on them on a number of occasions.

I am not critical of the operations of Inspectors General, or their function. I think it is terribly important.

I am simply saying that in the cases I know about there was an insensitivity to the rights of individuals in the Department of State, and I moved to try to correct that.

I don't know what happens in the Department of Commerce or the Department of Transportation or anything else. I am not familiar with that.

Mr. SUNUNU. I appreciate that.

One final question with regard to those rights and with some relation to the leaking that was talked about earlier, which is probably one of the grossest examples of a violation of those rights, there is the political appointee structure, where 28 of these IG's are political appointees, does that tend to strengthen an individual's ability to or willingness to stand firmly in support of those individual rights; does it intend to prevent leaking; does it intend to give the IG a little bit more independence in pursuing some of the issues of wrongdoing, or do you find the same degree of independence whether they are a political appointee or not?

Mr. HAMILTON. The cases with which I am familiar involve both political appointees and civil service, Foreign Service officers. I am not aware of any difference.

Mr. GOSS. I would agree with that. I don't pay any attention to whether they are political appointees or not. I pay attention to whether they have done a good job. Frankly, I couldn't tell you who is a political appointee and who isn't. It works that well.

Mr. SUNUNU. Good. Thank you.

Mr. HORN. I thank the gentleman.

Let me ask a few questions that relate to pamphlets I have in front of me, from the Office of Inspector General, U.S. Department of State. And we will pursue with the Inspector General as to the circumstance these are given out. I suspect, as was suggested here, that these are probably 1 of 50 leaflets you are given when you are a new employee of the Department of State. A new employee is probably worried more about the health plan at that point, than they are about the Office of Inspector General's investigative process.

Would you gentlemen agree that not only should it be given when the new employee comes on board, but also prior to coming into the room if they are being asked to speak to a particular subject? They might know it before they come in. How do you feel, Mr. Goss?

Mr. GOSS. It depends on who is in the room. Again, this goes right back to these same guidelines. Certainly, if there are a bunch of prosecutors and, you know, you have got people in the room

other than just sitting down with the IG's person having a one-on-one with the employee trying to find something out or get a clue. I think there is a difference here between legitimate fact-finding and the ambush. And I would say, yes, I would think it is appropriate. If it escalates to the point that there are going to be some people in the room and these are the people who are there, and we are notifying you of this, and we advise you to read this pamphlet, it seems to me that there are procedures there. They don't necessarily go to rights. They go to procedures.

And I imagine every agency has got a somewhat different administrative code and they have somewhat different procedures. And I think it is very important that the employee know. If there is a degree of seriousness that is being attached to the matter, I think the employee has a right to know it. My concern is that it not be done in a way that would frustrate an investigation of, you know, who is stealing the light bulbs or whatever it is. You don't want to tip them off. So it is that fine line you are looking for.

Mr. HORN. Well, in other words, you wouldn't tell them the nature of the investigation in advance. You would tell them there is an investigation and provide some basic due process considerations?

Mr. GOSS. Sure. If you will read, and I am sure you have, but if you look at my statement, it very clearly goes into the question of what rights are already there and what is custodial and what is noncustodial, whether we are dealing with criminal, when Miranda comes in, all of those kinds of things and the remedies that are already in the law. I think every employee needs to be reminded of those things at any time.

But to tell you the truth, if you were to say, would you come up to room 10 this afternoon at 2 and, by the way, read this for your rights, I think I would start to worry a little bit.

Now, the question is: Does that mean that before you get to that point the IG should be going and saying, look, we think there is a problem here or not? And I think that is a question that Mrs. Maloney asked me. Can you have consistent rules and so forth in the regulations? The answer is yes. How you apply those rules case by case is where I think you are getting into difficulties here, and this piece of paper, which I think is the same thing you are looking at there, is sort of part of that process of how you apply it fairly. And I don't know all the words in this and I don't know whether it works fairly. That is something I am sure that you are going to make a judgment on.

Mr. HORN. Mr. Hamilton.

Mr. HAMILTON. The amendment that I put forward in the committee is confined to the circumstance of a person who an employee who is a likely subject or target of a criminal investigation. That is the case I am aiming at here. That seems to me to be a serious problem.

So if a person is a target or a subject of a criminal investigation, I think they should have a full range of their rights available to them. And in my way of thinking that means they ought to know what they are getting into before they walk into that room. They ought to be notified of it.

Mr. GOSS. Mr. Chairman, may I——

Mr. HAMILTON. And who is going to be there.

Mr. GOSS. Excuse me. I am not disagreeing with Mr. Hamilton on that point. Again, I think that is a where-are-you-in-the-case question.

But the point that I have to make there that is so very important, and I can think of some big cases, and I think you can, too, if you just think back of headlines in the past couple of years, where if that happens and if we are not coordinated and we are dealing across the board of several agencies, I think you can foresee a situation where you might have Justice, State, DOD, or some of the other agencies' IG's involved in a case that goes over jurisdictional lines because of activities involved, let's say, things overseas. For instance, where we are not always sure whether it is law enforcement or intelligence or State Department or what. I can foresee the need to have coordination between all of the interested IG's, especially in matters involving national security; something like leaking information on a defense system to a foreign diplomat and having the equipment delivered in a way that violates U.S. laws would probably get four or five different criminal aspects, activities to this with overlapping jurisdictions, and if you changed the rules for one IG and that one IG has to do something that messes up the investigation for those other agencies, you have created a problem.

We have that problem right now in the separation of powers, where it is usually resolved between the Hill and downtown when we have to have an investigation of one of our colleagues. It is a very difficult problem. You can imagine how that is compounded when you are dealing with many agencies. That is why it is so important that you be consistent across the board and that everybody understands what the rules are.

Mr. HORN. On this employee pamphlet, when one enters any Federal organization or immediately before they are asked to go into the room, should there be a signed statement on file by the employee that I have read it? Or is it just worthless?

Mr. GOSS. I suppose it is nice to have, but I don't think it works very well.

Mr. HORN. We are going to save some trees this morning; is that it?

Mr. GOSS. I have signed an awful lot of pieces of paper in my life, and I bet you have too, and I don't think I could recall them all.

Mr. HORN. Well, just to know that at least they were given it so they don't go in and say nobody ever told me.

Mr. GOSS. I have signed a lot of papers that I have forgotten about it, and if I saw them again I might forget that I had seen them, too. It depends on what you are trying to protect there. I don't think that is solving your problem.

Mr. HORN. You mean you don't recollect?

Mr. GOSS. I have no recollection.

Mr. HORN. Great. The disease is spreading to the legislative branch.

OK. Any other comments of wisdom from you two very wise gentlemen?

Mr. GOSS. I just thank you for what you are doing.

Mr. HAMILTON. Thank you very much, Mr. Chairman.

Mr. HORN. All right. Thank you for coming. I appreciate it.

Mr. HORN. Our next panel and our last panel has five Inspectors General, Jacquelyn Williams-Bridgers of State; Eleanor Hill of Defense; Michael Bromwich of Justice; Patrick McFarland, Office of Personnel Management; and Mr. Robert Bryant, the Assistant Director of the Federal Bureau of Investigation with the Criminal Investigative Division and chair of the PCIE Integrity Committee.

I think most of you know that this committee has a tradition here of not swearing Members of Congress, because once they tell us something that is wrong we just never talk to them anymore. But outside witnesses, are asked to take the oath. So if you will stand and raise your right hand. We will add minister the usual oath.

[Witnesses sworn.]

Mr. HORN. All five witnesses have affirmed, the clerk will note.

Why don't we begin with the Honorable Jacquelyn Williams-Bridgers, Inspector General of the Department of State.

STATEMENTS OF JACQUELYN WILLIAMS-BRIDGERS, INSPECTOR GENERAL, DEPARTMENT OF STATE; ELEANOR HILL, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, CHAIR, PCIE LEGISLATION COMMITTEE; MICHAEL BROMWICH, INSPECTOR GENERAL, DEPARTMENT OF JUSTICE; PATRICK E. McFARLAND, INSPECTOR GENERAL, OFFICE OF PERSONNEL MANAGEMENT, CHAIR, PCIE INVESTIGATIONS COMMITTEE; ROBERT M. BRYANT, ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATIONS, CRIMINAL INVESTIGATIVE DIVISION, CHAIR, PCIE INTEGRITY COMMITTEE

Ms. WILLIAMS-BRIDGERS. Mr. Chairman, members of the subcommittee, thank you very much for the opportunity to discuss with you OIG investigative practices. This hearing is particularly timely, given the recent debate in the House about the due process rights of subjects of criminal investigations in my office. It is imperative, as the distinguished panel members just mentioned, that all of us involved in the pursuit of law enforcement balance our mandates to conduct independent and objective criminal investigations with the need to scrupulously protect the due process rights of the American citizens.

Congress created the Office of Inspector General to prevent and detect fraud, waste, and mismanagement through the conduct of audits, inspections, and investigations. These responsibilities require a proactive engagement as well as a reactive engagement in the conduct of our business. A proactive engagement is particularly important in the investigations area, to assure that employees are aware and mindful of the OIG role and responsibility and their rights and obligations when interfacing with OIG.

My office devotes significant attention to the discussion of the OIG investigative process. In numerous department training courses, including Ambassadorial training programs, as well as every Foreign Service and civil service introductory course.

OIG also authors and publishes the Department's Guidebook for Ethical Conduct. In the conduct of criminal investigations, any investigation that we conduct operates under the same guidelines and our investigators exercise the very same authorities as all

other Federal law enforcement entities, such as the FBI, DEA, and INS.

Just 2 years ago, the Department of Justice selected our office as one of seven OIG's to be extended full law enforcement authority under a Memorandum of Understanding with the Justice Department. This selection was based on our unblemished record of exercising full law enforcement authority pursuant to special deputation requests. Under this MOU, our 35 criminal investigators are authorized to effect arrests, to execute search warrants, and to utilize other sensitive law enforcement techniques which may be required in an investigation.

When conducting——

Mr. HORN. Could we have that document at this point in the record?

Ms. WILLIAMS-BRIDGERS. Absolutely. I will submit it for the record.

Mr. HORN. Without objection, it will be included. Thank you.

[The information referred to follows:]

OFFICE OF
THE INSPECTOR GENERAL

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415-0001

June 23, 1997

Honorable Stephen Horn
Chairman
Subcommittee on Government Management, Information
and Technology
House Committee on Government Reform and Oversight
Washington, D.C. 20515-6143

Dear Chairman Horn:

Enclosed is a copy of the Memorandum of Understanding between the Office of the Inspector General of the Office of Personnel Management, the Department of Justice and the Federal Bureau of Investigations, which I stated in my testimony that I would provide to the subcommittee. Also enclosed is a copy of the President's Council on Integrity and Efficiency Quality Standards for Investigations, which is currently under revision.

I have also included my biography and prepared statement on a 3 ½ inch diskette.

If you have any questions concerning these documents, please call me or have a member of your staff call E. Jeremy Hutton, Special Counsel, on 202-606-3807.

Sincerely,

Patrick E. McFarland
Inspector General

4 Enclosures

OIG-01
September 1991

Enclosure 1

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) constitutes an agreement between the Office of Inspector General of the Office of Personnel Management (hereafter OIG), the United States Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI).

I. PURPOSE

The purpose of this MOU is to set forth an agreement under which the Department of Justice will deputize certain OIG investigators as Special Deputy U.S. Marshals, and the OIG and its deputized investigators will adhere to certain specified requirements regarding training and investigations.

II. POLICY AND LEGAL FOUNDATION

DOJ has primary responsibility for enforcement of violations of federal laws by prosecution in the United States district courts. The FBI is charged, in various sections of the United States Code, with investigating violations of federal laws. The OIG has primary responsibility for the prevention and detection of waste and abuse, and concurrent responsibility for the prevention and detection of fraud, within the Office of Personnel Management. The Inspector General Act of 1978, 5 U.S.C. App 3, authorizes the Inspector General to conduct audits and investigations into the programs and operations of the Office of

Personnel Management.

III. DEPUTATION AGREEMENT

A. For a period beginning with the signing of this MOU and continuing to September 30, 1997, the Department of Justice will deputize as Special Deputy U.S. Marshals, pursuant to 28 CFR §§ 0.19(a)(3) and 0.112(4), all Special Agents of the OIG in the "1811 Series" who are designated and are supervised by the Assistant Inspector General for Investigations.[1] Those Special Agents so deputized may, while engaged in the performance of official duties and in addition to any other actions they are authorized to take:

1. make an arrest without a warrant for any federal violation,[2] if such violation is committed in the presence

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[1]The Inspector General Act, P.L. 95-452, provided that each Inspector General shall appoint an Assistant Inspector General for Auditing and an Assistant Inspector General for Investigations. This MOU contemplates deputation of those employees of the OIG who are supervised primarily by the Assistant Inspector General for Investigations, and are designated in the 1811 Series ("Criminal Investigator") by the Office of Personnel Management Position Classification Standards for Occupational Classification.

[2]Deputation as a Special Deputy U.S. Marshal does not provide plenary authority to make arrests for nonfederal criminal violations. See Office of Legal Counsel Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation, dated February 21, 1995, "Authority to Pursue Non-Federal Fugitives." Legal authority for federal officers to respond to such offenses generally depends on state law. A federal agency may, however, as a matter of policy permit its officers to intervene in serious criminal conduct that violates state law under certain circumstances. See 2 Op. Off Legal Counsel 47, 52-3, (1978) for a discussion concerning the effect of such policy on the risk of civil liability to the officer.

of the Special Agent, or if the Special Agent has probable cause to believe that the person to be arrested has committed a felony;

2. seek and execute a warrant for an arrest, for the search of premises, or the seizure of evidence, if such warrant is issued under the authority of the United States upon probable cause to believe that a violation has been committed; and

3. carry a firearm.

B. The deputation referred to in Paragraph A is contingent upon the OIG's and the OIG's employees so deputized abiding by the terms of this MOU. The deputation of a Special Agent may be revoked if DOJ or the OIG finds that the Special Agent has acted in contravention of those terms. The deputations of all Special Agents of the OIG may be revoked by DOJ if DOJ finds a pattern of noncompliance.

C. Between June 1, 1997 and August 31, 1997, the OIG shall make a written report to the Criminal Division of DOJ detailing the investigative and prosecutive activities of the persons employed by the OIG who have received special deputations. The reports shall contain information on the occasions[3] on which the authority conferred by the deputation was used in connection with arrests, searches, execution of restraining orders, protection of witnesses, dangerous surveillance of investigative subjects,

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[3]It is agreed that the OIG and DOJ will reach an understanding as to what constitutes an "occasion," so that statistics generated by each agency will be consistent.

interviews under hazardous circumstances, temporary custody of federal prisoners, support for undercover operations, service of subpoenas under hazardous circumstances, and assisting in electronic surveillance. The reports shall also identify the federal prosecutor assigned to any particular investigation that resulted in an arrest or search.[4]

IV. GENERAL TRAINING REQUIREMENTS

In order to be considered for deputation, each OIG Special Agent must certify completion of the Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center. As an alternative, this training requirement can be satisfied by certification of completion of a comparable course of instruction involving a minimum of 80 hours in enforcement operations, 80 hours of legal training, 40 hours of firearms training, and 40 hours of defensive tactics and physical conditioning. Additionally, the OIG agrees to provide periodic refresher training in the following areas: trial process, federal criminal and civil legal updates, interviewing techniques and policy, law of arrest, search and seizure, and physical conditioning/defensive tactics. The specifics of these programs are within the discretion of the OIG, but should conform to

[4]The information required by this paragraph is the information currently required to be filed by those Department of Labor OIG agents in the Office of Labor Racketeering who have blanket deputation authority to investigate labor racketeering offenses, and is used by Criminal Division personnel to assess whether the investigators have complied with the terms and conditions of the deputation agreement.

standards such as those set at the FBI Training Academy at Quantico, Virginia; the Federal Law Enforcement Training Center in Glynco, Georgia; or any other Federal law enforcement training facility.

V. FIREARMS TRAINING AND RE-CERTIFICATION REQUIREMENTS

It is imperative that periodic firearms training and recertification in accordance with Department of Justice or Department of Treasury standards be provided to deputized OIG Special Agents. This training should focus on technical proficiency in using the firearm the Special Agent will carry, as well as the policy and legal issues involved in the use of deadly force. The training for this requirement must be met by completion of an appropriate course of training at the Federal Law Enforcement Training Center at Glynco, Georgia, or an equivalent course of instruction. This training will include policy and law concerning the use of firearms, civil liability, retention of firearms and other tactical training, and deadly force policy. In addition to basic firearms training, it is further agreed that the OIG will implement a program of quarterly firearms qualifications by deputized IG Special Agents, which is conducted in accordance with recognized standards. In executing this MOU the OIG agrees to abide by the same use of deadly force policy as the FBI.[5]

[5] The current policy concerning the use of deadly force is contained in Resolution 14 of the Office of Investigative Policies, approved by the Attorney General on October 17, 1995.

VI. ADHERENCE TO ATTORNEY GENERAL GUIDELINES

OIG Special Agents deputized pursuant to this MOU agree to be governed by applicable sections of the Attorney General's Guidelines on General Crimes, Racketeering Enterprise, and Domestic Security / Terrorism Investigations.[6] OIG Special Agents will continue to follow the November 7, 1983, Attorney General's Memorandum on Procedures for Lawful, Warrantless Interceptions of Verbal Communications

VII. OIG / FBI MUTUAL NOTIFICATION REQUIREMENT

The Inspector General Act of 1978 directs expeditious reporting to the Attorney General whenever the OIG has reasonable grounds to believe there has been a violation of federal criminal law.[7] As the primary investigative arm of DOJ, the FBI has jurisdiction in all matters involving fraud against the federal government, and shares jurisdiction with the OIG in the

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A copy is attached and shall be considered a part of the MOU. Section I of Resolution 14 provides: "Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person."

[6]These Guidelines, which are applicable to the FBI, were promulgated by then Attorney General Thornburgh on March 21, 1989 and are set out at FBI's Manual of Investigative Operations and Guidelines, Part I, Sections 1-3.

[7]This requirement is reiterated with greater specificity in the United States Attorneys' Manual (USAM), Sections 9-42.502 and 503.

investigation of fraud against the OIG's agency. In such areas of concurrent jurisdiction, the OIG and the FBI agree to promptly notify each other upon the initiation of any criminal investigation, unless the FBI SAC and the OIG Regional Office have made other arrangements that preclude the need for notification in certain categories of cases or in certain situations. Absent exigent[3] circumstances, "promptly" shall be considered to be within thirty calendar days. Notification by the OIG shall be in writing and addressed to the FBI in the district in which the investigation is being conducted. Notification by the FBI shall be in writing and shall be addressed to the appropriate regional office of the OIG. In investigations where allegations arise which are beyond the scope of the OIG's jurisdiction, the OIG will immediately notify the appropriate investigative agency and the appropriate prosecutive authority of the allegations.

VIII. CONSULTATION WITH PROSECUTORS.

In criminal investigations, a federal prosecutor must be consulted at an early stage to ensure that the allegations, if proven, would be prosecuted. At a minimum, a federal prosecutor must be consulted before any criminal investigation is conducted beyond verifying the basic facts of the complaint and/or the

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[3]In this context, "exigent circumstances" are those when notification could reasonably be expected to endanger life or cause substantial property destruction, cause the concealing, destruction, or alteration of evidence, or otherwise seriously hinder or impair an investigation.

reliability of the complainant through re-contact of the complainant, public records and indices checks, and subpoenas for telephone toll records. Investigative steps such as the collection of third party records and consensually recorded conversations are beyond what is allowable prior to an initial consultation with a federal prosecutor.[3]

IX. SENSITIVE TECHNIQUES AND CIRCUMSTANCES REQUIRING JOINT INVESTIGATIONS

Certain types of investigations, typically because of the investigative techniques involved, are governed by statute or rules and often are subject to close judicial scrutiny. To ensure strict compliance with applicable requirements and with the Attorney General's Guidelines, cited in Section VI, these OIG investigations must be conducted jointly with the FBI or with another federal law enforcement agency that has statutory law enforcement authority and jurisdiction over the offense. Before an OIG investigation is conducted jointly with a federal law enforcement agency other than the FBI, the OIG shall notify the FBI. If the FBI believes that it, rather than another federal law enforcement agency, should conduct the investigation jointly with the OIG, and the OIG disagrees, the matter shall be referred

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[3]It is recognized that IG subpoenas, which have a civil and criminal purpose, are often used at a preliminary stage of an investigation. Nothing in this MOU is intended to preclude the OIG's continued use of such subpoenas as authorized in section 6(a)(4) of the Inspector General Act, and the reference to telephone toll records in the preceding sentence of the MOU is a specific recognition of this.

to the appropriate United States Attorney for resolution.

In situations where a joint investigation with the FBI is required, the FBI will make every effort to participate. Normally, resource allocations will be determined at the field office level. In unusual situations where an agreement cannot be reached at the field level, the matter will be referred to the appropriate agency's headquarters for resolution. The investigations that must be conducted jointly with the FBI or another statutory federal law enforcement agency are those involving:

A. Court Ordered Electronic Surveillance.

Court authorized interceptions of wire, oral, or electronic communications, are among the most intrusive investigative techniques currently available to law enforcement. The rigors of the approval process, expenditures of financial and manpower resources, and the probability of challenges by the defense bar make this technique subject to intense scrutiny. Surreptitious electronic surveillance using closed circuit television presents similar considerations. Any case involving the interception of communications pursuant to 18 U.S.C. § 2510 et seq., electronic surveillance using closed circuit television in situations where a warrant is required, or any other court-ordered electronic surveillance, shall be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense.

B. Undercover Operations

An undercover operation, especially one using a proprietary business entity, is often an invaluable technique in combatting white-collar crime, including fraud against the government. However, these operations must be monitored closely and carefully. The Criminal Undercover Operations Review Committee (CUORC), comprised of Senior Executive Service level managers from the FBI and DOJ, reviews every undercover operation involving sensitive circumstances. The CUORC considers the efficacy as well as the legal and policy implications of every proposal, and each undercover operation which is approved is subject to a management on-site review at regular intervals.

To ensure that the review standards of the CUORC are applied to undercover operations contemplated by the OIG, any undercover operation by the OIG must be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense if it will extend beyond six months in duration or will involve any of the following circumstances:[10]

1. authorized criminal activity;
2. the operation of a proprietary business;
3. a substantial risk of harm to any individual;
4. the potential for significant civil liability; or
5. the targeting of a high-level public official or any

[10]The five categories are generally defined in the Attorney General's Guidelines on FBI Undercover Operations as operations that may not be approved by the Special Agent in Charge because of fiscal circumstances or sensitive circumstances.

public official involved in a systematic pattern of corruption.

C. Especially Sensitive Targets

Investigations of certain classes of persons typically result in a high level of public and governmental attention. Consequently, an OIG investigation that involves any of the following is to be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense:

1. an investigation of a Member of Congress, a federal judge, a member of the Executive Branch occupying a position for which compensation is set at Executive Level IV or above, or a person who has served in such capacity within the previous two years;

2. a significant investigation of a public official for bribery, conflict of interest, or extortion relating to the performance of the official's performance of duty;[11]

3. an investigation of a federal law enforcement

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[11] "Significant investigations" include investigations such as those involving allegations of a pattern of bribe-taking by a group of public officials acting in concert with one another. They do not include routine investigations into bribery, conflict of interest, or extortion on the part of lower or mid level employees by the OIG and it is recognized that investigations of this type have typically been carried out by the OIG. Nevertheless, investigations of this type, like all investigations, are subject to the notification and consultation requirements of Parts VII and VIII. Such notification is particularly important in cases involving government officials and employees.

official acting in his official capacity,[12] except OIG internal affairs investigations solely of OIG personnel;

4. an investigation of a member of the diplomatic corps of a foreign country; or

5. an investigation of a person who is or has been a member of the Witness Security Program if that fact is known by the OIG or its employees.

D. Consensual Monitoring in Certain Situations

Consensual monitoring of conversations in some circumstances can present unusual problems. Accordingly, if the OIG contemplates an investigation --

1. of a public official for bribery, conflict of interest, or extortion, relating to the performance of the official's duties; or

2. in which the consenting or nonconsenting person is in the custody of the Bureau of Prisons or the United States Marshals Service,

the investigation must be conducted jointly with the FBI or other federal law enforcement agency with statutory law enforcement authority and jurisdiction over the offense.

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[12]The term "acting in his official capacity" is intended to cover misconduct by investigators in the exercise of their authority to investigate violations of law. The term would include such things as taking bribes or other situations in which a criminal investigator misused the powers of his office in an effort to alter the result of an investigation. It would not include such things as making a false claim on a travel voucher, FECA fraud, improperly claiming overtime pay, or other derelictions that can be committed by federal employees who are not law enforcement officials.

X. USES OF INFORMANTS, SOURCES AND COOPERATING WITNESSES THAT REQUIRE PROSECUTOR CONCURRENCE

The use and control of informants, sources, and cooperating witnesses is recognized by the courts as lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, certain guidelines must be applied because the use of informants and cooperating witnesses may involve intrusion into the privacy of individuals, or cooperation with individuals whose reliability and motivation can be open to question. In the following situations, the prior concurrence of a federal prosecutor must be obtained to avoid problems such as entrapment, danger to the public, and abuse of police authority:

A. when an informant is authorized to participate in criminal activities;

B. when an informant or cooperating witness is a person entitled to claim a federally recognized legal privilege of confidentiality, such as an attorney, clergyman, or doctor;

C. when aggregate payments to a source who could be a witness in a legal proceeding for services and/or expenses exceed $25,000; or

D. when the use of any member of the news media as a source is planned (and in such a situation the prior written approval of a federal prosecutor must be obtained).

XI. RELATIONS WITH THE NEWS MEDIA

DOJ has prescribed policy and instructions concerning the

release of information by employees of DOJ relating to criminal and civil proceedings[13]. OIG personnel must familiarize themselves with and follow these guidelines while deputized. In addition, in the course of joint investigations, wherever a "news release" would be permitted pursuant to the guidelines noted above, the OIG must coordinate the release with the FBI and the DOJ.

XII. EXISTING MOUS AND BLANKET DEPUTATIONS REMAIN IN FORCE

This MOU does not affect any prior MOU between the DOJ and the OIG of the Office of Personnel Management, or any existing blanket deputation of the Special Agents of the OIG of the Office of Personnel Management. Should any such prior MOU or blanket deputation expire while this MOU is in effect, the prior MOU or blanket deputation will not be renewed and deputations of the special agents of the OIG will be governed by this MOU.

XIII. NO RIGHTS CREATED BY THIS MOU

This MOU is entered into solely to govern the relationship between the OIG, DOJ and the FBI. It is not intended to, does not, and may not be relied upon to create any procedural or substantive rights enforceable at law by any party in any matter, criminal or civil, nor does it place any limitation on otherwise lawful investigative prerogatives of the OIG, DOJ or the FBI.

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[13] See 28 CFR § Section 50.2, and United States Attorneys' Manual, 1-7.000.

APPROVED: Patrick E. McFarland DATE: 9-11-96
Patrick E. McFarland
Inspector General
Office of Personnel Management

APPROVED: John C. Keeney DATE: 7-29-96
John C. Keeney
Acting Assistant Attorney General
Criminal Division
U.S. Department of Justice

APPROVED: William J. Esposito DATE: 7/29/96
William J. Esposito
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Ms. WILLIAMS-BRIDGERS. When conducting investigations, the law requires that IG's report expeditiously to the Attorney General when we have reasonable grounds to believe there has been a violation of Federal criminal law. In keeping with this mandate, our office coordinates early with DOJ on all criminal investigations. Justice then assumes a supervisory role in the conduct of investigations.

Nearly 100 percent of our cases at the start are criminal investigations. Assistant U.S. attorneys, therefore, provide guidance because they are most familiar with the varying and unique prosecutive thresholds in their districts. Once a criminal investigation is either prosecuted or declined for prosecution, there will often be an administrative phase to the investigation. This administrative phase may require further investigation to gather necessary evidence for referral to the Department of State, for example, for disciplinary action, or to the Department of Justice for civil remedy.

Now, allow me briefly to comment on the issue of due process, which has been the focus of much of the discussion this morning.

Due process is defined by the Constitution and is constantly interpreted by the courts. The recent House debate considered an amendment to law that would provide special privileges to a very narrow spectrum of American citizens: Employees of the Department of State, USIA and ACDA privileges that included notification of certain rights that do not extend to any other American citizen.

Mr. Chairman, I want to assure you that my office provides the full range of warnings and assurances to individuals subject to investigation in accordance with Federal case law and DOJ guidelines. What this means is that during the custodial interviews, meaning when we are about to effect an arrest of the subject of an investigation, we advise the subject of their right to remain silent and their right to retain counsel. During noncustodial employee interviews, certain warnings are administered depending on the circumstances existing at that time.

Circumstances that might dictate which warning is given varied but could depend on factors as to whether or not the case has been declined for criminal prosecution by DOJ and upon the guidance provided us by the Federal prosecutor. The legislation discussed in the House debate would also have required identification of all individuals attending an OIG interview.

We generally provide advanced notice to subjects of an investigation when scheduling interviews if such notice would not compromise the integrity of the investigation. An advanced notice requirement, as suggested in the former amendment, would preclude the possibility of State OIG engaging in any type of undercover investigation. Further, an individual who is provided advanced notice of an interview or who is told at an early stage of an investigation that FBI or DEA, for example, would participate may use such information to determine either our strategy or possible identities of informants or other witnesses against them. This is a serious concern as more of our passport and visa process—visa investigations cross the line into narcotics violations or more serious criminal violations of law.

Finally, such advanced notice may also foster the opportunities for the subjects to destroy incriminating evidence, fabricate evidence, or attempt to improperly influence the testimony of cooperating witnesses.

Other law enforcement entities not constrained with the requirements, as suggested in the former amendment, might simply choose not to become involved with State OIG criminal investigations. This would be unfortunate since between 30 and 40 percent of our criminal investigations are conducted jointly with other law enforcement entities.

Last, OIG is committed to and goes to great lengths to protect the privacy of individuals who are subjects or witnesses in connection with our investigations. Indeed, the integrity of our investigative process requires that we not disclose the details of pending investigations. Therefore, our policy is not to comment publicly about open investigations.

Any comment made by OIG regarding pending criminal matters is closely coordinated with and approved by the Department of Justice. In the case referred to by the earlier panel, I must reiterate, Mr. Chairman, there was no unauthorized release of information to the public by my office.

In conclusion, I am committed to protecting the Secretary of State's ability to pursue the foreign policy objectives free of impediments of fraud, waste, and abuse, as the Congress intended, and as the American taxpayer deserves.

I thank you, again, Mr. Chairman, for holding this hearing. I would be glad to entertain any questions that you or members of the subcommittee might have at any point.

Mr. HORN. Well, thank you very much. We are going to wait until after the testimony of everybody on the panel before we open it to questions.

[The prepared statement of Ms. Williams-Bridgers follows:]

TESTIMONY OF
JACQUELYN WILLIAMS-BRIDGERS
INSPECTOR GENERAL OF THE DEPARTMENT OF STATE,
THE ARMS CONTROL AND DISARMAMENT AGENCY, AND
THE UNITED STATES INFORMATION AGENCY,
INCLUDING THE BROADCASTING BOARD OF GOVERNORS

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION AND TECHNOLOGY
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

JUNE 24, 1997

Mr. Chairman, thank you for this opportunity to discuss with you the investigative practices and procedures of my office. This hearing is particularly timely given concerns raised during recent debate in the House about the due process rights of subjects of OIG criminal investigations.

No one is, or should be, more concerned about adhering to due process in my office than I. I have carefully listened to the concerns of the distinguished panel members who proceeded me and I want you to know that I hear their concerns. I have already committed to updating our investigative rights pamphlet and ensuring that each and every employee of the Department receives this information on a recurring basis. I have also committed to putting in writing our policies and procedures related to the public release of information on investigations, and to reporting to the Congress on instances of such releases over the past year.

My goal today is to underscore my unwavering adherence to the rule of law in the conduct of criminal investigations and to an individual's right to be informed at the appropriate time of the full panoply of rights and obligations dictated by federal law and judicial decisions.

I. OIG ROLES AND RESPONSIBILITIES

OIG Responsibilities and Authorities

Under the provisions of the Inspector General Act of 1978, as amended, and the Foreign Service Act of 1980, as amended, the Inspector General at the U.S. Department of State has broad authority to conduct audits, inspections and criminal investigations as necessary to improve the effectiveness, efficiency and economy of State Department operations and to detect

and prevent waste, fraud, abuse and mismanagement. An independent Office of Inspector General (OIG) was established in the Department of State in 1986. In December of 1987, this office also became the OIG for the Arms Control and Disarmament Agency, and in April of last year, the Office of Inspector General for USIA, including the Broadcasting Board of Governors was merged into my office.

The Inspector General is required by law to 1) report both to the Secretary of State and the Congress; 2) operate under the general supervision of and have prompt access to the Secretary; 3) bring particularly serious problems, abuses or deficiencies to the immediate attention of the Congress, while keeping the Secretary informed; and 4) report twice each year to the Congress on the activities and findings of the OIG during the previous six-month period.

The investigative process is a very important component of an IG's ability to ferret out and hold employees accountable for waste, fraud and abuse in the Department of State, the United States Information Agency, including the Broadcasting Board of Governors, and the Arms Control and Disarmament Agency. In 1995, the Department of Justice selected our office as one of seven OIGs to be extended full law enforcement authority under a Memorandum of Understanding (MOU) with the Justice Department. This selection was based on our unblemished record of exercising full law enforcement authority pursuant to special deputation requests. Under this MOU our 35 federal criminal investigators operate with full law enforcement authorities, including the ability to effect arrests, to execute search warrants, and to utilize other sensitive law enforcement techniques which may be required in a particular investigation. All of these authorities are exercised under the supervision of a federal prosecutor and many levels of management review in OIG. If an investigation discloses sufficient evidence of criminal misconduct, the case is referred to the Department of Justice for consideration of criminal prosecution. If the case is prosecuted, our case agents work closely with federal prosecutors in trial preparation and presentation which includes testimony before federal grand and trial juries. In the conduct of federal criminal investigations, OIG investigators operate under the same guidelines and exercise the same authorities as other federal law enforcement entities such as the FBI, the DEA and the INS.

The current MOU with the Justice Department expires at the end of this fiscal year. I would hope that at the earliest opportunity, the Congress would consider incorporating these MOU authorities into statute.

Proactive and Preventive Actions

The Inspector General is charged with fraud prevention as well as fraud detection. Toward this objective, the Office of Inspector General engages in several activities including preparing and distributing fraud alert bulletins and Management Implication Reports, conducting training, distributing informational pamphlets and booklets, and undertaking proactive investigations. Fraud Alert Bulletins are issued to all bureau executive directors when our investigations identify a systemic weakness that has an impact on all Department, USIA, or ACDA bureaus. Management Implication Reports are issued when a systemic weakness is

identified in a bureau-specific program or operation. It is sent directly to the affected bureau with recommendations for corrective action.

Experienced investigative staff from the OIG also provide training to individuals in State, USIA and ACDA, as well as other government agencies. OIG provides speakers on a regular basis for courses at the National Foreign Affairs Training Center including ambassadorial seminars, foreign service officer and civil service introductory training, budget and fiscal officers training, advanced consular courses, and regional security officer training. A portion of the discussion in these classes is devoted to the subject of the OIG investigative process. We seek to reach out to employees during such training to explain in detail our investigative process as we find it is a matter of intense interest to employees at all levels in the Department.

The OIG also writes, publishes and distributes a booklet entitled "Standards of Conduct" which is a guide to ethical conduct for Department of State employees in the United States and abroad. Both the investigative pamphlet and ethics booklet have been widely distributed throughout the Department and to embassies abroad. In addition, the OIG section of the Foreign Affairs Manual, which is available to all employees either in hard copy or in electronic form, fully spells out the investigative process as well as the other responsibilities of the OIG. We undertake these activities in an effort to heighten employee sensitivity to potential ethical pitfalls, such as conflict of interest situations and other common problem areas.

II. INVESTIGATIVE CASELOAD

Office of Inspector General investigations are conducted in response to allegations of fraud and misconduct in all Department of State, USIA, and ACDA programs and operations. Our caseload varies from 200 to 300 pending investigations at any given time and currently stands at 210 cases. Major areas of investigative emphasis have been in passport and visa fraud, theft and embezzlement cases, false claim and false statement cases, contract and procurement fraud and a wide variety of employee misconduct issues. Currently passport and visa fraud cases comprise 23 percent of our workload. Theft and embezzlement cases comprise 21 percent of our cases. False statement and claim cases are 15 percent, contract and procurement fraud cases are seven percent and employee misconduct cases are 17 percent of the workload. The remaining 17 percent of our cases are spread among a number of case/violation types, such as grant fraud, bribery, conflict of interest, mail and wire fraud.

Over the last several years between 30 and 40 percent of our workload has involved joint investigations with such other agencies as the FBI, INS, DEA, Customs, other Offices of Inspector General and the Department's Bureau of Diplomatic Security.

III. QUALIFICATIONS OF OIG INVESTIGATIVE AND LEGAL STAFF

All of the Special Agents in our Office of Investigations have been trained at the Federal Law Enforcement Training Center (FLETC) or a comparable law enforcement academy. We

have an intensive in-service training program which requires agents to keep abreast of changing laws and regulations governing the conduct of federal investigations. For instance, FLETC recommends that all GS-1811 criminal investigators take the FLETC sponsored Continuing Legal Education Training Program every five years. We have mandated that our agents take and pass the course every four years. Our agents have an average of 14.4 years of law enforcement experience. Our investigation managers have on average 22.6 years of law enforcement experience. In addition to their experience with the Department of State Office of Inspector General, our agents come to us with law enforcement experience from other Offices of Inspector General, investigative arms of the Military Departments, or other Treasury and Justice law enforcement agencies such as ATF, Customs and the INS.

My Office of Counsel, which currently includes six attorneys and two paralegals, has a great deal of experience in the oversight of criminal investigations. They work in tandem with Justice Department attorneys and other IG counsel throughout the government, both to oversee complex criminal investigation and to stay abreast of an ever-changing criminal investigative statutory framework. My chief counsel spent five years as a State prosecutor in Montgomery County, Maryland. He spent another six years as a senior trial attorney in the Public Integrity Section of the Criminal Division of the Department of Justice. He joined this office almost at its inception in 1987. My deputy counsel has spent his entire career working on the legal staff of Inspectors General. He spent a number of years as an associate counsel at the Commerce Department IG and then joined this office in 1986. He has extensive experience in the oversight of criminal investigations and is an expert in the ethics and conflicts of interest criminal statutes as well as government-wide ethics regulations promulgated by the Office of Government Ethics. My remaining four attorneys, one of them a previous chief counsel to another IG, have a wide range of backgrounds which bring fresh insights and careful oversight to our investigative caseload.

IV. THE INVESTIGATIVE PROCESS

Sources of Allegations

The investigative process begins with the receipt of information alleging fraud, waste, abuse or mismanagement in the programs and activities of the State Department, ACDA, USIA, including the Broadcasting Board of Governors. Allegations originate from a number of sources. Thirty one percent of our case openings are based on information received from other agencies such as the FBI, INS and other law enforcement agencies. Eighteen percent of our cases are the result of Department management referrals. Employees are the source of 10 percent of the allegations we receive, and another 10 percent of our cases comes from the OIG hotline.

Conduct of Investigations

The Inspector General Act requires all IGs to "report expeditiously to the Attorney General when the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law." In keeping with this legislative mandate, our OIG has established a

policy of early coordination with the Department of Justice on all criminal investigations. The Department of Justice (DOJ) then, in essence, assumes a supervisory role in the conduct of our criminal investigations. Nearly 100 per cent of our cases at initiation are criminal investigations. In rare instances OIG opens "special inquiries" that at initiation are administrative in nature. Our practice on these occasions has been to use multi-disciplinary teams including investigators, auditors, inspectors and attorneys. On these teams, the investigator's role is not only to be a fact finder but also to be available to pursue an investigation criminally should the inquiry develop possible violations of federal law.

We potentially present cases for prosecutive determination in any of the 94 Federal judicial districts. In light of this, we are especially sensitive to the guidance of Assistant United States Attorneys (AUSAs) who are most familiar with the often varying and unique prosecutive thresholds in their districts. For instance, the AUSA is in the best position to know if the gravamen of a particular allegation, even if proven, rises to the prosecutive threshold in a given district. Among the guidance we often receive from AUSAs is the proper rights warnings to be administered to the target of the investigation.

Once a criminal investigation is either prosecuted or declined for prosecution, there will often be an administrative phase to the investigation. This administrative phase may require additional investigation to gather the necessary preponderance of the evidence on which either a referral to the Department for administrative or disciplinary action or to the Department of Justice for civil remedy is based. Our administrative referrals to the Department are made to the Director General for appropriate disciplinary action on Foreign service and Civil service employees and to the appropriate Ambassador. If a financial recovery action is to be pursued, we also refer our reports to the Department's Office of Finance and Management Policy. Finally, if the investigation involves a contractor, and wrongdoing is established, a referral may be made to the Department's Procurement Executive in the Office of Administration for consideration of a potential suspension or debarment action.

Due Process and Advice of Rights

Due process is defined by federal law, court decisions and federal regulation. The OIG conforms scrupulously to all federal law enforcement standards. All federal law enforcement entities are required to provide "due process" to all individuals under investigation. A purposeful violation of an individual's due process rights in the federal criminal investigative process would subject the offending federal investigator to a wide range of disciplinary action including potential criminal prosecution, likely civil actions with resulting monetary penalties, as well as severe administrative sanctions up to and including dismissal from employment. Due process represents a legal "bright line" in the federal investigative arena, clearly recognized and understood by OIG investigators, which if violated would subject them to serious sanction.

The recent House debate considered a change in law that would provide additional rights to a narrow spectrum of American citizens, i.e., employees of the State Department, USIA, and ACDA, and would alter long-standing and widely accepted investigative standards. Given the existing panoply of rules and procedures regulating due process considerations in the federal

investigative context, any legislative change that would impose special rules on one law enforcement office would not address these due process concerns. Rather, such legislation would have an unintended but, nevertheless, clearly deleterious effect on the ability of that law enforcement office to bring criminals to justice.

A requirement that the State/USIA/ACDA OIG, as distinct from all other federal investigative entities, provide *Miranda* type warnings to employees in a formal interview situation where they are the "likely" subject or target of a criminal investigation is unnecessary and would prove to be counterproductive. Existing federal law (due process) requires *Miranda* warnings only when the individual is in a custodial law enforcement situation and is being interviewed under circumstances in which there is no ability to leave the interview. In the *Miranda* decision, the Supreme Court recognized that individuals subject to interrogation while held in police custody were most in danger of being coerced into making admissions; hence, the Supreme Court required that such individuals be apprised of their rights to remain silent and to counsel. The Supreme Court has repeatedly refused to extend these same rights to individuals who are free to end a police interview simply by leaving the room. Legislation similar to that discussed in the House debate would have the effect of overturning a long line of Supreme Court cases refusing to extend *Miranda* warnings in non-custodial interview situations, but would do so only for employees investigated by our office.

This office strictly adheres to established federal case law and provides full *Miranda* warnings to employees during custodial interviews. In addition, we follow Justice Department established policies on providing other rights warnings when an employee is the subject or target of an OIG investigation. These rights warnings, known as *Garrity* and *Kalkines* warnings, are administered depending on circumstances existing at the time of the interview. Circumstances that might dictate which warning is given vary but could depend upon factors such as whether a case has been declined for criminal prosecution by DOJ and upon guidance provided to us at a particular juncture in the case by a federal prosecutor. Our Office of Investigations Policy and Procedures Manual provides our investigators with guidance on administering proper rights warnings. All of our instruction in this critical area is completely consistent with case law and with the larger federal investigative community standards. Because I recognize how very important it is to protect the rights of the accused in a criminal investigation, I have tasked my Assistant Inspector General and Chief Counsel with ensuring that all of our Special Agents are kept fully abreast of changing case law. As previously stated, towards achieving this goal we send our Special Agents to very comprehensive Continuing Legal Education Training Programs and we do so even more frequently than recommended by the Federal Law Enforcement Training Center.

The legislation discussed in the House debate would also have required identification of all individuals attending an OIG interview. This requirement would preclude the possibility of State OIG engaging in any type of Justice Department sanctioned undercover investigative activity, such as consensual monitoring or Title III wiretap authority as well as other law enforcement techniques. The absence of these techniques would compromise our ability to conduct or successfully complete many of our most serious criminal investigations. An individual who is provided with such warnings prematurely will very likely decline further

interview and ask to be represented by an attorney, thus effectively shutting down the investigation. It is in recognition of that concern that the Supreme Court has ruled consistently that the right to counsel does not attach until a later more formal stage of the inquiry. The courts do not want to prevent the successful conclusion of criminal investigations, rather they want to ensure fairness for individuals held in inherently coercive interview situations. Further, an individual who is provided early or advance notice of an interview, or who is told at an early stage of an investigation that the FBI or DEA will participate, may use such information to figure out the investigative strategy and possibly to help identify confidential informants and other witnesses against them. This is a serious concern as more of our passport and visa investigations cross the line into narcotics and other more serious potential criminal violations. Finally, such unprecedented advance information may also foster opportunities for the subject to destroy incriminating evidence, fabricate exculpatory evidence and attempt to improperly influence the testimony of or to otherwise intimidate other witnesses.

The Justice Department is endeavoring to ensure standardization of law enforcement procedures. Standardized procedures are imperative so that federal law enforcement officials will have a clear and uniform understanding of the rules so as to ensure that there is no ambiguity with respect to the requirements to protect the rights of individuals under investigation. The imposition of any unique requirements would severely limit our office's ability to participate as equal partners with other federal and state law enforcement agencies in the conduct of criminal investigations. Other law enforcement entities not shackled with these requirements would simply choose not to involve State OIG in its criminal investigations. This would indeed be unfortunate as between 30 to 40 percent of our criminal investigative caseload is presently worked jointly with other law enforcement entities, and those cases represent a very significant portion of our most serious and sensitive investigations.

V. PUBLIC DISCLOSURE

OIG is committed to and goes to great lengths to protect the privacy of individuals who are subjects or witnesses in connection with our investigations. Indeed, the integrity of our investigative process requires that we do not disclose details about pending investigations. Therefore, our general policy is not to comment publicly about open investigations. Any comment by OIG regarding a pending criminal investigation is closely coordinated and approved by the Department of Justice. Unfortunately, on occasion, information does reach the media about our ongoing investigations which is beyond our control. An individual who has been interviewed may contact a member of the media for any number of reasons, for example to draw public attention to a problem in an effort to force resolution of that problem.

Should we receive a media inquiry on a closed investigation, that inquiry would be handled in accordance with the provisions of the Privacy Act and the Freedom of Information Act and the files would be reviewed and redacted accordingly.

In conclusion, Mr. Chairman, I am committed to protecting the Secretary of State's ability to pursue the foreign policy objectives of the United States free from the impediments of waste, fraud and abuse as the Congress intended and as the U.S. taxpayer deserves.

I would like to thank you, Mr. Chairman for holding this hearing today and the support you have provided to the continued exercise of the full range of law enforcement authorities consistent with the policies and practices exercised by the Department of Justice and other Federal law enforcement agencies and as provided by the Inspector General Act of 1978.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or others on the Subcommittee may have.

Mr. HORN. The Honorable Eleanor Hill is the Inspector General of the Department of Defense, and chair of the Legislation Committee of the PCIE. Ms. Hill.

Ms. HILL. Thank you, Mr. Chairman. Good morning.

Let me, first of all, thank you for the opportunity to testify here today and also to commend you for the subcommittee's attention to issues which really directly affect not only the Inspectors General but the entire Federal law enforcement community.

I have a written statement, which I would like to submit for the record, and in the interest of time, I would just briefly like to emphasize a few points.

Mr. HORN. The whole statement shall automatically go in just after I introduced you, without objection.

Ms. HILL. Thank you.

As you know, the Congress vested the Inspectors General with broad authority to not only audit and investigate, but also to advise their departments on how best to prevent and control fraud and abuse in the future. Our investigative role fully complements and enhances our ability to work for constructive change in Government.

The Federal law enforcement community, of which the IG's are a part, today faces perhaps a more diverse and more challenging array of criminal activity and criminal threats than ever before. The public interest in identifying and combating those threats is unquestioned. Law enforcement's task is to effectively investigate that criminal activity while carefully and continually balancing the public's interest against the need to recognize and protect the rights of the individual.

My own experience tells me that while that is clearly a difficult task, it is not impossible. It requires professionalism, competence, a sense of fairness, and unwaivering respect for the rule of law. All of those are qualities which we strive for at the DOD IG.

I want to take a few minutes to talk about the Defense Criminal Investigative Service, which I go into in great length in the statement, commonly known as DCIS, which is the criminal investigative arm of the DOD IG. One of the things that Congressman Hamilton raised this morning that concerned me was his statement that the IG's are really not members of the Federal law enforcement community. I would certainly take issue with that: at the DOD IG, while we have many auditors, and a separate section on administrative investigations, we have DCIS, which I think is recognized throughout the Federal law enforcement community as a member of that community. It has a proven track record in Federal law enforcement. I should add DCIS works closely and jointly on many cases with the FBI, the Postal Inspection Service, the Customs Service, and many other members of the Federal law enforcement community, in addition to the other Inspectors General. So we certainly would differ on that point, I think, with Mr. Hamilton.

DCIS is currently staffed with over 350 criminal investigators, and I stress they are only criminal investigators. There are 1,811 Federal criminal law enforcement officers. They have 50 field offices throughout the United States. We also have one office overseas in Germany.

DCIS has compiled an impressive track record of professionalism and competence in criminal investigations, particularly in procurement fraud, which is its main area of emphasis. Since 1981, it has conducted investigations resulting in 4,000 criminal indictments and $3.8 billion in recoveries to the Government. DCIS currently has more than 1,700 ongoing investigations. Again I stress this is not the entire IG's office, this is just our criminal investigations section.

DCIS has prioritized its work in critical areas, particularly product substitution; contract accounting fraud; subcontractor kickbacks; health care fraud, which is a huge area at the Defense Department; property disposal; and environmental crime, to name but a few.

The ability of DCIS to conduct professional and competent investigations is directly related to its training program, which is comparable to training programs at all major Federal law enforcement agencies. As outlined in the statement, this includes three required programs of instruction at the Federal Law Enforcement Training Center, as well as additional specialized and advanced courses in areas of particular interest to DCIS.

Regarding law enforcement authority, which was mentioned by Ms. Bridgers this morning, while DCIS currently lacks statutory law enforcement authority to arrest civilians, it has been granted that authority under a special blanket deputation from the Department of Justice since 1991. That deputation predated and is separate from the 1995 deputation agreement between the Department of Justice and several other IG's, which Ms. Bridgers referred to a moment ago.

DCIS has traditionally worked closely with both the Justice Department and the FBI, encouraged by a long-standing Memorandum of Understanding between Justice and the Defense Department which covers the investigation and prosecution of criminal matters over which both departments have jurisdiction.

Since deputized in 1991, DCIS agents have made 500 civilian arrests and served 800 search warrants. The fact that the Justice Department has annually approved the deputation since 1991 attests to DCIS's need for this authority as well as its ability to exercise that authority properly.

As a result, this year both the Justice Department and the FBI have endorsed DOD's request for statutory law enforcement authority for DCIS. That authority is now contained in both the House and Senate versions of this year's defense authorization bill, as reported by the authorizing committees to the floor. We believe the legislation is necessary and appropriate and we are hopeful that it will be enacted in the final authorization bill.

My statement sets forth in detail DCIS policies on interviews and rights advisement, all of which are emphasized to our agents in course training as well as in written policy manuals. The policies are intended to comply with all applicable statutory and case law requirements. I note that we are probably unique among the statutory IG's in that we routinely interview not only civilians, but also military members, and, therefore, we comply in their case with the Uniform Code of Military Justice.

On the question of interviews, and we go into it in great length in our statement, I do want to emphasize to the committee that DCIS, when they interview a suspect in a criminal case, and again we are talking about criminal cases, clearly identifies themselves at the beginning of the interview as a member of DCIS. In and of itself this tells the individual it is a criminal investigation because the name of the service is the Defense Criminal Investigative Service. So there is no question if you are interviewed by DCIS that it is potentially a criminal case and we feel that that is good notice. We think that's well-known in the Department and they are advised of their rights, as Ms. Bridgers pointed out, in keeping with statutory requirements.

And I think, of course, our concern with the Hamilton amendment—although I have great respect for Congressman Hamilton, I know his amendment is well intended—I think we feel that it would, in fact, create special rights that do not currently exist, not only for other people that may be interviewed by the IG. In DCIS's case we not only interview employees, we interview civilians, for example, defense contractors. So you would be creating a special class of rights not only for people interviewed by DOD but only part of the people interviewed by DOD.

Although this hearing is focused on criminal investigations, I should point out that the DOD IG, unlike some other IG offices, does have a separate component which is responsible for administrative noncriminal inquiries. That office operates separately from DCIS and has its own core of investigators. It is charged with conducting investigations and overseeing investigations by the military departments in the area of whistle-blower reprisal. It also conducts or oversees investigations of noncriminal misconduct against senior officials, meaning political appointees as well as military officers of grade 7 and above. In 1996, that office investigated or oversighted 500 such administrative cases, including 145 that we conducted in-house at the DOD IG.

Despite the Department's downsizing, that caseload is increasing. We anticipate a record 700 inquiries will be opened in 1997.

Finally, I note that while we have the statutory authority to do so, given the current resources, the DOD IG cannot realistically conduct or directly oversee every investigation that concerns the Department of Defense. I want to point this out only to show that when we talk about investigations at the Department of Defense, we are talking about a huge universe of which we are a small part, just in terms of numbers.

There are approximately today 800,000 civilian employees at DOD. There are 1.5 million active duty military members, and there are another 1.5 million ready Guard and Reserve, all of whom can send complaints, ask for investigations, or be the subjects of investigations.

In addition to the DOD IG, there are roughly 8,000 investigators, inspectors, and auditors just in the military departments and another 4,500 auditors in the Defense Contract Audit Agency. So if you are going to create certain investigative rights for people who are interviewed by the DOD IG at the Defense Department, you would be creating another controversy because you would be giving people special rights in those DOD investigations and not in others.

In closing, I want to reiterate that we do recognize and appreciate the critically important role that investigations must play in our society. We also understand that those who investigate exercise considerable power and that with that power, and clearly because of it, they also bear a heavy responsibility.

We believe our record reflects the importance we place on competence, integrity, and fairness in investigations. I can assure you that we will make every effort to continue to meet those standards in the future. Thank you.

Mr. HORN. Thank you.

[The prepared statement of Ms. Hill follows:]

INTRODUCTION

Good morning, Mr. Chairman and members of the Subcommittee. Let me first of all thank you for the opportunity to testify here today and also commend you for your continuing attention to issues which directly impact the Federal law enforcement community. As you know, Congress vested the Inspectors General with broad authority to not only audit and investigate, but also to advise their Departments on how best to prevent and control fraud and abuse in the future. Our investigative role fully complements and enhances our ability to work for constructive change in Government.

The Federal law enforcement community, of which the DoDIG is a part, today faces perhaps a more diverse and more challenging array of criminal activity than ever before. The list includes, to name but a few: drug trafficking and street violence; domestic and international terrorism; international trafficking in nuclear materials; environmental crime; increasingly sophisticated methods of fraud against the Government as well as the private sector in the health care, finance, and insurance arenas, among others; and finally, the new but still mostly uncharted frontier of cyberfraud.

The public interest in identifying and combating those threats is unquestioned. Law enforcement's task is to effectively investigate and, ultimately, prosecute those responsible for this criminal activity while carefully and continually balancing the public's interest in doing so against the need to recognize and protect the rights of the individual. My own experience tells me that while that is clearly a difficult task, it is not impossible.

It requires professionalism, competence, a sense of fairness, and unwavering respect for the rule of law. All of those are qualities that we continually strive for in the Defense Criminal Investigative Service (DCIS), which is the arm of my office responsible for criminal investigations. I hope that my testimony this morning will help to assure you that DCIS is without question a recognized, valued and responsible member of the Federal law enforcement community.

CRIMINAL INVESTIGATIONS

The DCIS was established by the Secretary of Defense on April 20, 1981, as a worldwide civilian Federal law enforcement agency to investigate suspected criminal activities involving Department of Defense (DoD) components and DoD contractors. In October 1981, DCIS began operations under the direction, authority, and control of the Assistant to the Secretary of Defense (Review and Oversight).

In September 1982, Congress amended the Inspector General Act of 1978 to mandate the creation of the Office of The Inspector General (OIG), for the Department of Defense. As a result of that legislation, the position of Assistant Inspector General for Investigations (AIG-INV) was established and the DCIS became the criminal investigative element of the OIG. The DCIS current staff of approximately 350 criminal investigator~~s~~ are assigned to 50 offices located throughout the United States and in Europe. Those offices consist of a headquarters, six major field offices (FOs), and subordinate resident agencies (RAs) and posts of duty (PODs), located in geographical areas where DoD agencies have primary field elements or where a significant volume of DoD contracting occurs.

Traditionally, the DCIS has concentrated its resources in the procurement and acquisition arena and specifically on allegations involving complex fraud by large contractors. Prior to the formation of the DCIS, there had never been a criminal conviction of a Top 100 DoD contractor for cost mischarging or defective pricing. The DCIS has been extremely successful in obtaining convictions in procurement fraud cases, to include the convictions of 43 Top 100 DoD contractors resulting in significant monetary recoveries.

Over the last 16 years the Office of the DoD Inspector General through the work of the DCIS, has played a leading role in the investigation of significant and complex white collar crimes. Since 1981, DCIS has been responsible for more than 4,000 criminal indictments and over $3.8 billion in recoveries and fines. In just the last two fiscal years, DCIS agents were responsible for 751 indictments and over $885.8 million in fines and recoveries. As of June 18, 1997, DCIS had more than 1,700 current ongoing investigations. The DCIS contributes to a strong national defense through prioritizing critical areas such as product substitution, cost mischarging, defective pricing, health care fraud and improper disposal of government property. Let me briefly describe our efforts in some of those areas.

Product Substitution

The introduction of counterfeit material and other forms of unauthorized product substitution into the procurement system continues to be the number one DCIS priority. These investigations, which deal with reliability, readiness and safety issues that can directly impact the individual Service member as well as our nation's ability to maintain a strong national defense, are of paramount concern. The Department of Justice (DOJ), reflecting its close working relationship with DCIS, has similarly adopted product substitution cases as a priority. Product substitution investigations have always comprised a major part of the DCIS case inventory. DCIS efforts in this area have uncovered defective critical products such as: parachute cord,

life rafts, missile components, aircraft parts, tank components and ammunition.

Contract Accounting Frauds

DCIS investigations of contract accounting fraud in DOD contracts, particularly cost mischarging and defective pricing cases, have resulted in some of our largest monetary recoveries. The DCIS is currently investigating over 400 cases of this type, many of which involve DoD's Top 100 contractors. These labor intensive and often lengthy cases are among the most complex forms of fraud investigations. Many of these investigations have received significant audit support from the Defense Contract Audit Agency and our own OIG audit element.

Subcontractor Kickbacks

Since the passage of the Anti-Kickback Act of 1986, the DCIS has been active in investigating a number of subcontractor kickback violations. The Act prohibits kickbacks involving government contracts; requires that prime contractors have in place reasonable procedures to prevent and detect kickbacks; and requires that prime contractors report in writing to the IG or the DOJ when they have grounds to believe that there may have been violations of the Act. DCIS joint efforts with the FBI, participation in multi-disciplined task forces, and the utilization of informants and undercover operations have been especially effective in these types of cases.

Health Care Fraud

Within the Department of Defense, the Office of Civilian Health and Medical Programs of the Uniformed Services (CHAMPUS) spends approximately $6 billion per year for health care and related services. As you know, concerns over health care fraud have escalated in both government and the private sector.

During the first 6 months of this fiscal year alone, health care fraud investigations comprised more than 25 percent of the DCIS case inventory and resulted in 25 criminal indictments.

Health care fraud schemes are not always confined to one Federal program. As a result, DCIS frequently participates with the Federal Bureau of Investigation and the Department of Health and Human Services Office of the Inspector General in joint investigations of health care fraud and is a member of 27 multi-agency regional health care fraud task forces nationwide. These joint efforts have led to several significant results, including successful investigations of fraudulent laboratory charges such as those involving SmithKline Beecham Corporation, Laboratory Corporation of America Holdings, Damon Laboratories, Corning Clinical Laboratories and Spectra Laboratory, Incorporated.

Together, those investigations resulted in over $600 million in recoveries to the United States Government.

Defense Reutilization and Marketing Service

Under the direction of the Defense Logistics Agency (DLA), the Defense Reutilization and Marketing Service (DRMS) accomplishes the integrated management of property disposal operations worldwide, including reutilization of serviceable assets in support of the Military Services and other authorized customers. The Defense drawdown and the base closure and realignment process continue to have a significant effect on the disposal and transfer of excess military equipment. Emphasis on this type of case and the use of multi-agency, multi-disciplined task forces have identified a significant problem. Most of the equipment has a significant resale value, and the volume and value of the equipment create a potential for corruption. We have directed our field elements to aggressively pursue all information related to the unlawful disposal of defense related supplies and equipment. These investigations involve numerous offenses including major theft, public corruption, kickbacks, U.S. Customs Service violations, antitrust violations and false statements by recipients of equipment.

Environmental Program

Although the Environmental Protection Agency (EPA) has primary jurisdiction with respect to hazardous waste spills or other hazardous situations, DCIS does have the responsibility for investigating fraud in DoD environmental clean-up contracts. The DCIS cooperates with the EPA and other state and local agencies to ensure the expertise needed to deal with these situations. DCIS has identified, investigated and obtained prosecution for a number of environmental crimes affecting the interest of the DoD.

Special Operations

As a part of the effort by the DoD Inspector General to increase oversight of DoD intelligence programs, the DCIS Special Operations Program has increased liaison efforts within the intelligence community. DCIS has recently given additional investigative attention and effort to the Defense Intelligence Agency, the National Security Agency and the National Reconnaissance Office. DCIS Special Operations has also worked closely with the Central Intelligence Agency on matters of mutual interest. Fraud awareness efforts have increased with the inclusion of a block of instruction in the Security for Special Programs course at the DoD Security Institute.

Special Projects

Although the DCIS primary mission is to investigate procurement and contracting fraud affecting DoD programs and operations, our agents are frequently called on to conduct investigations in many other areas. In recent years, DCIS agents have participated in a variety of important, unusual and far-reaching projects and task forces including:

- a congressionally mandated review of prior investigations by the Military Services of apparently self-inflicted deaths of Armed Services members;

- a Government-wide review, requested by the President's Foreign Intelligence Oversight Board, of U.S. intelligence agencies' knowledge of or involvement in the murder, torture or disappearance of American citizens in Guatemala;

- an intelligence review of the murders of U.S. Marines in El Salvador;

- the Atlanta Olympic Games Anti-Terrorism Task Force; and

- the investigation of missing nuclear, biological and chemical warfare logs related to the Gulf War.

Staffing

As of September 30, 1996, DCIS was comprised of 358 criminal investigators and 99 administrative and support personnel. As part of the Department's ongoing downsizing DCIS investigative and support staff are expected to further decrease over the next five years. By FY 2001 DCIS is projected to have authorization for 300 special agent positions, a reduction of 20 percent from current levels.

I remain very concerned regarding the negative impact this downsizing will have on DCIS' ability to continue to meet its investigative responsibilities and ensure adequate investigative coverage for DoD programs. We have initiated various measures including our reorganization last year to allow us to better accommodate downsizing without sacrificing quality in our work. However, as the cuts continue, that task becomes increasingly difficult. Since 1994, the DoD OIG as a whole has shrunk by more than 300 personnel, while requests for our services have continued to increase. If this continues, I will have no choice but to decline to conduct some investigations as well as a number of audits and evaluations.

Training

DCIS agents receive basic and advanced training comparable to all major Federal law enforcement agencies. All DCIS special agents attend the 9-week Basic Criminal Investigator Training Program at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA. This is the same training program attended by all Federal criminal investigators with the exception of the Federal Bureau of Investigation and the Drug Enforcement Administration who train at the FBI Academy. The training includes firearms, defensive tactics, laws of arrest and search and seizure, rules of evidence and criminal law. DCIS agents also attend a 2-week Inspector General Basic Course at FLETC which emphasizes the responsibilities of the Inspector General to ensure that civil and administrative remedies are considered in addition to criminal prosecutions. DCIS special agents also attend a 2-week DCIS Special Agent Training Program at FLETC that concentrates on the unique aspects of investigations within DoD. In addition, DCIS agents attend a number of specialized and advanced courses at FLETC, other agencies and at private vendors to supplement training needs. Examples of these courses include: Financial Investigations in an Automated Environment, Advanced Interviewing Techniques, Financial Crimes Investigation Training Program, Continuing Legal Education and International Money Laundering. DCIS special agents are also required to participate in regularly scheduled in-service training and to demonstrate proficiency in the use of firearms and defensive tactics.

Proactive and Cooperative Efforts

DCIS is recognized within the Federal law enforcement community as a leader in the investigation of procurement fraud. DCIS has developed training programs in conducting procurement and contract related investigations as well as accounting and financial investigative training and we have presented these courses to other Federal Inspector General organizations. The DCIS was one of the first investigative agencies to emphasize a comprehensive approach to the investigation of procurement and contract fraud by coordinating criminal prosecution with civil recoveries and administrative remedies such as suspensions and debarments. Our experience has shown that one of the most effective means to combat fraud against the DoD is the combined use of criminal, civil, contractual and administrative sanctions.

Throughout its history DCIS has striven to work cooperatively with the military as well as Federal, state and local law enforcement agencies. DCIS has successfully worked with much of the Federal law enforcement community including the FBI, the U.S. Customs Service, the Internal Revenue Service Criminal Investigation Division, the Postal Inspection Service, as well as Offices of Inspectors General in the Departments of Transportation and Health and Human Services, the National

Aeronautics and Space Administration, and the General Services Administration.

DCIS has also been a leader in the use of proactive efforts, such as the innovative use of undercover techniques, to identify and investigate procurement and contracting fraud and other white collar crimes. DCIS has successfully used undercover operations to investigate product substitution of critical aircraft and aerospace parts, health care fraud, theft and the illegal export of military equipment, fraudulent worker's compensation claims, and kickbacks and bribery.

Law Enforcement Authority

I was asked to discuss the deputation of Inspector General special agents and the granting of arrest authority to these agents. DCIS agents are civilian law enforcement officers and derive their law enforcement authorities from multiple sources. The authority to carry firearms is delegated from the Secretary of Defense (Title 10, U.S. Code, Section 1585). As Federal law enforcement officers, DCIS agents may apply for search warrants under 28 Code of Federal Regulations, Part 60. DCIS agents may apprehend military personnel under Rules for Courts-Martial, RCM 302(b), and apply for search warrants under Military Rules of Evidence 315 (h)(4).

These authorities indicate clearly that DCIS agents are expected to perform, and do perform, traditional law enforcement duties that may expose them to threats and violence. While DCIS agents do not presently have statutory authority to arrest civilians, they have been deputized as Special Deputy United States Marshals since 1991. In that capacity they have been able to make arrests when appropriate. The fact that DOJ and the United States Marshals Service (USMS) have continually approved and granted special deputation to DCIS agents since 1991 is convincing evidence of the need for DCIS agents to have complete law enforcement authority and the fact that DCIS agents have judiciously exercised that authority.

From FY 91 through FY 96, DCIS investigations resulted in over 2,000 indictments and over 1,800 convictions. During that same time, DCIS agents participated in over 500 civilian arrests and nearly 800 search warrants.

Currently, both Houses of Congress have under consideration legislation to amend Title 10 and codify the law enforcement authorities exercised by DCIS special agents under the statutory and regulatory provisions mentioned above. H.R. 1119, the National Defense Authorization Act for Fiscal Year 1998, as reported by the House Committee on National Security contains Section 1051, Authority for Special Agents of the Defense Criminal Investigative Service to Execute Warrants and Make Arrests. S. 924, the National Defense Authorization Act for

Fiscal Year 1998, as reported by the Senate Committee on Armed Services contains Section 1065, Law Enforcement Authority for Special Agents of the Defense Criminal Investigative Service. The DOJ, the FBI and the DoD have all endorsed the codifying of law enforcement authorities exercised by DCIS special agents within Title 10.

This proposed legislation would contribute greatly to the effectiveness and efficiency of DCIS in carrying out the mission of the DoD Inspector General. Implementation of this legislation would also eliminate a significant annual administrative burden on the DCIS and the U.S. Marshals Service.

Interviews and Rights Advisement Policies

I have also been asked to comment on our policies and procedures related to interviewing and rights advisement. The Inspector General community subscribes to generally recognized Federal law enforcement policies and procedures in the areas of interviewing and rights advisement. I believe that the DCIS policies and procedures are representative of the Federal law enforcement and Inspector General community as a whole. DCIS policy requires that investigators meet the procedural requirements for a lawful interview or interrogation by specifying certain minimal prerequisites to ensure that the interviewee's responses are voluntary. Those requirements differ depending on the status of the interviewee such as whether the interviewee is considered a witness, subject or suspect; whether the interviewee is or is not in custody or otherwise detained; and, unique to the DoD, whether the interviewee is a member of the Armed Forces subject to the provisions of the Uniform Code of Military Justice (UCMJ).

In short, before interviewing or interrogating a suspect our criminal investigators identify themselves to the interviewee by name and official position as a Federal agent. Agents must also explain in general terms the nature of the investigation. For civilian custodial suspects, special agents begin the interrogation by reading and explaining the suspect's rights regarding self-incrimination. In custodial settings special agents also inform interviewees that they are entitled to consult with a lawyer prior to and during the questioning session. Agents refrain from making or implying promises of benefit or reward, or threats of punishment and avoid coercing, unlawfully influencing or unlawfully inducing a person to make a statement. The requirements to advise civilian interviewees of their rights regarding self-incrimination and the right to counsel do not apply in non-custodial situations. Of course, in non-custodial situations the person has no obligation to submit to an interview.

The rule for rights advisement for military personnel is somewhat different. Article 31, Uniform Code of Military Justice, provides that no person subject to the UCMJ may be

compelled to incriminate himself or to answer any questions the answer to which may tend to incriminate him. It further provides that no person subject to the UCMJ may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used against him in a trial by court-martial. It is DCIS policy to provide this warning to all military personnel suspected or accused of an offense.

ADMINISTRATIVE INVESTIGATIONS

Although I understand the Subcommittee's principal focus is on criminal investigations, it is important to note that in addition to DCIS, the DoD OIG also contains an administrative investigative unit known as the Office of Departmental Inquiries. Allegations that are not considered criminal in nature, such as violations of ethics regulations, reprisal for whistleblowing, or other misconduct, may be investigated administratively following procedures that have been designed for noncriminal inquiries.

Under Title 10, U.S. Code, my office investigates and performs oversight of administrative investigations conducted by the Military Departments pertaining to allegations of reprisal against military members (10 U.S.C. 1034), nonappropriated fund employees (10 U.S.C. 1587) and employees of Defense contractors (10 U.S.C. 2409). In addition, DoD regulations provide that my office conduct or oversight all investigations of non-criminal misconduct against senior officials (political appointees, members of the Senior Executive Service, and military officers in the grade of O-7 or above).

In fiscal year 1996, my office was responsible for conducting or overseeing in excess of 500 such administrative investigations. Of that number, 145 were conducted by members of my staff. The non-criminal investigative workload has increased steadily over the past five years and we anticipate that a record number of inquiries (over 700) will be opened in fiscal year 1997. When conducting such inquiries, my office protects the rights of subjects and witnesses by observing the following practices:

o At the time the inquiry is opened, the subject is advised of our intent to investigate and the general nature of the allegations against him or her. In addition, notification of the inquiry is provided to appropriate management officials in the subject's agency.

o The subject is interviewed by investigators from my office, who identify themselves using appropriate credentials. If the subject is a member of the Armed Forces and is suspected of violating the UCMJ, he or she is given a UCMJ Article 31 rights warning before the interview. In this regard,

administrative inquiries may be used to address conduct that may also constitute relatively minor violations of the UCMJ, that do not warrant a criminal investigation. At the time they are given a rights warning, subjects may decline to be interviewed.

o Administrative investigative work conducted by my office is closely reviewed by my counsel for accuracy, thoroughness and supportability of conclusions rendered.

o If the inquiry substantiates allegations of misconduct, we provide the subject a summary of our tentative conclusions in the matter and offer the subject an opportunity to comment. We consider those comments prior to finalizing our report and may incorporate them into the report as appropriate.

o We do not make specific recommendations for disciplinary action. Rather, we provide the results of our inquiry to management officials who determine the need for, and nature of, any disciplinary action against the subject.

CONCLUSION

In closing, I want to reiterate that we at the DoD OIG recognize the critically important role that investigations must play in our society. We also understand that those who investigate exercise considerable power and that with that power, and clearly because of it, they also bear heavy responsibility. We believe our record reflects the importance we place on competence, integrity, and fairness in investigations. I can assure you that we will make every effort to continue to meet those standards in the future.

Mr. HORN. Our next witness is the Honorable Michael Bromwich, Inspector General of the Department of Justice. Mr. Bromwich.

Mr. BROMWICH. Thank you very much, Mr. Chairman, for inviting me to testify at this important hearing.

I will try to address some of the issues that have already come up in the hearing, mindful of your statement that our prepared statements will be introduced for the record.

I think that predictably this has become already a more broad-ranging discussion of the investigative practices and procedures of the entire Inspector General community rather than just focusing on the amendment that was originally introduced to address alleged State Department improprieties and I think that's all to the good. I think that, and I believe, as Congressman Hamilton pointed out, the Inspector General Act has now been in effect for 20 years. My organization was added in the 1988 amendments. So we have been functioning for about half that period. But I think it is entirely appropriate that this subcommittee and other committees of Congress take a look at our investigative practices and procedures, because I think the question of who is overseeing the overseers is a very important one. And I think that my colleagues join me in encouraging and welcoming the congressional oversight.

I also hope it is the beginning of a continuing discussion on the work that we do, because as I think you have already heard from Inspectors General Williams-Bridgers and Hill, we do some very important work and sometimes I think we have not done an adequate job of educating the Congress or the public about all the work that we do. We don't do primarily light bulb and parking spaces investigations. The bulk of our work is on very serious matters.

You have heard Inspector General Hill describe some of the very serious procurement and other kinds of defense fraud matters that her office investigates. The general run of my investigations division caseload, Mr. Chairman, is smuggling contraband into Federal correctional facilities, drug smuggling across the border, and widespread immigration document fraud affecting the security of our Nation's boundaries and the integrity of our immigration system.

So, in fact, I think you will find unanimity on this panel that, in fact, we all consider our investigators to be Federal law enforcement agents. They are trained to be that. They act as though they are that and indeed they are that.

What we try to do in structuring our investigative practices and procedures is to model ourselves as closely as possible according to what the established law enforcement agencies do. Most of the procedures that are in our investigative manual have been adapted from what the Federal Bureau of Investigation does, from what the Drug Enforcement Administration does, and so forth. We do that because we think that they have spent a lot of time thinking about what is both good investigative practice and what is fair to the witnesses and the subjects that are interviewed in investigations. Although we are obviously prepared to consider changes that might be necessary, we think that's a good and important starting point.

I think we are fortunate this morning to have Mr. Bryant from the FBI here so that to the extent you have any questions about the policies, procedures, and practices we follow, I think he can

help us in identifying the reasons why those procedures are necessary in order to conduct good, powerful, and credible criminal investigations.

I think it is at all times an important job that we have to balance the important investigative equities that we have—the prerogatives that we have—to try to make sure that waste, fraud, and abuse are identified, and to a significant extent deterred. But we must at all times be mindful of protecting the rights of our agencies' employees, and we, at the Justice Department, certainly seek to do that and think we do a good job of doing that.

I fully agree with Congressman Hamilton, who I admire at least as much as Inspector General Hill does, that it is a matter of credibility; that we need to conduct investigations in ways that are fair and are perceived to be fair in order for our investigative results to be credible and in order for our agencies to have the respect within our respective departments that we need in order to do our jobs effectively.

A couple of other thoughts before I close, Mr. Chairman. It was stressed, I believe, by Mr. Goss that in addressing the issues of fairness and notice to people who are participating in interviews and who are the people who are being interviewed, it is important to take a look at what kinds of notice could, in fact, tip people off in advance to the nature or the kind of investigation. You don't want to tip people off in advance to enable them to shred documents, coach other witnesses, and so forth. So in many cases the reasons for not disclosing in advance to a witness the subject of the interview is precisely to address those concerns about preserving the integrity of the investigation. That being said, we do have a practice, in virtually every case, that as the interview commences, in addition to providing any warnings that the witness is entitled to, depending on whether it is a custodial or noncustodial situation, we do attempt to describe exactly what the scope of the interview is; the subjects that are going to be discussed during the interview, and we underline and emphasize the voluntariness of the interview. Obviously, if the person is under arrest, it is a custodial situation, that goes by the boards. But if it is not——

Mr. HORN. Just for the record, would you mind defining "custodial" because most of the people who read this hearing transcript or are sitting back in the audience may not know.

Mr. BROMWICH. Custodial is somebody who, in fact, is under arrest, has already been placed under arrest or is, in fact, not free to leave, so even if they have not yet formally been placed under arrest, they will not be permitted to leave that room without being arrested. That is a custodial situation and that is what I mean when I talk about custodial circumstances.

Mr. HORN. And how often really do you run into that situation?

Mr. BROMWICH. Not that often. I would be guessing if I gave you a percentage of our interviews that are custodial or quasi custodial.

Mr. HORN. Probably 5 percent?

Mr. BROMWICH. It is probably more than that because we do try to interview people after we have arrested them. Those would all be custodial interviews and we arrest a number of people.

But I think that's really not the prime focus of this hearing, as I understand it. It really is dealing with agency employees who are

in something other than a custodial situation, either they are simply witnesses who are being asked for information or they are the subject or target of a criminal or administrative investigation but they are not in custody. Nor is there any immediate intention to take them into custody.

As to those people, Mr. Chairman, we stress at the beginning of the interview, and the witness signs a form that says so, that they are free to leave at any time.

Mr. HORN. And that is all your interviews, you do that?

Mr. BROMWICH. Yes, except those that are custodial and they already know that they have been taken into custody.

Mr. HORN. All right.

Mr. BROMWICH. So they are aware that they are free to leave, and through that warning they know that, in fact, this is a voluntary interview.

Mr. Chairman, that concludes my opening remarks. I welcome any questions that you or any other members of the subcommittee may have after Mr. McFarland and Mr. Bryant complete their opening statements.

Mr. HORN. Thank you very much.

[The prepared statement of Mr. Bromwich follows:]

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before you and members of this Subcommittee to discuss issues relating to the oversight of investigative practices employed by Inspectors General. I regard the quality of our investigations and the fairness of our procedures to be crucial elements in determining the professionalism, credibility, and reputation of our work in combatting fraud, waste, abuse, employee misconduct, and corruption. Consequently, I welcome this Subcommittee's interest in Office of the Inspector General (OIG) investigative practices and procedures and the opportunity you have provided for a discussion of these matters.

Because Congress made different choices when it created various Inspector General offices in the federal executive branch and because my office differs from most others, let me begin by describing our investigations jurisdiction and practices.

JURISDICTION

The Office of the Inspector General (OIG) for the Department of Justice was formed April 14, 1989, pursuant to the Inspector General Act Amendments of 1988. The statute and Attorney General Order 1931-94 together give the OIG investigative jurisdiction to conduct or oversee misconduct investigations in most components of the Department of Justice, including the Immigration and Naturalization Service, the

Bureau of Prisons, and the U.S. Marshals Service.

However, the Office of Professional Responsibility (OPR) for the Department of Justice has jurisdiction to investigate misconduct allegations involving departmental attorneys acting in their litigative, prosecutive, or investigative capacities, or in providing legal advice. In addition, the Federal Bureau of Investigation and the Drug Enforcement Administration have retained their separate Offices of Professional Responsibility with authority to investigate misconduct matters involving their own employees. Last year, the FBI and DEA began reporting some OPR case information to my office on a regular basis; however, I must go to the Deputy Attorney General to get permission to investigate an FBI or DEA matter on a case by case basis.

LAW ENFORCEMENT AUTHORITY

OIG Special Agents are deputized annually as Special Deputy U.S. Marshals, and through that process receive their law enforcement authority to make arrests, carry firearms, and execute search warrants. Law enforcement authority is necessary for OIG Special Agents. Since 1990, our Agents have made 851 arrests, executed 173 search warrants and on more than 2,000 occasions obtained approval to record conversations where we believed criminal activity would take place. Special Agents in my office work in dangerous undercover assignments posing as corrupt Department of Justice employees and in other roles. When conducting investigations, they have regular contact with the criminal elements attempting to commit such crimes as

providing contraband to federal prisoners, smuggling dangerous drugs into the U.S., and attempting to obtain fraudulent immigration documents. Because of the cooperation of the United States Marshals Service, the process of periodic redeputation has worked well enough as a logistical matter. However, we do not believe that this is a satisfactory long-term solution to the continuing need that OIG Special Agents have for law enforcement authority. We are naturally distrustful of a procedure where the authority we need to do our job is dependent upon a deputation from an agency that we are responsible for investigating and monitoring. The permanent solution to the question of law enforcement authority would be for the Congress to establish permanent authority by further amendment to the Inspector General Act.

INVESTIGATIVE RESOURCES

When this Office was created in 1989, investigative staff positions from the Immigration and Naturalization Service, the Bureau of Prisons and the Marshals Service were consolidated into the Investigations Division and the primary mission of that division was focused on those components. Since then, additional investigative jurisdiction has been added, but the resources provided have not kept pace with the growth in jurisdiction and the growth in the size of the Department. There are over 101,000 employees in the Department of Justice. Excluding those assigned to the DEA and FBI, the Department still has over 80,000 employees who are likely to fall

under the jurisdiction of the OIG.

The Office of the Inspector General currently employs 129 Special Agents who are deployed in 17 field and area offices around the country. Most of our agents are assigned to offices in states along the Southwest Border. We have four offices in Texas, one in Arizona, three in California, and plan to open a fourth office in El Centro, in the Imperial Valley of California. This distribution reflects the large proportion of our investigative work taken up with cases from the Immigration and Naturalization Service.

All of the Special Agents employed in the Investigations Division are graduates of the Federal Law Enforcement Training Center (FLETC), Glynco, Georgia, or an appropriate equivalent federal law enforcement training academy. Most OIG Special Agents have college degrees, four are attorneys, and two are candidates for advanced doctoral degrees. In addition to 129 Special Agents, we also employ 29 investigative analysts and administrative support persons in our Investigations Division.

OIG Special Agents average approximately 15 years' experience as Agents or criminal investigators. Most have been criminal investigators for other agencies, including other Department of Justice law enforcement agencies, such as the FBI, the DEA, INS and BOP; non-DOJ agencies such as the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, or the U.S. Customs Service; other Inspectors General; and state or local police. Some are specialists, with established expertise in polygraphy, foreign languages, and computer investigations, or in the particular

operations of individual Department of Justice components and bureaus.

Throughout the careers of our investigators, we provide both in-service refresher courses and specialty training opportunities for OIG Special Agents. Several of these courses have been customized for our agents in cooperation with the Law Enforcement Training Faculty at FLETC. Besides training in criminal investigations, OIG Agents receive training in procedures for conducting investigations that may lead to administrative or adverse personnel actions. We identify investigations as either criminal or administrative at the time they are opened, or as soon as possible thereafter, and those that are considered criminal follow criminal procedures either until they are closed, or until prosecution has been formally declined.

CASELOAD SELECTION CRITERIA

The Office of Inspector General is forced to be selective about the investigations that we conduct because we have resources to open cases in response to only a small percentage of the allegations we receive. In Fiscal Year 1996, investigations were opened based on 14.8 percent of misconduct allegations received. Unfortunately, this percentage has declined over the past several years as our workload demands increase and our manpower has decreased.

Because of this pressure to be selective, the criteria that we currently apply in evaluating allegations is somewhat more restrictive than we have used in the past. The investigations we initiate ordinarily meet one or more of three criteria:

- Likely to be accepted (if proven) as a criminal matter by a U.S. Attorney or other prosecutor (four out of five of our cases fall in this category);
- Likely to result (if proven) in agency administrative or disciplinary action against an employee at the grade of GS-15 or above; or
- Of special public interest or the subject of significant management concern.

We receive allegations from many sources, including the public, the Congress, Department of Justice employees and managers, and from aliens and inmates who believe their civil rights have been violated. We record every complaint we receive in the Investigations Data Management System, and each is reviewed by one or more managers. The decision to open a matter as an investigation is only made by the Special Agent in Charge in each of the field offices or the Director of the Special Investigations and Review Unit. Any matter opened as an investigation in the field is also reviewed at Investigations headquarters.

INVESTIGATIONS PROCEDURES

A. Criminal Investigations Procedures: The procedures that we follow in conducting a criminal investigation are the same as those followed by any other law enforcement agency within the Department of Justice. We participate actively in the work of the Office of Investigative Agency Policies (OIAP) and implement the policies that it adopts. OIAP was created by the Attorney General as a means to bring greater consistency and cooperation to the work of the federal law enforcement agencies. In

many of our cases, we work jointly with agents from the FBI, DEA, Customs Service, Immigration & Naturalization Service, and others, so the benefit of having consistent or uniform procedures is proven frequently in our work.

Employees who are interviewed who may be the subject of a criminal investigation are advised of their rights at the beginning of the interview. They include the right not to answer any questions and to terminate the interview at will. This advice of rights is not required as a matter of Constitutional law, which requires them to be given only when an individual has been taken into custody. However, like many other law enforcement agencies, we provide these warnings as a matter of policy and practice.

There are many legal requirements associated with the conduct of a criminal investigation, the collection of evidence, and the eliciting of information from witnesses and subjects. These policies are generally the result of court decisions, guidance originating from federal prosecutors, and the federal criminal justice system that extend to all investigators. Rather than outlining all these procedures at this time, I will be happy to answer any specific questions that the Subcommittee may have.

B. Noncriminal Investigations Procedures: Employees who are the subject of non-criminal investigations, or who are interviewed after prosecution has been declined, also are provided with oral and written information concerning their rights. These employees can be compelled by their supervisor to answer work-related questions, but the information they provide cannot be used against them in a criminal

proceeding.

In general, unless there is a valid investigative purpose for doing otherwise, we give the witness a succinct description of the purpose of the interview so that the employee can make an informed decision regarding the exercise or release of his or her various rights. Like all law enforcement agencies everywhere, however, we do not inform an employee that an investigation has been opened into the employee's conduct until we are ready to do so -- there are too many opportunities for an employee to change or discard documents, to intimidate subordinates, or to "coach" colleagues.

Without any exception that I can recall, our practice is to provide the subject of an inquiry an opportunity to meet with us in a formal interview to make his or her case and present the version of events and facts supportive of the subject's defense to the allegations. In the event that an adverse action of some kind is initiated, the employee is provided with a copy of the investigative materials that the official who proposed action relied upon in reaching that decision.

UNION REPRESENTATION ISSUES

Because a substantial number of employees who are the subject of OIG investigations are represented by unions (e.g., Border Patrol Agents, other Immigration Service employees, Bureau of Prisons Correctional Officers, Deputy U.S. Marshals), the OIG frequently is confronted with a variety of labor-management

relations issues including whether the OIG should be required to provide prior notice to the union of an employee interview, whether bargaining unit employees should be afforded the right to have a union representative present during an investigative interview, and whether OIG investigative practices and procedures can be the subject of a collective bargaining agreement. Although this is a controversial issue, I owe you the benefit of my views.

The OIG is an independent entity vested by statute with authority to investigate waste, fraud, and abuse in the Department's programs and operations, and allegations of misconduct and criminal wrongdoing on the part of Department employees. In order to maintain the Inspector General's independence, section 9(a)(2) of the Inspector General Act bars the Inspector General from assuming program operating responsibilities in the Department. Accordingly, by law and practice the Inspector General is separated from the management of the Department of Justice, its offices, boards, divisions or components. Not only is this separateness a result of law, it is a practical necessity, and it is a direct result of congressional design. Congress devised the OIG structure and relationship to ensure that investigations would not be subject to the control or influence of the program managers and institutional officialdom; that they would not be shaped by either management or union interests.

The question of whether a bargaining unit employee asked to participate in an OIG investigative interview is entitled to have a union representative present has been litigated in the federal courts with mixed results, although in my view the better

informed and more soundly reasoned decisions have concluded that OIGs should not be bound by the provisions of the Federal Labor Relations Act or the procedures of bargaining unit contracts with management. In litigation involving my office, the Court of Appeals stated,

> [T]here cannot be the slightest doubt that Congress gave the Inspector General the independent authority to decide "when and how" to investigate; that the Inspector General's authority encompasses determining how to conduct interviews under oath; and that the Inspector General's independence and authority would necessarily be compromised if another agency of government - the Federal Labor Relations Authority - influenced the Inspector General's performance of his duties on the basis of its view of what constitutes an unfair labor practice.

United States Department of Justice v. FLRA, 39 F. 3d 361, 366 (D.C. Cir. 1995) (citations omitted).

Even though a majority of the Circuits that have considered this issue, including the District of Columbia Circuit that has nationwide jurisdiction in federal agency issues, have recognized the independence of the OIG, the Federal Labor Relations Authority (FLRA) continues to take the position that OIGs are management for the purpose of determining whether a bargaining unit employee has the right to have a union representative present during an investigative interview.

This has provided a fertile ground for unions to create substantial mischief in some major investigations as they try to extend the scope of the FLRA's view of Inspector General investigations. In a significant number of our cases, various unions

have sought to introduce union representatives into our investigative interviews, in many instances in interviews involving union members who are sought only as witnesses and are not themselves in jeopardy of any kind. This has been unacceptable to us because of the threat it poses to our ability to collect facts without interference and without having the testimony of our witnesses influenced and shaped by outside sources.

It should be noted that where the subject of an investigation is a member of a union, the likelihood is strong that the other witnesses will also be union members. There are great opportunities for confusion and conflict regarding the interests of the union, of the individual union member-witness, and the other members of the union. Because personal attorneys, unlike union representatives, are bound by the constraints of ethical rules to keep client confidences and may not represent individuals with conflicting interests, we have no objection to having individual union members have their own lawyers present to represent the witness being interviewed.

Let me be more specific about the problems that can be created by having a union representative attend investigative interviews. For example, while we can promise confidentiality to a witness, it is quickly diluted by the attendance of a union representative, who has no privilege protecting the communication and who may report the information to others. If a union member has incriminating or inculpatory information about another union member, the chances that he or she will divulge it with a union representative present are substantially reduced. On the other hand, if

the union member tells the union representative that he or she does not want the representative to attend the interview, the witness may well have tipped his or her hand as to the nature of the information that is to be disclosed. As a result, the union member has an understandable reason to hold back incriminating information, with possible serious ramifications for both the investigation and for the witness who withheld the information.

In short the presence of union representatives at investigative interviews has the grave potential to distort and undermine the integrity of the investigative process. I strongly urge this Subcommittee to sponsor a small but significant amendment to the Inspector General Act to make this proposition clear and to uphold the ability of Inspectors General to conduct their investigations without this outside influence.

QUALITY ASSURANCE MEASURES FOR INVESTIGATIONS

I know this committee is very concerned over the question of how one assures that investigations are properly conducted. Let me tell you how I have gone about it, and then describe some of the other safeguards that also apply.

First, an IG can and must invest time and money in training and retraining investigators -- to remind them of established principles of their work and to update them on newly changed rules. I have described this training previously in my prepared statement but it is also relevant to the question of quality assurance. Second, we have written guidelines and manuals that set out our expectations regarding the

conduct of investigations. Third, I have fought as hard as I can for the resources to keep a high ratio of supervisors to agents, so that each agent gets the additional supervision, monitoring, and guidance that he or she needs. Fourth, OIG agents' investigative reports are reviewed by both their immediate supervisors and also by headquarters staff to ensure that the investigations have been properly conducted, accurately reported, and thorough.

Fifth, I have devoted a small staff to conduct inspections of the Investigations Division field offices. At investigations field offices, they pull and review files, interview the agents, examine manuals and other guidance to ensure they are current and complete, and test many of the office's practices. They verify the evidence logs and the inventories of ammunition, weapons, and surveillance equipment; they check firearms proficiency records; audit the undercover funds; and they examine a host of other activities of the investigations offices. Sixth, I expanded the Internal Control Unit, now called the Special Investigations and Review Unit, which reports directly and only to my deputy or to myself. While I use it often for inquiries of special sensitivity within the Department, it is also my instrument for conducting investigations of my own employees where I have reason to question their activities.

These safeguards are internal to the OIG. It should be noted that if an OIG's investigation is deficient, either in the gathering of facts or adherence to legal requirements, my staff and I will soon hear about it from prosecutors, personnel officers, and others who read and must use my work product in the performance of

their own duties. Thus, while nothing is foolproof, I think that these efforts do ensure that my office's investigations will be professional, objective, and appropriate.

CONFIDENTIALITY AND PRIVACY

The issues of confidentiality and privacy have various aspects. First, protecting the confidentiality of persons who honestly provide information to the Office of the Inspector General is a sensitive task. Because we have the resources to open investigations in only a small percentage of allegations we receive, we must in many cases refer appropriate matters to the affected DOJ components so that issues can be addressed by them. Since our inception, we have had policies designed to protect the identity of complainants in appropriate cases. The confidentiality of both the initial complainant and also of cooperating witnesses may require protection; in some cases, we have concluded that we should not disclose the identity of a critical witness until the witness had been recontacted and asked to permit disclosure because of the importance of the witness's testimony to the case.

Second, during the pendency of a case, we also attempt to protect the subject of the case from unnecessary exposure or publicity. This is not always practicable, because sometimes our investigation is a response to matters that have already become public knowledge and, of course, the conduct of each interview widens the universe of persons aware that an investigation is ongoing. Nonetheless, our general policy is to refuse to comment regarding the particulars of an investigation to the media or to

Congress, except in quite special circumstances. We have found Congress to be generally respectful of this special area of concern.

Some additional considerations shape confidentiality and privacy issues upon the conclusion of a case. There is at that point the possibility of an adverse action, in which case the employee against whom the action is proposed becomes vested with additional rights to know the evidence against him. In most other circumstances, the Privacy Act will require redaction of many of the identifying particulars associated with individuals and witnesses discussed in the report.

Finally, there is a Congressional and public interest that must sometimes be satisfied -- to receive concrete assurances that open controversies have been fully, fairly, and objectively investigated and that accountability, if appropriate, has been exacted. It is for these reasons that I have issued public reports on some investigations, such as the investigation into the Good O' Boys and the allegations of racism and criminal misconduct alleged to characterize the annual Roundups; the alleged deception of Congress associated with the visit of a Congressional task force delegation to the Miami Immigration and Naturalization Service facilities; and the review of the FBI Laboratory and of some of the scientists who were employed there and performed examinations and analyses in certain major bombing prosecutions. I plan to release other investigative reports in the future. In fact my office uses a website on the Internet in order to maximize the dissemination of this information to the public.

ADDITIONAL TOOLS

My office has the power and authority without exception to interview all Department of Justice employees whose information is needed in any of our investigations. In addition, I have a statutory authority to request assistance and information from any other federal agency, and certain remedies if it is, in my judgment, unreasonably refused or not provided. This authority provides an IG with access to documents and witnesses from other federal agencies. Further, the IG Act provides subpoena power to obtain documents from sources outside the Federal government.

In my judgment, the most significant way that Congress could advance the investigative power of Inspectors General would be to provide us with the ability to compel testimony from witnesses outside our Departments. None of us currently has this ability. Obviously, where our investigations are conducted in conjunction with a grand jury, testimony can be compelled, although it is not available to be used in non-criminal proceedings. But we cannot compel testimony in any of our administrative or non-criminal investigations from persons not in the Government.

In the absence of testimonial subpoena power, we are currently at risk of failing to secure the testimony of witnesses whose information is vital to complete our investigations successfully. For example, in my office's recent reviews of the FBI Laboratory and the FBI's performance in the Aldrich Ames affair, we needed information from people who no longer worked for the government. Fortunately, we

were able to obtain the testimony voluntarily in every case involving a significant witness. But the risk is real and ever-present. I could give you examples from many of the special investigations we have conducted over the past two years where we came close to losing -- and in some cases have lost -- the testimony of key witnesses because of the lack of testimonial subpoena power. Particularly when we are being asked by Congress and our respective Departments to conduct investigations of great public importance, we should not be forced to have the success or failure of our investigations turn on the whims of witnesses.

If the concern is the potential burden on witnesses, I would suggest that the burden is not great when measured against the harm of not securing the testimony of key witnesses. However, if the Congress seeks special assurances that the testimonial subpoena power would not be abused, I for one would not oppose a requirement that the Inspector General himself or herself personally approve each and every testimonial subpoena. The Subcommittee can make substantial strides towards completing the investigative arsenal of Inspectors General by providing us with testimonial subpoena power. I urge you to do so without delay.

Mr. Chairman, that concludes my prepared testimony. I would be happy to respond to any questions from you or other members of the Subcommittee.

Mr. HORN. Our next witness is the Honorable Patrick McFarland, Inspector General, Office of Personnel Management.

Mr. MCFARLAND. Mr. Chairman, thank you for inviting me to testify before your subcommittee on the investigative practices of members of the President's Council on Integrity and Efficiency. As you know, I am appearing in my capacity as chairman of the PCIE's Investigations Committee. I have submitted a prepared statement for the record which addresses the specific points you raise.

Mr. HORN. Why don't you tell us what PCIE stands for? I hate Government gibberish.

Mr. MCFARLAND. I am sorry. It is the President's Council on Integrity and Efficiency.

Mr. HORN. Thank you.

Mr. MCFARLAND. I have submitted a prepared statement for the record which addresses the specific points you raised. In my brief remarks, I would like to highlight some of the controls currently in place to assure professional conduct by criminal investigators in Offices of Inspectors General. Before I do so, I would like to talk for a moment about the overall mission and vision of the IG community.

Prior to passage of the Inspector General Act of 1978, as amended, in many cases investigations were not conducted by the agencies in a coordinated and efficient manner. The act not only gave agencies independent law enforcement authority but also provided a statutory framework for coordination.

IG offices are no different than other law enforcement organizations in the powers possessed and, as we should be, we are very concerned about how the power is used. We are fully conscious of the broad range of powers that we possess. We also realize that, if unchecked, individual reputations and careers could be seriously compromised. In fact, the Inspectors General vision statement addresses this concern.

A few years ago, the PCIE adopted reinvention principles in that statement requiring IG's to maximize the positive impact and ensure the independence and objectivity of our investigations.

The IG community is proud of its involvement in developing and implementing the vision statement. Along those lines, Mr. Chairman, if IG's are not vigilant in protecting the rights of those individuals under investigation, IG's will never attain their ultimate objective of having a positive impact on agency programs and operations.

Now that I have talked broadly about the IG mission, I would like to specifically address concerns you have raised regarding internal and external controls of IG investigations.

The authority to investigate allegations concerning misconduct or criminal activity in the programs administered by their agency is one of the most significant responsibilities of Inspectors General. Under the IG Act, all criminal investigators have the responsibility to act in a fair, ethical, and objective manner to substantiate or, just as importantly, disprove allegations of misconduct or criminal activity.

At the heart of the IG's authority to conduct investigations is the need to assure that controls are in place at every level to protect

the rights of the individuals under investigation and to assure that the investigators are acting in a manner beyond reproach.

In looking at the wide range of organizations that are members of the PCIE and the Executive Council on Integrity and Efficiency, I am impressed by the number of innovative approaches they have taken and are continuing to develop to maintain the integrity of their investigations.

Internal controls within each IG office will vary widely, depending on the size and geographic reach of the agency, as well as the size and organization of its IG office. Most IG offices have investigation manuals which establish the procedural basis for conducting every step of an investigation. The manuals are modeled on Justice Department guidelines and incorporate PCIE Quality Standards for Investigations.

One of the most dramatic developments providing both enhanced law enforcement authority to IG criminal investigators and at the same time increasing external controls on investigations is the Memorandum of Understanding between respective IG offices, the Department of Justice, and the Federal Bureau of Investigation, authorizing blanket deputation of special agents. It imposes significant controls on deputized agents.

Under the MOU, IG's are required to report to the Department of Justice detailing the investigative and prosecutive activities of agents who receive special deputation. The MOU mandates coordination between the IG, DOJ, FBI, and other Federal law enforcement agencies, as well as consultations with prosecutors on all criminal investigations. Certain investigations involving sensitive techniques such as electronic surveillance, undercover operations, sensitive targets, and consensual monitoring are required to be conducted jointly with the FBI or with another Federal law enforcement agency that has jurisdiction over the offense. Any jurisdictional disagreements are referred to the appropriate U.S. attorney for resolution.

In addition to internal agency procedures and guidelines established by the Attorney General, all IG's adhere to the PCIE Quality Standards for Investigations, which provide PCIE guidelines. These general and qualitative standards were promulgated in 1985. They provide the basic standards of conduct and represent a consensus from organizations affiliated with the PCIE.

On May 30, 1996, a working group was formed to revise the PCIE Quality Standards for Investigations. This group reviewed the relevance, in accordance with contemporary standards and compliance of these standards with rules, laws, and regulations. The training profile received the most substantial revisions. Changes in the experience level of IG entry level investigators, as well as a new emphasis on law enforcement skills, necessitated this change. The revised standards will soon be disseminated to the PCIE and the ECIE members for final comment.

In the revisions to the investigative standards, we recognize that one of the most effective controls to protect individual rights and assure high quality law enforcement is to provide agents with training opportunities. The PCIE Investigations Committee works closely with law enforcement training authorities to ensure the most professional and relevant training available is provided to

both new investigators and to experienced individuals. A full description of our training facilities and the changes under consideration and the investigative standards is included in my formal statement.

Thank you, Mr. Chairman.

Mr. HORN. We thank you for that helpful statement.

[The prepared statement of Mr. McFarland follows:]

STATEMENT OF
HONORABLE PATRICK E. McFARLAND, INSPECTOR GENERAL
UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION AND TECHNOLOGY
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

June 24, 1997

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE YOUR SUBCOMMITTEE ON THE INVESTIGATIVE PRACTICES OF MEMBERS OF THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY (PCIE). AS YOU KNOW, I AM APPEARING IN MY CAPACITY AS CHAIRMAN OF THE PCIE'S INVESTIGATIONS COMMITTEE. ALTHOUGH I HAVE ONLY RECENTLY BEEN SELECTED FOR THAT POSITION, THE VIEWS I AM PRESENTING TODAY ARE DERIVED FROM MY SEVEN YEARS EXPERIENCE AS INSPECTOR GENERAL AT THE OFFICE OF PERSONNEL MANAGEMENT (OPM), AND 28 PRIOR YEARS OF LAW ENFORCEMENT EXPERIENCE, STARTING AS A POLICE OFFICER WITH THE ST. LOUIS METROPOLITAN POLICE DEPARTMENT.

ROLE OF THE PCIE

THE PCIE WAS ESTABLISHED IN MARCH 1981 BY EXECUTIVE ORDER 12301, WHICH WAS SUBSEQUENTLY AMENDED IN 1992. IT IS PRESENTLY COMPOSED

OF THE 27 PRESIDENTIALLY APPOINTED INSPECTORS GENERAL (IGs) REPRESENTING 29 AGENCIES. MEMBERSHIP ALSO INCLUDES THE DEPUTY DIRECTOR FOR MANAGEMENT OF THE OFFICE OF MANAGEMENT AND BUDGET AS THE CHAIRPERSON, THE VICE CHAIRPERSON OF THE EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY (ECIE), (ESTABLISHED UNDER EXECUTIVE ORDER 12805, ON MAY 11, 1992), THE CONTROLLER OF THE OFFICE OF FEDERAL FINANCIAL MANAGEMENT, THE ASSOCIATE DEPUTY DIRECTOR FOR INVESTIGATIONS AT THE FEDERAL BUREAU OF INVESTIGATION (FBI), THE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS, THE SPECIAL COUNSEL OF THE OFFICE OF SPECIAL COUNSEL, AND THE DEPUTY DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT. JOHN LAYTON, INSPECTOR GENERAL AT THE DEPARTMENT OF ENERGY IS THE NEW VICE CHAIR REPLACING JUNE GIBBS BROWN OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

EXECUTIVE ORDER 12301, AS AMENDED, GAVE THE PCIE RESPONSIBILITY TO IDENTIFY VULNERABILITY IN FEDERAL PROGRAMS THAT COULD LEAD TO FRAUD, WASTE AND ABUSE, AND TO DEVELOP PLANS FOR COORDINATED, GOVERNMENTWIDE ACTIVITIES THAT ADDRESS THESE PROBLEMS AND PROMOTE ECONOMY AND EFFICIENCY IN FEDERAL PROGRAMS AND OPERATIONS. AMONG OTHER RESPONSIBILITIES, THE PCIE WAS CHARGED WITH DEVELOPING POLICIES THAT WILL AID IN THE ESTABLISHMENT OF A CORPS OF WELL-TRAINED AND HIGHLY SKILLED ORGANIZATIONS OF IGs.

WHILE THE PCIE IS NOT A GOVERNING BODY, ITS MEMBERS ARE URGED BY THE EXECUTIVE ORDER TO ADHERE TO PROFESSIONAL STANDARDS DEVELOPED BY THE COUNCIL AND PARTICIPATE IN THE PLANS, PROGRAMS, AND PROJECTS OF THE COUNCIL TO THE EXTENT PERMITTED UNDER LAW. THROUGH ITS ADVISORY ROLE, THE PCIE PERFORMS IMPORTANT COORDINATING AND TRAINING FUNCTIONS. EXECUTIVE ORDER 12301 SPECIFICALLY STATES:

> "CREATION AND OPERATION OF THE COUNCIL SHALL NEITHER INTERFERE WITH EXISTING AUTHORITY AND RESPONSIBILITIES IN THE RELEVANT AGENCIES AND ENTITIES NOR AUGMENT OR DIMINISH THE STATUTORY AUTHORITY OR RESPONSIBILITIES OF INDIVIDUALS OF THE COUNCIL."

THE PCIE HAS A NUMBER OF STANDING COMMITTEES WHICH INCLUDE THE INTEGRITY AND INVESTIGATIONS COMMITTEES. THE INTEGRITY COMMITTEE, OF WHICH I AM A MEMBER, IS RESPONSIBLE FOR INVESTIGATING ALLEGATIONS OF MISCONDUCT AGAINST INSPECTORS GENERAL AND SENIOR IG OFFICIALS. THE INVESTIGATIONS COMMITTEE PROVIDES GUIDANCE TO THE PCIE COMMUNITY ON ISSUES RELATING TO IG INVESTIGATIONS.

INTERNAL AND EXTERNAL CONTROLS ON INVESTIGATIONS

THE POWER TO INVESTIGATE ALLEGATIONS CONCERNING MISCONDUCT OR CRIMINAL ACTIVITY IN THE PROGRAMS ADMINISTERED BY HIS OR HER AGENCY IS ONE OF THE MOST SIGNIFICANT RESPONSIBILITIES OF IGs UNDER THE INSPECTOR GENERAL ACT OF 1978, AS AMENDED (IG ACT). THE NATURE OF CRIMINAL MISCONDUCT VARIES WIDELY FROM AGENCY TO AGENCY, REFLECTING THE VARIETY OF PROGRAMS ADMINISTERED BY THE FEDERAL GOVERNMENT. ALL CRIMINAL INVESTIGATORS HAVE THE COMMON CHALLENGE TO ACT IN A FAIR, ETHICAL AND OBJECTIVE MANNER TO SUBSTANTIATE OR, JUST AS IMPORTANTLY, DISPROVE ALLEGATIONS OF MISCONDUCT. ALLEGATIONS ARE BROUGHT TO THEIR OFFICES BY MANAGEMENT, EMPLOYEES, AGENCY CLIENTS, OR DISCOVERED IN THE COURSE OF IG AUDITS OR INVESTIGATIONS. ALL IGs HAVE HOTLINE NUMBERS WHICH ARE AVAILABLE TO THE PUBLIC FOR REPORTING FRAUD, WASTE AND ABUSE. IN ADDITION, IGs ALSO INVESTIGATE A VARIETY OF WHISTLE-BLOWER COMPLAINTS. AT THE HEART OF THE IG AUTHORITY TO CONDUCT INVESTIGATIONS IS THE NEED TO ASSURE THAT CONTROLS ARE IN PLACE AT EVERY LEVEL TO PROTECT THE RIGHTS OF THE INDIVIDUALS UNDER INVESTIGATION AND TO ASSURE THAT THE INVESTIGATORS ARE ACTING IN AN

ETHICAL AND PROFESSIONAL MANNER UTILIZING THE RESOURCES ALLOCATED TO THEM IN AN EFFECTIVE AND EFFICIENT MANNER.

WE MUST NEVER LOSE SIGHT OF THE FACT THAT ENHANCED TECHNOLOGY AVAILABLE TO CRIMINAL INVESTIGATORS TO MEET THE GROWING SOPHISTICATION AND QUANTITY OF FRAUD AGAINST GOVERNMENT PROGRAMS HAS INCREASED. THE PCIE MUST DEVELOP INNOVATIVE METHODS TO ENSURE PROTECTION OF INDIVIDUALS UNDER INVESTIGATION. INDEED, ERRANT INVESTIGATIONS CAN NOT ONLY DESTROY INDIVIDUAL REPUTATIONS OR CAREERS BUT ALSO COMPROMISE THE INTEGRITY OF THE OFFICE AND ITS PROGRAMS.

WHILE INDIVIDUAL IGs WILL ADDRESS SPECIFIC ISSUES CONCERNING THEIR RESPECTIVE AGENCIES, I WANT TO TAKE THIS OPPORTUNITY TO GIVE YOU AN OVERVIEW OF THE TYPES AND WIDE RANGE OF CONTROLS THAT ARE IN PLACE TO ENHANCE PROFESSIONALISM OF CRIMINAL INVESTIGATORS.

JUST AS THE AGENCIES THAT COMPRISE THE PCIE AND THE ECIE VARY GREATLY IN THEIR SIZE, MISSION AND ORGANIZATION, SO DO THE STRUCTURES OF THE ORGANIZATIONS ESTABLISHED TO FIGHT FRAUD. IN LOOKING AT THE WIDE RANGE OF ORGANIZATIONS THAT ARE MEMBERS OF THE PCIE AND ECIE, I AM IMPRESSED BY THE NUMBER OF INNOVATIVE

APPROACHES THEY HAVE TAKEN, AND ARE CONTINUING TO DEVELOP TO MAINTAIN THE INTEGRITY OF THEIR INVESTIGATIONS. TODAY, I WANT TO REVIEW INTERNAL AND EXTERNAL CONTROL SYSTEMS NOW IN PLACE AND DESCRIBE EXISTING INSTITUTIONS FOR THE IMPROVEMENT OF LAW ENFORCEMENT TECHNIQUES.

INTERNAL CONTROLS WITHIN EACH IG OFFICE WILL VARY WIDELY DEPENDING ON THE SIZE AND GEOGRAPHIC REACH OF THE AGENCY AS WELL AS THE SIZE AND ORGANIZATION OF ITS IG OFFICE. OBVIOUSLY, THE DEPARTMENT OF DEFENSE, WITH OPERATIONS AND FIELD OFFICES AROUND THE WORLD, MAY NEED A MORE FORMALIZED, STRUCTURED AND LAYERED ORGANIZATION TO REVIEW AND CONTROL ITS OPERATIONS THAN AN IG OFFICE SUCH AS MINE AT OPM WITH NO REGIONAL OFFICES AND LESS THAN A DOZEN SPECIAL AGENTS. AT SMALLER AGENCIES THE INTERNAL REVIEWS MAY BE CONDUCTED PERSONALLY BY THE ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS WITH THE ASSISTANCE OF SUPERVISORY AGENTS. AT SOME OFFICES OF INSPECTOR GENERAL (OIGs) THEY HAVE NUMEROUS UNITS CONDUCTING EVALUATIONS, INSPECTIONS, REVIEWS, AND AUDITS OF ITS INVESTIGATIONS. THE PURPOSE OF THESE CONTROLS WILL BE ESSENTIALLY THE SAME:

- TO ASSURE CRIMINAL INVESTIGATIVE ACTIVITIES ARE CONDUCTED WITHIN PRESCRIBED GUIDELINES, LAWS AND REGULATIONS INCLUDING ESTABLISHED AGENCY AND ATTORNEY GENERAL POLICIES AND DIRECTIVES.

- TO ENSURE RESOURCES HAVE BEEN DIRECTED TOWARD IG AND AGENCY PRIORITIES, GOALS AND OBJECTIVES.

- TO ENSURE RESOURCES HAVE BEEN UTILIZED IN AN EFFICIENT AND EFFECTIVE MANNER.

WHILE EACH AGENCY WILL VARY AS TO THE MECHANISMS BY WHICH INTERNAL CONTROLS ARE ADMINISTERED, IN MOST INSTANCES IG OFFICES HAVE INVESTIGATIONS MANUALS. THESE MANUALS ESTABLISH THE PROCEDURAL BASIS FOR CONDUCTING EVERY STEP OF AN INVESTIGATION AND ARE MODELED ON JUSTICE DEPARTMENT GUIDELINES AND INCORPORATE THE *PCIE QUALITY STANDARDS FOR INVESTIGATIONS (STANDARDS)*. THE INITIAL ELEMENT OF CONTROL ARISES WITH EVALUATION AND ASSIGNMENT OF CASES AND TRADITIONAL LINE SUPERVISION AND REVIEW OF SPECIAL AGENT ACTIVITIES. ALL IG OFFICES REQUIRE SOME FORM OF PERIODIC INTERNAL CASE REVIEWS.

A NUMBER OF IG OFFICES HAVE INSTITUTED INNOVATIVE APPROACHES TO EVALUATE AND CONTROL INVESTIGATIONS ACTIVITIES INTERNALLY. THESE APPROACHES ARE DESIGNED TO MEET THE UNIQUE NEEDS OF THE SPECIFIC ORGANIZATION. FOR EXAMPLE, AT THE DEPARTMENT OF VETERANS AFFAIRS THERE IS A SPECIFIC INSPECTION PROGRAM FOR ALL FIELD ELEMENTS WITHIN THE OFFICE OF INVESTIGATIONS. AT THE SMALL BUSINESS ADMINISTRATION, THE OFFICE OF INVESTIGATIONS CONDUCTS A QUALITY ASSURANCE REVIEW OF EACH FIELD OFFICE EVERY TWO TO THREE YEARS TO ASSESS COMPLIANCE WITH OIG POLICIES AND PROCEDURES. IN 1995, THE DEPARTMENT OF ENERGY IMPLEMENTED AN INTERNAL INSPECTION REVIEW PROCESS THAT REQUIRES EACH OFFICE OF INVESTIGATIONS TO UNDERGO AN EVALUATION OF THE WORK PERFORMED DURING THE PREVIOUS TWO YEARS. ALTHOUGH THESE INTERNAL CONTROLS ARE NOT IDENTICAL AND COMPREHENSIVE IN SCOPE, I WANT TO TELL YOU THAT IGs ARE CONTINUALLY WORKING WITHIN THEIR RESPECTIVE AGENCIES TO DEVELOP OVERSIGHT PROCEDURES TO ENSURE QUALITY AND PROFICIENCY IN CONDUCTING INVESTIGATIONS.

EFFECT OF BLANKET DEPUTATION OF IG SPECIAL AGENTS

ONE OF THE MOST DRAMATIC DEVELOPMENTS PROVIDING BOTH ENHANCED LAW ENFORCEMENT AUTHORITY TO IG CRIMINAL INVESTIGATORS AND

EXTERNAL CONTROLS ON INVESTIGATIONS IS THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN RESPECTIVE IG OFFICES, THE DEPARTMENT OF JUSTICE (DOJ) AND THE FEDERAL BUREAU OF INVESTIGATION (FBI) AUTHORIZING BLANKET DEPUTATION OF IG SPECIAL AGENTS. THE INITIAL MOU ISSUED IN 1995 GRANTED DEPUTATION TO SEVEN OFFICES. AFTER ONE YEAR A REVIEW WAS PERFORMED AND BASED ON SUCCESSFUL RESULTS, IN 1996 THE DEPUTY ATTORNEY GENERAL EXPANDED THE MOU TO INCLUDE AN ADDITIONAL EIGHT AGENCIES. I AM PROVIDING A COPY OF MY OFFICE'S MOU UNDER SEPARATE COVER.

WHILE SOME AGENCIES HAVE THEIR OWN RESPECTIVE LAW ENFORCEMENT AUTHORITY TO CARRY FIREARMS UNDER A SPECIFIC STATUTORY GRANT, PRIOR TO THE MOU THOSE OIGs NOT COVERED UNDER STATUTE WERE REQUIRED TO APPLY FOR DEPUTATION ON A CASE-BY-CASE BASIS. THIS PROCESS WAS EXTREMELY TIME CONSUMING AND OFTEN DIMINISHED THE DETERRENT EFFECT OF THE INVESTIGATION BECAUSE OF LACK OF TIMELINESS. FURTHERMORE, THERE WAS LACK OF UNIFORMITY BETWEEN JURISDICTIONS ON SPECIFIC GROUNDS NEEDED TO RECEIVE SPECIAL DEPUTATION.

UNDER THE TERMS OF THE MOU, SPECIAL AGENTS ARE AUTHORIZED TO MAKE ARRESTS WITHOUT A WARRANT FOR ANY FEDERAL VIOLATION, EXECUTE A

WARRANT FOR AN ARREST OR SEARCH AND CARRY A FIREARM. DESPITE THE BROAD MOU LANGUAGE, CURRENT DOJ GUIDELINES LIMIT ARRESTS TO IG PROGRAMS AND RELATED OFFENSES. OF COURSE, COUPLED WITH ENHANCED POWERS IS THE RESPONSIBILITY OF AGENTS TO ACT PROPERLY AND PROFESSIONALLY. UNDER THE MOU, OIGs ARE REQUIRED TO REPORT TO DOJ DETAILING THE INVESTIGATIVE AND PROSECUTIVE ACTIVITIES OF AGENTS WHO RECEIVED SPECIAL DEPUTATIONS. TO BE ELIGIBLE FOR DEPUTATION, EACH AGENT MUST COMPLETE BASIC CRIMINAL INVESTIGATOR TRAINING AT THE TREASURY FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC) IN ADDITION TO RECEIVING PERIODIC REFRESHER TRAINING IN A VARIETY OF AREAS. DEPUTIZED AGENTS ARE ALSO REQUIRED TO RECEIVE PERIODIC FIREARMS TRAINING AND RECERTIFICATION.

MOU PROVIDES RULES FOR COORDINATION OF JOINT FEDERAL LAW ENFORCEMENT EFFORTS

ALONG WITH ENHANCED TRAINING REQUIREMENTS, THE MOU MANDATES COORDINATION BETWEEN THE OIG, DOJ, FBI AND OTHER FEDERAL LAW ENFORCEMENT AGENCIES. IN AREAS WHERE THE OIG AND FBI HAVE CONCURRENT JURISDICTION, THE OIG AND FBI ARE REQUIRED TO NOTIFY EACH OTHER UPON INITIATION OF A CRIMINAL INVESTIGATION WITHIN 30 CALENDAR DAYS. CERTAIN INVESTIGATIONS INVOLVING SENSITIVE TECHNIQUES, SUCH AS ELECTRONIC SURVEILLANCE, UNDERCOVER OPERATIONS, SENSITIVE TARGETS INCLUDING INVESTIGATIONS OF MEMBERS OF CONGRESS AND CONSENSUAL MONITORING, ARE REQUIRED TO BE CONDUCTED JOINTLY WITH THE FBI OR WITH ANOTHER FEDERAL LAW ENFORCEMENT AGENCY THAT HAS JURISDICTION OVER THE OFFENSE. IF THE OIG INVESTIGATION IS CONDUCTED WITH A FEDERAL LAW ENFORCEMENT AGENCY OTHER THAN THE FBI, THE OIG IS REQUIRED TO NOTIFY THE FBI. IF THE FBI BELIEVES THAT IT SHOULD BE INVOLVED IN THE INVESTIGATION AND THE OIG DISAGREES, THE MATTER IS REFERRED TO THE APPROPRIATE UNITED STATES ATTORNEY FOR RESOLUTION. THE MOU ALSO REQUIRES COORDINATION AND CONSULTATION WITH PROSECUTORS ON ALL CRIMINAL INVESTIGATIONS.

PCIE QUALITY STANDARDS FOR INVESTIGATIONS

IN ADDITION TO INTERNAL AGENCY PROCEDURES AND GUIDELINES ESTABLISHED BY THE ATTORNEY GENERAL, ALL OIGs ADHERE TO THE PCIE QUALITY STANDARDS FOR INVESTIGATIONS (*STANDARDS*) PROMULGATED BY THE PCIE. THESE GENERAL AND QUALITATIVE STANDARDS WERE ISSUED IN 1985 AND REPRESENT A CONSENSUS FROM ORGANIZATIONS AFFILIATED WITH THE PCIE. AS STATED IN THE PREFACE TO THE *STANDARDS*:

> "THESE STANDARDS AND IMPLEMENTING GUIDELINES AND PROCEDURES ARE ONLY AIMS. THEIR ATTAINMENT WILL DEPEND ON TRAINING FUNDS AND PERSONNEL RESTRICTIONS. AGENCIES AND OFFICES WERE ESTABLISHED UNDER DIFFERENT LAWS AND THEIR MANDATES WILL DIFFER. THEREFORE, THESE DIFFERENCES, AS WELL AS OTHER FACTORS, MAY AFFECT THE PRACTICES OF VARIOUS OFFICES AND, CONSEQUENTLY, THE APPLICABILITY OF THEIR STANDARDS."

THE GENERAL STANDARDS CONSIST OF SPECIFIC QUALIFICATIONS FOR INVESTIGATORS, INDEPENDENCE IN INVESTIGATIVE WORK AND REQUIREMENTS FOR EXERCISING DUE PROFESSIONAL CARE. SPECIFIC QUALITY STANDARDS INCLUDE PROPER PLANNING, EXECUTION, AND

REPORTING OF AN INVESTIGATION AND ADEQUATE MANAGEMENT OF INFORMATION COMPILED DURING THE INVESTIGATION, WHICH INCLUDES APPROPRIATE SAFEGUARDS OF CONFIDENTIAL AND PROPRIETARY DATA. A COPY OF THE ORIGINAL *STANDARDS* IS BEING FURNISHED TO THE SUBCOMMITTEE UNDER SEPARATE COVER.

REVISIONS TO THE PCIE QUALITY STANDARDS FOR INVESTIGATIONS

ON MAY 30, 1996, I WAS NAMED AS CHAIR OF THE WORKING GROUP FORMED TO REVISE THE *STANDARDS*. THE GROUP IS COMPRISED OF INSPECTORS GENERAL FROM THE DEFENSE INTELLIGENCE AGENCY, TENNESSEE VALLEY AUTHORITY, SOCIAL SECURITY ADMINISTRATION AND THE DIRECTOR OF THE INSPECTOR GENERAL CRIMINAL INVESTIGATOR ACADEMY (IG ACADEMY). THE WORKING GROUP WAS CHARGED WITH REVIEWING THE *STANDARDS* TO ENSURE RELEVANCE, ACCORDANCE WITH CONTEMPORARY STANDARDS, AND COMPLIANCE WITH RULES, LAWS AND REGULATIONS. ALL PCIE AND ECIE MEMBERS WERE REQUESTED TO PROVIDE COMMENTS TO THE WORKING GROUP ON THE *STANDARDS*. ALSO, THE DIRECTOR OF THE IG ACADEMY SURVEYED VARIOUS LAW ENFORCEMENT ACADEMIES AT THE FEDERAL LAW ENFORCEMENT TRAINING CENTER.

THE VAST MAJORITY OF CHANGES SUGGESTED FOR THE DRAFT *STANDARDS* ARE TO ELIMINATE AMBIGUITIES AND UPDATE THE EXISTING STANDARDS. THE TRAINING PROFILE RECEIVED THE MOST SUBSTANTIAL REVISIONS. CHANGES IN THE EXPERIENCE LEVEL OF OIG ENTRY LEVEL INVESTIGATORS AS WELL AS A NEW EMPHASIS ON LAW ENFORCEMENT SKILLS NECESSITATED THIS CHANGE. ALL BASIC SKILLS ARE NOW TAUGHT WITHIN THE TWO BASIC TRAINING PROGRAMS: THE FEDERAL LAW ENFORCEMENT TRAINING CENTER (FLETC) CRIMINAL INVESTIGATOR TRAINING PROGRAM AND THE IG ACADEMY INSPECTOR GENERAL BASIC TRAINING PROGRAM, BOTH LOCATED AT GLYNCO, GEORGIA. THE PRIOR PROFILE HAD SKILLS SUCH AS CONSTITUTIONAL RIGHTS, FIREARMS, PROSECUTIVE CRITERIA AND COLLECTION AND ANALYSIS OF DATA TAUGHT AT THE JOURNEYMAN LEVEL RATHER THAN THE ENTRY LEVEL. THE NEW PROFILE INDICATES THE ENTRY LEVEL INVESTIGATOR WILL OBTAIN ALL BASIC INVESTIGATOR AND LAW ENFORCEMENT TRAINING WITHIN THE FIRST YEAR OF EMPLOYMENT. AREAS ASSIGNED TO THE "ADVANCED" TRAINING AREA CONSIST OF DEVELOPING SKILLS SUCH AS CONTRACT FRAUD, UNDERCOVER OPERATIONS AND SUPERVISION.

ON MAY 9, 1997, THE WORKING GROUP FORWARDED THE *STANDARDS* TO THE INVESTIGATIONS COMMITTEE MEMBERS FOR COMMENT. SUGGESTED CHANGES ARE BEING REVIEWED AND A DRAFT WILL BE DISSEMINATED TO

PCIE AND ECIE MEMBERS FOR COMMENT. I WILL BE HAPPY TO PROVIDE THE SUBCOMMITTEE WITH THE FINAL QUALITY STANDARDS FOR INVESTIGATIONS UPON COMPLETION.

TRAINING

ONE OF THE MOST EFFECTIVE CONTROLS TO PROTECT INDIVIDUAL RIGHTS AND ASSURE HIGH QUALITY LAW ENFORCEMENT IS TO PROVIDE AGENTS WITH TRAINING OPPORTUNITIES. THE PCIE INVESTIGATIONS COMMITTEE WORKS CLOSELY WITH LAW ENFORCEMENT TRAINING AUTHORITIES TO ENSURE THE MOST PROFESSIONAL AND RELEVANT TRAINING AVAILABLE IS PROVIDED TO BOTH NEW INVESTIGATORS AND TO EXPERIENCED INDIVIDUALS. PRESENTLY, ALL OIG INVESTIGATORS ARE REQUIRED TO HAVE THREE BASIC TYPES OF TRAINING: ON-THE-JOB TRAINING (OJT), CRIMINAL INVESTIGATOR TRAINING AND THE INSPECTOR GENERAL BASIC TRAINING PROGRAM. WHEN EXPERIENCED AGENTS JOIN IG OFFICES, THEIR PRIOR EXPERIENCE MAY BE SUBSTITUTED FOR FLETC AND THE IG ACADEMY TRAINING. THE PCIE IS INVOLVED IN SETTING THE CURRICULUM FOR THESE PROGRAMS AND ALL PCIE IGs CONTRIBUTE TO FUNDING THE ACADEMY BASED ON A SPECIFIC FORMULA.

AS IS TRUE IN ALL LAW ENFORCEMENT, OJT IS A CRITICAL ELEMENT OF THE EARLY DEVELOPMENT OF IG CRIMINAL INVESTIGATORS. LEARNING FROM THE BEST AND MOST EXPERIENCED ENSURES THAT EVERY NEW RECRUIT HAS HANDS-ON OPPORTUNITIES IN A CONTROLLED MENTOR SETTING WHILE IN THE FIELD. FROM MY OWN EXPERIENCES, I CAN TELL YOU THAT OJT IS AN ONGOING PROCESS. EVEN AFTER YEARS OF LAW ENFORCEMENT WORK, OUR PEERS ARE THE BEST SOURCE OF ACQUIRING NEW APPROACHES AND SKILLS.

IN ADDITION TO LEARNING FROM MORE EXPERIENCED AGENTS, OIGs ARE INCREASINGLY USING PROFESSIONALS WITHIN THEIR OFFICES, INCLUDING IG COUNSELS, TO PROVIDE TRAINING. AUDITORS AND INVESTIGATORS WORK TOGETHER IN DEVELOPING CASES AND PROVIDING EXPERTISE NECESSARY TO UNDERSTAND COMPLICATED CONTRACT OR PROCUREMENT QUESTIONS. INVESTIGATORS ASSIST AUDITORS IN DETECTING POSSIBLE CRIMINALITY.

THE CRIMINAL INVESTIGATOR TRAINING PROGRAM AT FLETC IS REQUIRED OF MOST FEDERAL LAW ENFORCEMENT PERSONNEL, AT THE TIME OF THEIR EMPLOYMENT. THIS NINE-WEEK CLASS COVERS THE GAMBIT OF BASIC INVESTIGATIONS AND LAW ENFORCEMENT SKILLS. THE EMPHASIS IS ON A MULTI-DISCIPLINARY APPROACH WITH MULTI-AGENCY PARTICIPATION.

CRIMINAL INVESTIGATORS FROM THE IG COMMUNITY ARE NOW REQUIRED TO ATTEND THE INSPECTOR GENERAL BASIC TRAINING PROGRAM CONDUCTED BY THE IG ACADEMY. IN THE PAST, THIS PROGRAM WAS A TWO-WEEK COURSE IN THE UNIQUE AREAS OF OIG INVESTIGATIONS. IN FY 1998, THIS CLASS WILL BE INCREASED BY A WEEK AND WILL PLACE NEW EMPHASIS ON FIREARMS, ARREST TECHNIQUES AND COMMUNICATIONS SKILLS.

THE IG ACADEMY ALSO PROVIDES SEVERAL INTERMEDIATE AND ADVANCED CLASSES TO INVESTIGATORS. IN THE LAST FEW YEARS, AS OIG INVESTIGATIONS HAVE BEGUN TO GROW IN NATURE AND STATURE, MORE EMPHASIS HAS BEEN PLACED UPON TRAINING BEYOND THE BASIC LEVELS.

TRAINING HAS BEEN A KEY ELEMENT OF BOTH THE ORIGINAL INVESTIGATIONS STANDARDS AND THE PROPOSED DRAFT UNDER CONSIDERATION BY THE PCIE INVESTIGATIONS COMMITTEE. THE NEW PROPOSED STANDARDS INCLUDE NOT ONLY THE TYPES OF TRAINING NECESSARY FOR EACH GRADE BUT ALSO RECOMMEND HOW THE TRAINING WILL BE ACQUIRED, I.E., OJT, FLETC OR IG ACADEMY PROGRAMS. THE NEW TRAINING PROFILES WERE DEVELOPED BY THE IG ACADEMY TO INCLUDE MANY AREAS OF INVESTIGATION NOT ENVISIONED AT THE TIME THE ORIGINAL STANDARDS WERE DEVELOPED. JUST AT THE GS-5 LEVEL, AN ENTRY LEVEL FOR INVESTIGATORS, NEW ELEMENTS BEING ADDED INCLUDE

ARREST TECHNIQUES, CIVIL AND ADMINISTRATIVE REMEDIES, AGENCY VULNERABILITY, AUTHORITY AND JURISDICTION, AND COORDINATING WITH ASSISTANT UNITED STATES ATTORNEYS.

I HOPE THAT MY TESTIMONY HAS DEMONSTRATED THAT THERE ARE SUBSTANTIAL INTERNAL AND EXTERNAL CONTROLS ON OIG INVESTIGATIONS. WHILE WE ARE ALWAYS LOOKING FOR NEW WAYS TO INCREASE THE FAIRNESS OF OUR INVESTIGATIONS, WE ARE NOT AWARE OF WIDESPREAD ABUSES THAT WOULD JUSTIFY PLACING OIGs UNDER NEW RESTRICTIONS THAT WOULD LIMIT OUR ABILITY TO CONTINUE OUR SUCCESSFUL TEAMWORK WITH OTHER LAW ENFORCEMENT AGENCIES IN INVESTIGATING AND PROSECUTING FRAUD.

THIS CONCLUDES MY FORMAL TESTIMONY. I WILL BE HAPPY TO RESPOND TO YOUR QUESTIONS.

Quality Standards for Investigations

President's Council on Integrity and Efficiency

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PREFACE

The general and qualitative standards set forth in this document are guidelines applicable to all types of investigative efforts. They are flexible enough to take into consideration the diverse nature of investigative responsibilities in the Federal Government, while remaining precise enough to provide specific goals. They are comprehensive and relevant to government investigations, including: background and security inquiries; all forms of misdemeanors and felonies (vice, violence, property, narcotics and white collar crime); administrative and programmatic matters; and, special investigations requested by any appropriate authority.

Furthermore, these standards and implementing guidelines and procedures are only aims. Their attainment will depend on training funds and personnel restrictions. Agencies and offices were established under different laws and their mandates will differ. Therefore, these differences, as well as other factors, may affect the practices of various offices and, consequently, the applicability of their standards.

This information represents a consensus from organizations affiliated with the President's Council on Integrity and Efficiency (PCIE). It endorses the establishment of a permanent committee, consisting of members of the leading professional investigative associations, to further develop and refine this effort and through it, encourage the use of consistent guidelines among agencies.

The following discussion and recommended procedures should facilitate such efforts.

QUALITY STANDARDS FOR INVESTIGATIONS

GENERAL STANDARDS

General Standards apply to the desired qualities for investigators and the organizational environment in which they perform. They address the "need for" criteria. The three general standards relate to qualifications, independence and due professional care.

A. Qualifications

The first general standard for investigative organizations is:

> *Individuals assigned to conduct the investigative activities must collectively possess professional proficiency for the task required.*

This standard places upon the investigative organization and the investigators the responsibility for ensuring that investigations are conducted by personnel who collectively have the knowledge and skills required to perform the investigative activities.

Guidelines

Investigations vary in purpose and scope. Some are inquiries into the background and suitability of individuals for employment or for granting of security clearances. Others delve into integrity of personnel and systems in the broad spectrum of agencies and programs at state and local levels of government. Others seek to establish the commission of crimes and deter-

mine the perpetrator of the offense. Still others involve complex financi transactions, frauds and the application of criminal sanctions. A wide var etv of knowledge and skills is necessary to perform the broad range c activities required by these diverse investigations.

Investigative organizations should establish criteria to be used in recruiting and selecting the best qualified applicant. As a minimum, factors to be considered in employing entry level candidates should include: education and/or experience, character, age and physical abilities. Each of these factors is controlled by legislation or the regulations of central agencies. Investigative organizations should periodically review these criteria to ensure that they assist in providing the best qualified applicants.

Education—All entry level investigators should possess a degree from a four-year college or the equivalent.

Academic achievement is an indicator of the individual's ability to analyze and react to complex situations. It is believed that the knowledge acquired from a higher education will enable the investigator to better deal with complex problems encountered in day-to-day investigative work. Higher education enhances the investigator's ability to effectively communicate, both orally and in writing, with the general public.

An entry level candidate may substitute job experience for a college education. Each candidate must demonstrate ability to exercise tact, initiative, ingenuity, resourcefulness and judgment in collecting, assembling and developing facts, evidence and other pertinent data; to make oral and written reports of investigations; and to analyze and evaluate evidence.

Depending upon the nature of the investigative organization's mission, requirements may be established for specific types of experience, e.g., financial, computer, etc.

Character—Each investigator must possess and maintain the highest standards of conduct and loyalty in both official and personal matters.

Every citizen is entitled to have complete confidence in the integrity of government affairs. Investigators must help earn and must honor that trust by their own integrity and conduct in all official actions. Because of the sensitivity of the investigative functions, a suitability determination should be made as to the investigator's character, reputation, trustworthiness and overall fitness for such a position. A determination as to one's suitability

will be based on the results of a background investigation, including personal interviews, written inquiries and confirmations, record searches and a review of the applicant's compliance with programs administered by the agency (e.g., income tax checks for IRS investigators). The period or term to be covered by the background investigation should be an agency determination based upon its program responsibilities. Such suitability decisions should be made prior to the appointment of an individual as an investigator.

Physical Capabilities—Each investigative organization should develop job-related physical requirements to enable investigators to adequately discharge their duties, while promoting personal well-being.

The physical demands placed upon the investigator will vary among agencies. Some organizations may desire to establish a personalized wellness program for investigators to provide and maintain physical fitness and reduce the risks of cardiovascular disease, obesity, stress and other law enforcement related ailments.

Age—Consideration should be given to the establishment of minimum and maximum age requirements for entry level positions. A qualified investigator must possess certain individual character traits, such as tact, poise, diplomacy, maturity and self-confidence.

An investigator's duties frequently require irregular unscheduled hours, personal risk, exposure to extreme weather conditions, considerable travel and arduous exertion. Investigators are frequently engaged in stressful encounters and can be victims of "burn out." Investigative agencies should establish and maintain a vibrant workforce.

Knowledge, Skills and Abilities—Due to the critical and sensitive nature of an investigator's position, investigative agencies should ensure that all investigators possess the requisite knowledge, skills and abilities to fulfill their responsibilities. These requirements are summarized as follows:

1. A knowledge of theories, principles, practices and techniques of investigation and the education, ability and experience to apply such knowledge to the type of investigation being done;

2. A knowledge of government organizations, programs, activities, functions and—where applicable—their interrelations with the private sector that may be acquired by education, study or experience;

3. A knowledge of applicable laws, rules and regulations, including the U.S. Constitution, the U.S. Criminal Code, the Federal Rules of Evidence, the Federal Rules of Criminal Procedure and other pertinent statutes, such as the Privacy and Freedom of Information Acts; and

4. The skills necessary for the investigation.

   This standard recognizes that proper training is required in order to meet the need for the broad range of special knowledge and skills necessary to conduct investigations. This training should include both formal classroom and on-the-job training. The qualifications mentioned herein apply to the skills of an investigative organization as a whole and not necessarily to every individual investigator. If an organization possesses personnel or draws upon outside resources with acceptable skills in such areas as accounting, use of investigative equipment and computerized systems, each individual member need not possess all these skills. Skills required to conduct an investigation are:

   a. Proficiency at obtaining information from people;

   b. Ability to analyze and evaluate facts, draw sound conclusions and—where necessary—make constructive recommendations; and

   c. Ability to deliver concise, factual summaries of the results of the investigation, both orally and in writing.

Entry Level Training—In order to satisfy these requirements, agency heads should ensure that all investigators successfully complete a formal basic training course. This training may be specifically designed to meet an agency's program needs—such as those conducted at the FBI Academy—or may be developed to meet the basic mandatory needs of multiple agencies, such as the Federal Law Enforcement Training Center. Investigators should be given additional orientation specifically relating to the agency's mission, programs, policies, procedures, rules and regulations. (See Appendix A—Job Task Illustration for Investigators.)

In-Service Training—Investigative agencies should ensure that investigative personnel are current with new laws and court decisions affecting operations, technological improvements and any changes in agency policies, procedures, rules and regulations. All subsequent training should be part of a systematic, progressive plan to provide for the requisite knowledge, skills and abilities.

Professional Development—The training of an investigator should be a continuing process. Investigators should receive formal and on-the-job exposure prior to assignments requiring independence and individual judgments. A continuous career development program should be established to provide the proper preparation, training and guidance to employees to enable them to develop into professionally qualified investigators and supervisors.

To facilitate this effort, the investigative agency should develop a training profile that will satisfy its needs. (See Appendix B—Training Profile Illustration for Investigators.)

B. Independence

The second general standard for investigative organizations is:

> *In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude.*

This standard places upon agencies, investigative organizations and investigators the responsibility for maintaining independence, so that judgments used in obtaining evidence, conducting interviews and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external and organizational.

Guidelines

Personal Impairments—There are circumstances in which investigators may experience difficulty in achieving impartiality because of their views or personal situations. While these impairments apply to individual investigators, they may also apply to the investigative organization. These circumstances include—but are not limited to—the following:

1. Official, professional, personal or financial relationships that might affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way;
2. Pre-conceived opinions of individuals, groups, organizations or objectives of a particular program that could bias the investigation;
3. Previous involvement in a decision-making or management capacity that would affect current operations of the entity or program being investigated;
4. Biases—including those induced by political or social convictions—that result from employment in, or loyalty to, a particular group or organization; and
5. Financial interest—direct or substantially indirect—in the individual, entity or program being investigated.

External Impairments—Factors external to the investigative organization can pose a threat to restrict its ability to make independent and objective investigations and reports of investigations. For example, under the following conditions investigators may be adversely affected and the investigative organization will not have complete freedom to make independent and objective investigations:

1. Interference in the assignment of cases or investigative personnel;
2. Restrictions on funds or other resources dedicated to the investigation or to investigative organizations;
3. Authority to overrule or to influence the extent and thoroughness of the investigative scope, how the investigation is conducted, who should be interviewed, what evidence should be obtained and the appropriate content of the investigative report; and

4. Denial of access to sources of information, including documents and records.

Organizational Impairments—An investigative organization's independence can be affected by its place within the structure of the government entity of which it is a part. To help achieve maximum independence, the investigative function or organization should be organizationally located outside the staff or line management function of the unit under investigation or whose employees are under investigation. The investigative organization should report to the head or deputy head of the government authority to refer investigations to the appropriate prosecutive authorities and top management without fear of censure.

C. Due Professional Care

The third general standard for investigative organizations is:

> *Due professional care is to be used in conducting investigations and in preparing related reports.*

This standard requires a constant effort to achieve quality professional performance. It does not imply infallibility or absolute assurances that an investigation will reveal the truth of a matter.

Guidelines

This standard requires:

Thoroughness—All investigations must be conducted in a diligent and thorough manner in accordance with all applicable laws, rules and regulations and with due respect for the rights and privacy of those involved.

Appropriate Techniques—Specific methods and techniques used in each investigation must be appropriate for the circumstances and objectives.

Impartiality—All investigations must be conducted in a fair and impartial manner, with the perseverance necessary to determine the facts.

Objectivity—Evidence must be gathered and reported in an unbiased and objective manner in an effort to support all the facts developed to prove or disprove an issue.

Timeliness—All investigations must be conducted and reported in a timely manner.

QUALITATIVE STANDARDS

Qualitative standards apply to the management functions and processes in which investigators perform. They address the "how to" criteria.

In any type of investigation, there are four critical standards that must be addressed if the effort is to be successful. These standards are: Planning, Execution, Reporting and Information Management.

A. Planning

The first qualitative standard for investigative organizations is:

> *Investigative priorities should be established and objectives developed to ensure that individual case tasks are performed efficiently and effectively.*

This standard recognizes the general limitation of available resources and requires that attention be given to the establishment of case priorities. This should be extended to both qualitative and quantitative aspects and the proper degree of supervision should be carefully considered. This may best be achieved by preparing an investigative plan. The plan should set forth the nature of the investigation while specifically listing the substantive issues to be developed, a specific plan of action, the estimated required manpower, expected completion date and anticipated results or accomplishments.

Guidelines

Organizational Planning—It is necessary for organizations to prepare goal-oriented investigative plans. A basic, single-source planning document should present each organization's individual resource goals, allocation of resources, budget guidance, performance measures and a guide for managers to implement these plans. Moreover, the plans should include the allocation of resources in terms of priorities, reactive and proactive investigations, as well as new initiatives in order to ensure the attainment of those goals.

While the plan must be flexible enough to accommodate individual agency needs and shifting of investigative emphasis and staff resources as circumstances dictate, it must provide a basis for the professional management of investigative resources and workload during the planning year.

Individual Case Planning—In order to conduct investigations, each case to be investigated should address the following:

Upon receipt, each complaint must be evaluated against the investigative functions, priorities and guidelines for one of three decisions:

- Initiate investigative activity,
- Refer to another appropriate authority, or
- File for appropriate period—no action.

If the decision is to initiate investigative activity, the organization should begin any necessary immediate actions and prepare—if appropriate—an investigative plan of action, as soon as possible, that includes as much of the following information as deemed necessary.

1. Determine whether the nature of the investigation is criminal, civil or administrative.
2. Determine elements of proof or critical elements.
3. Determine solvability of complaint, if appropriate.
4. Coordinate the decision to open an investigation with appropriate authority.
5. Identify and rank the investigative requirements necessary to satisfy investigative goals.
6. Determine the resources necessary to meet investigative requirements, including the probable cost of investigation.
7. Identify the best approach to take during the investigation in order to resolve the allegation.
8. Determine the initial scope of the investigation, ensuring that all essential leads are followed.
9. Establish a time-phased approach that ensures individual leads are accomplished on a timely basis and periodic evaluations of pro-

gress occur. This would include a positive decision to continue or terminate the investigation.

10. Coordinate investigative actions with investigative function elements and others, as necessary.
11. Determine the format to be used to report results.
12. Ensure that investigative steps include the identification of any causative factors that can be reported as weaknesses requiring corrective action by management.

B. Execution

The second qualitative standard for investigative organizations is:

> *Investigations should be conducted in a timely, efficient, thorough and legal manner.*

The investigator is a fact-gatherer and should not allow conjecture, unsubstantiated opinion or bias to affect work assignments. He or she also has a duty to be equally receptive to evidence that is exculpatory, as well as incriminating. Interviews of subjects and witnesses should be conducted in an effective manner. The collection of evidence should be undertaken in such a way as to ensure that all relevant material is obtained, the chain of custody is preserved and the evidence is properly admissable in a subsequent proceeding.

Guidelines

With regard to the conducting of interviews, the following guidelines should be considered:

Impartiality—All interviews should be conducted in a fair and impartial manner with the objective of obtaining the most accurate, relevant, timely and complete information from the source.

Prior Preparation—A review of known information should precede a planned interview.

Full Identification—An investigator should fully identify himself/herself and state the purpose of the interview, if appropriate.

Complete Information—Relevant personal data, including—but not limited to—full name, personal and business address and occupation will be obtained from the interviewee.

Related Information—When conducting an interview, particular attention should be given to obtaining the interviewee's observation of incidents and the actions or statements of other persons connected with the event.

FOIA and Privacy—The investigator should bear in mind the interviewee's access to information through the Freedom of Information Act (5 U.S.C. 552) and under provisions of the Privacy Act (5 U.S.C. 552a).

Inclusion in Reports—All interviews are subject to inclusion in reports.

Retention of Notes—Any contemporaneous interview notes that are prepared in a criminal investigation shall be retained at least until final disposition of the case.

Joint Interviews—Consideration should be given to conducting interviews with more than one investigator in situations that are potentially hazardous or compromising.

C. Reporting

The third qualitative standard for investigative organizations is:

> *Reports must thoroughly address all relevant aspects of the investigation and be accurate, objective, timely, understandable and logically organized.*

As befits the investigative process, this standard requires that report writing receive primary attention. Whether the report is in oral or written form, it must clearly and concisely reflect the results of the investigator's efforts. It should be presented in straightforward, grammatically correct language—avoiding the use of unnecessary, obtuse and confusing verbiage. Graphics

should be well prepared, clearly relevant to the investigation and supportive of the presentation.

Guidelines

In pursuing this standard, the following guidelines should be considered:

Written Reports—Written reports should address the following elements:

1. In any report, the facts must be set forth to facilitate reader comprehension.
2. The principles of good report writing must be adhered to. A quality report will be logically organized, accurate, complete, brief, impartial and clear.
3. An investigative report will not require substantial correcting or rewriting, and will be submitted timely.
4. Reports should clearly record or reference all pertinent interviews.
5. Reports or case files should reflect what the investigation accomplished. This would include fines, savings, recoveries, indictments, convictions, management recommendations, etc.

Preparation Guidelines—The following guidelines apply to the preparation of all investigative reports:

1. Organize the report in an orderly, logical manner to quickly identify the issues and evidence.
2. Write in short, simple, direct sentences and paragraphs.
3. Reports should be no longer than necessary without sacrificing clarity, completeness and accuracy to communicate the relevant investigative findings. Reports must neither raise unanswered questions nor leave matters open to misinterpretation.
4. Each report must contain an accurate recitation of facts.
5. Information obtained during an investigation should be verified by as many sources as are necessary and reasonable to establish the validity of such information.

6. Investigative reports should not contain opinions, conclusions or personal views.
7. Systemic weaknesses or management problems disclosed in an investigation should be reported to agency officials.

D. Information Management

The fourth qualitative standard for investigative organizations is:

> *Results of investigations should be stored in a manner allowing effective retrieval, cross-referencing and analysis.*

One of the many hallmarks of an efficient organization is its ability to retrieve information that it has collected. An effective information management system creates and nourishes an institutional memory. This in turn enhances the entire organization's ability to conduct pattern and trend analysis. It enhances the organization's ability to fulfill the mandate of detection and prevention. A residual effect is that it assists in the process of making informed judgments relative to resource allocation, training needs, investigative program development, prevention and implementation of the investigative process.

Guidelines

The degree to which an organization achieves its goals is affected by the way information is collected, stored, retrieved and analyzed. Information, or the lack of it, has a direct influence on management's ability to make sound decisions relating to investigative matters. Therefore, written directives should exist that define the organizational component responsible for record maintenance and the specific procedures to be performed.

Information Flow—Accurate processing of information is essential to an investigative agency's mission. It should begin with the orderly, systematic and accurate maintenance of an index system. Written guidance should define the data elements to be recorded in the system. The guidance should be based on legal requirements and needs. Data elements typically

would include the names of victims, complainants, suspects and—in some instances—witnesses.

Complaint Handling Activities—The investigative process often begins with information received in the form of a complaint from an individual. The initial complaint will rarely provide the agency with all the necessary information and may be the first indication of a serious violation of law. Established policies, procedures and instructions for handling and processing complaints should be in place.

Individuals receiving complaints should obtain all pertinent details, while avoiding collecting unrelated information. The agency should adopt procedures to ensure that basic information is recorded and tracked to final resolution.

Case Initiation—Guidelines should be established for making a determination to initiate an investigation, or to pursue another course of action. Case assignments should be based on the number of investigators, their geographical dispersion, level of experience and pending workloads. The anticipated results or impact of a successful investigation should consider public expectations rather than potential commitment of resources.

Management Information—Management should have certain information available to perform its responsibilities and measure its accomplishments. Items considered for tracking purposes include the following:

Workload data

- Cases opened
- Cases closed
- Cases pending
- Referrals to program agencies
- Referrals to another investigative agency (federal, state or local—including agency name)
- Prosecutive and administrative referrals
  —accepted
  —declined
  —agency referrals
- Number of complaints handled
- Amount of direct and indirect labor

Identification data

- Fraud and corruption case tracking system referral numbers
- Type of violation alleged
- Category of investigation priority
- Dollar amount of contracts involved in investigations
- Whistleblower complaints
- Joint investigations
- Sensitive investigations
- Auxiliary-type investigations
- Supplemental investigative activities
- Principal state where investigation is centered
- Investigative techniques employed (i.e., consensual monitoring, forensic sciences, etc.)
- Release of data under FOI or Privacy Act

Investigative results data

- Number of indictments, convictions, unsuccessful prosecutions, civil actions
- Amount of recoveries, cost efficiencies, restitutions, fines and settlements
- Recommendations to management
- Number of terminations, suspensions, demotions, debarments

The above data will generally allow for the design of a basic system of administrative checks and controls to meet management needs. Depending on the complexity and scope of an investigative activity, additional data can be developed that will enable trend and pattern analyses.

The Investigative File—All investigative activity, both exculpatory and incriminating, should be recorded in an official case file. A case file should be established immediately upon the opening and assignment of an investigation. The predicating document will usually be the complaint form referred to previously. A case may also be opened upon the receipt of a referral from another investigative agency or program office. Written directives should specify procedures for at least the following:

- Assignment of case numbers
- File organization or prescription
- Filing of exhibits and storing evidence

- Distribution and dissemination of reports
- Privacy and security provisions
- Accounting for disclosure of information
- Record retention

APPENDICES

Appendix A

JOB TASK ILLUSTRATION FOR INVESTIGATORS

Receive, Analyze and Develop Allegation

- Recognize violation (elements of the crime)
- Know prosecutive criteria
- Define scope and objective of investigation
- Establish and maintain focus of investigation
- Determine sufficiency of grounds for investigation

Analyze Available Data

- Sift through information and select significant data by weighing information and evidence
- Review specific files to establish validity of complaint
- Determine case status and receive approval
- Decide upon activity to recommend (open, refer, etc.)
- Determine investigative course (criminal, civil or administrative)
- Establish priorities

Prepare Investigative Plan

- Determine scope of investigation
- Assess resources needed
- Plan and organize investigation and set goals
- Determine needs for records and identify potential witnesses
- Correlate witnesses and records with specific fact situations and elements of proof

Conduct Investigation

- Recognize and gather information (source and informants)
- Conduct interview, including note taking
- Use effective human relations (meet and deal effectively, develop rapport, maintain impartiality)

- Use oral communication skills including briefing techniques
- Project professional image
- Know legal decisions and guidelines
- Collect, weigh and preserve evidence
- Maintain and consider constitutional rights
- Apply knowledge of laws and/or regulations
- Know agency programs, operational policies and procedures
- Use appropriate investigative techniques (surveillance, arrest, technical equipment)
- Maintain appropriate liasion and jurisdiction
- Effectively manage the case, time and assisting personnel
- Avoid the abuse of power

Analyze, Organize, Review and Evaluate Data

- Analyze information gathered
- Recognize potential evidence
- Analyze financial data
- Be aware of evidentiary rules

Write and Submit Final Report

- Write report with attention to format, grammar and clarity
- Organize and correlate data, findings and results
- Ensure report is complete and accurate

Post-Investigative Duties

- Assist in preparation for court
- Assist U.S. Attorney at trial
- Testify at trial
- Know rules of criminal procedure

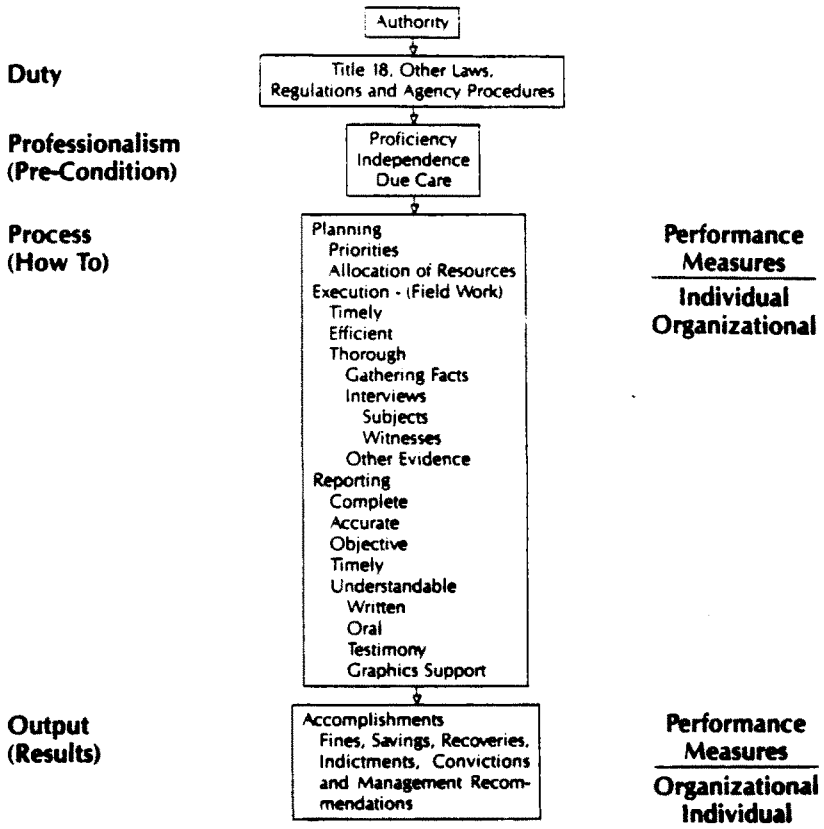
Appendix B

TRAINING PROFILE ILLUSTRATION FOR INVESTIGATORS

Elements	GS–5	GS–7	GS–9	GS–11	GS–12	GS–13	GS–14
Ethics Code of Conduct	X	X	X	X	X	X	X
Rules of Evidence	X	X	X	X	X	X	X
Interviewing	X	X	X	X	X	X	X
Computer Fraud	X	X	X	X	X	X	X
Investigative Applications to EDP	X	X	X	X	X	X	X
Report Writing	X	X	X	X	X	X	X
Information Analysis	X	X	X	X	X	X	X
Elements of a Crime	X	X	X	X	X	X	X
Affidavits & Statements	X	X	X	X	X	X	X
Investigative Planning	X	X	X	X	X	X	X
Financial Investigations		X	X	X	X	X	X
Forensic Accounting		X	X	X	X	X	X
Employee Frauds		X	X	X	X	X	X
Arrest Procedures		X	X	X	X	X	X
Informants & Undercover Operations		X	X	X	X	X	X
Vice & Violent Crime		X	X	X	X	X	X
Property Crimes		X	X	X	X	X	X
Narcotics		X	X	X	X	X	X
Basic EDP		X	X	X	X	X	X
Electronic Data Processing Applications			X	X	X	X	X
Embezzlement			X	X	X	X	X
Loans			X	X	X	X	X
Case Management			X	X	X	X	X
Bribery			X	X	X	X	X
Basic Accounting Principles				X	X	X	X
Agency Vulnerability				X	X	X	X
Constitutional Rights				X	X	X	X
Report Writing (Advanced)				X	X	X	X
Collection and Analysis of Data				X	X	X	X
Authority and Jurisdiction				X	X	X	X
Contracts					X	X	X
Accounting					X	X	X
Governmental Accounting					X	X	X
Supervision					X	X	X
Procurement					X	X	X
Firearms & Emergency Equipment					X	X	X
Civil & Admin. Remedies						X	X
White Collar Crime						X	X
Prosecutive Criteria						X	X
Disclosure & Privacy Act						X	X
Assisting US Attorneys							X
Testifying in Court							X
Anti-Trust Investigations							X

Appendix C

FRAMEWORK AND GUIDELINES FOR INVESTIGATIVE STANDARDS



U.S. GOVERNMENT PRINTING OFFICE: 1995 - 400-704 - 814/40308

Mr. HORN. Mr. Robert M. Bryant, Assistant Director, Federal Bureau of Investigation. Welcome.

Mr. BRYANT. Thank you.

Mr. Chairman, I appear before you today in my capacity as chairman of the Integrity Committee of the President's Council on Integrity and Efficiency. My testimony will cover the function and activities of the Integrity Committee and provide some insight into the process by which allegations against Inspectors General are referred, reviewed, and investigated.

To gain an understanding of the function of the Integrity Committee, I wish to emphasize that the mandate of the Integrity Committee covers only Inspectors General and certain members of their staffs regarding noncriminal allegations of wrongdoing. The Integrity Committee covers senior offices of Inspector General staff members in instances where it would be inappropriate or might appear to be less than objective if the Inspector General conducted the investigation.

The Integrity Committee does not generally conduct inquiries into investigative practices of the Inspector General. The Integrity Committee does not function as an office of professional responsibility.

Upon receipt of an allegation against an Inspector General received by the Integrity Committee at FBI headquarters, the allegations are received from several sources to include Inspectors General themselves, agency heads, and private citizens. The FBI has chaired this committee since 1990.

Upon receipt of an allegation, the working group of the Integrity Committee acknowledges receipt of the allegation to the complainant. A copy of the complaint is forwarded to the Public Integrity Section of the Department of Justice for a determination whether the allegation is criminal or administrative in nature. Should the Public Integrity Section determine that the allegation is, in fact, a criminal violation of the law, then it is referred to the appropriate Federal law enforcement agency for a criminal investigation.

The Integrity Committee receives the results of a criminal investigation that's been referred and they may pursue noncriminal allegations related to the case not addressed during the criminal investigation.

The membership of the Integrity Committee currently consists of the Special Counsel of the Office of Special Counsel, the Director of the Office of Government Ethics, two Inspectors General from the President's Council on Integrity and Efficiency, and one Inspector General from the Executive Council on Integrity and Efficiency. Committee members serve annually. Advising the committee is a lawyer from the Department of Justice's Public Integrity Section.

The Integrity Committee meets quarterly to review allegations. During these meetings, the Integrity Committee determines the manner in which to handle a complaint. Should a complaint fall outside the purview of the committee, the case is closed and the complainant is notified in writing of the action taken. If, however, the Integrity Committee finds it appropriate to refer the allegation elsewhere, the allegations are referred to the most suitable investigative entity.

For example, if an allegation is made against an individual within the Office of the Inspector General below the level of Deputy Inspector General, it would be fitting to refer the allegation to the Inspector General personally. An allegation related to prohibited personnel practices would be referred to the Office of Special Counsel, and an allegation regarding equal opportunity matters would be referred to their equal opportunity office.

If an allegation is credible and falls under the Integrity Committee's purview, I, as chairman, will initiate an investigation to obtain facts related to the allegation. Since the committee does not maintain an investigative staff, I can convene an investigative group headed by an independent Inspector General. The staff may be made up of the investigators from the Office of the Independent Inspector General's office or others from the Inspector General community at large.

Presidential Executive Order 12993 gives the FBI the authority to conduct investigations under the direction of the chairman of the Integrity Committee. As chairman, I am authorized to obtain investigative resources outlined above and may augment those resources with investigative personnel of the FBI. Reimbursement for the investigations is conducted as a responsibility for the agency employing the subject of the allegation. Upon completion of the investigation, a report is issued to the Integrity Committee, and where it is reviewed, and based on the findings in the investigation, an appropriate recommendation is forwarded to the chairman of the PCIE with notification to the original complainant.

The Integrity Committee has handled 162 complaints since 1990. In view of the signing of the Executive Order 12993, it is expected that there will be some increase in the number of referrals to the committee as evidenced by the receipt of 23 referrals since last quarter's meeting, which was April 30, 1997. Currently, we have 37 matters pending review.

Thank you very much.

Mr. HORN. We thank you.

[The prepared statement of Mr. Bryant follows:]

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS ROBERT BRYANT, AND I AM THE ASSISTANT DIRECTOR OF THE CRIMINAL INVESTIGATIVE DIVISION OF THE FBI. I APPEAR BEFORE YOU TODAY IN MY CAPACITY AS CHAIRMAN OF THE INTEGRITY COMMITTEE OF THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY (PCIE). MY TESTIMONY WILL UPDATE INFORMATION PREVIOUSLY PROVIDED BY MY PREDECESSOR, MR. BILL ESPOSITO, NOW DEPUTY DIRECTOR OF THE FBI, AND WILL COVER THE FUNCTION AND ACTIVITIES OF THE INTEGRITY COMMITTEE AND PROVIDE INSIGHT INTO THE PROCESS BY WHICH ALLEGATIONS AGAINST INSPECTORS GENERAL ARE REFERRED, REVIEWED AND INVESTIGATED.

TO GAIN AN UNDERSTANDING OF THE FUNCTION OF THE INTEGRITY COMMITTEE, I WISH TO EMPHASIZE THAT THE MANDATE OF THE INTEGRITY COMMITTEE COVERS ONLY INSPECTORS GENERAL AND CERTAIN MEMBERS OF THEIR STAFFS REGARDING NON-CRIMINAL ALLEGATIONS OF WRONGDOING. THE INTEGRITY COMMITTEE COVERS SENIOR OFFICE OF INSPECTOR GENERAL STAFF MEMBERS IN INSTANCES WHERE IT WOULD BE INAPPROPRIATE OR MIGHT APPEAR TO BE LESS THAN OBJECTIVE IF THE INSPECTOR GENERAL CONDUCTED THE INVESTIGATION. THE INTEGRITY COMMITTEE DOES NOT GENERALLY CONDUCT INQUIRIES INTO THE INVESTIGATIVE PRACTICES OF INSPECTORS GENERAL.

WHEN MY PREDECESSOR LAST TESTIFIED ABOUT THE INTEGRITY COMMITTEE, HE GAVE YOU AN OVERVIEW OF HOW THE INTEGRITY COMMITTEE OPERATES AND DISCUSSED SEVERAL DEFICIENCIES RELATED TO THE MANNER IN WHICH NONCRIMINAL ALLEGATIONS AGAINST INSPECTORS GENERAL WERE

INVESTIGATED. I BELIEVE IT WOULD BE HELPFUL TO THE COMMITTEE IF I REITERATE SEVERAL POINTS REGARDING THE OPERATION OF THE COMMITTEE. ONCE THE COMMITTEE HAS BEEN PRESENTED INSIGHT INTO THE WORKINGS OF THE INTEGRITY COMMITTEE, I WILL REPORT ON THE JOINT EFFORTS OF THE INTEGRITY COMMITTEE AND THE INSPECTOR GENERAL COMMUNITY TO RECTIFY PREVIOUSLY-OUTLINED DEFICIENCIES IN THE INVESTIGATION OF NON-CRIMINAL ALLEGATIONS BROUGHT AGAINST INSPECTORS GENERAL.

ALLEGATIONS AGAINST INSPECTORS GENERAL ARE RECEIVED BY THE INTEGRITY COMMITTEE WORKING GROUP AT FBI HEADQUARTERS. THE ALLEGATIONS ARE RECEIVED FROM SEVERAL SOURCES INCLUDING INSPECTORS GENERAL, AGENCY HEADS, AND PRIVATE CITIZENS. THE FBI HAS CHAIRED THE COMMITTEE SINCE 1990. THE COMMITTEE WAS FORMALIZED BY EXECUTIVE ORDER IN MARCH, 1996.

THE MEMBERSHIP OF THE INTEGRITY COMMITTEE CURRENTLY CONSISTS OF THE SPECIAL COUNSEL OF THE OFFICE OF SPECIAL COUNSEL; THE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS; AND TWO INSPECTORS GENERAL FROM THE PCIE AND ONE INSPECTOR GENERAL FROM THE EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY. INSPECTOR GENERAL MEMBERSHIP ON THE COUNCIL ROTATES. ADVISING THE COMMITTEE IS A DESIGNEE OF THE PUBLIC INTEGRITY SECTION OF THE DEPARTMENT OF JUSTICE WHO IS NOT CONSIDERED A SITTING MEMBER OF THE INTEGRITY COMMITTEE.

UPON RECEIPT OF AN ALLEGATION, THE WORKING GROUP OF THE

INTEGRITY COMMITTEE ACKNOWLEDGES RECEIPT OF THE ALLEGATION TO THE COMPLAINANT. A COPY OF THE COMPLAINT IS FORWARDED TO THE PUBLIC INTEGRITY SECTION, U.S. DEPARTMENT OF JUSTICE, FOR A DETERMINATION WHETHER THE ALLEGATION, IF PROVEN, WOULD CONSTITUTE A PROSECUTABLE VIOLATION OF FEDERAL CRIMINAL LAW.

SHOULD THE PUBLIC INTEGRITY SECTION DETERMINE THAT AN ALLEGATION WOULD CONSTITUTE A PROSECUTABLE VIOLATION OF FEDERAL CRIMINAL LAW, THE ALLEGATION IS REFERRED TO THE APPROPRIATE FEDERAL LAW ENFORCEMENT AUTHORITY FOR A CRIMINAL INVESTIGATION. THE INTEGRITY COMMITTEE RECEIVES THE RESULTS OF THE CRIMINAL INVESTIGATION, AT WHICH TIME THE COMMITTEE MAY PURSUE ANY NON-CRIMINAL ALLEGATIONS RELATED TO THE CASE NOT ADDRESSED DURING THE CRIMINAL INVESTIGATION. THE PROCESS BY WHICH THE INTEGRITY COMMITTEE INVESTIGATES NON-CRIMINAL ALLEGATIONS WILL BE DETAILED LATER IN MY REMARKS.

THE INTEGRITY COMMITTEE MEETS QUARTERLY TO REVIEW ALLEGATIONS. DURING THESE MEETINGS, THE INTEGRITY COMMITTEE DETERMINES THE MANNER IN WHICH TO HANDLE A COMPLAINT. SHOULD A COMPLAINT FALL OUTSIDE THE PURVIEW OF THE COMMITTEE, THE CASE IS CLOSED OR REFERRED AND THE COMPLAINANT NOTIFIED OF THE ACTION TAKEN. IF, HOWEVER, THE INTEGRITY COMMITTEE FINDS IT APPROPRIATE TO REFER THE ALLEGATION ELSEWHERE, THE ALLEGATIONS ARE REFERRED TO THE MOST SUITABLE INVESTIGATIVE ENTITY. FOR EXAMPLE, IF AN ALLEGATION IS MADE AGAINST AN INDIVIDUAL WITHIN AN OFFICE OF

INSPECTOR GENERAL BELOW THE LEVEL OF THE DEPUTY INSPECTOR GENERAL, IT WOULD BE FITTING TO REFER THE ALLEGATION TO THE INSPECTOR GENERAL. AN ALLEGATION RELATED TO PROHIBITED PERSONNEL PRACTICES WOULD BE REFERRED TO THE OFFICE OF SPECIAL COUNSEL WHICH HAS OVERSIGHT IN THIS AREA. UPON REFERRAL, THE OFFICE OF SPECIAL COUNSEL IS REQUIRED TO REPORT BACK TO THE COUNCIL THE FINDINGS OF ANY INVESTIGATION IT UNDERTAKES OF AN INSPECTOR GENERAL.

IF AN ALLEGATION IS CREDIBLE AND FALLS UNDER THE INTEGRITY COMMITTEE'S PURVIEW, THE COMMITTEE CAN INITIATE A REVIEW TO OBTAIN FACTS RELATED TO THE ALLEGATION. SINCE THE COMMITTEE DOES NOT MAINTAIN AN INVESTIGATIVE STAFF, I CAN CONVENE AN INVESTIGATIVE ENTITY COMPOSED OF A STAFF HEADED BY AN INDEPENDENT INSPECTOR GENERAL. THE STAFF MAY BE MADE UP OF AUDITORS FROM THE OFFICE OF AN INDEPENDENT INSPECTOR GENERAL'S OFFICE OR CULLED FROM THE INSPECTOR GENERAL COMMUNITY AT LARGE. PRESIDENTIAL EXECUTIVE ORDER 12993 GIVES THE FBI THE AUTHORITY TO CONDUCT REVIEWS UNDER THE DIRECTION OF THE CHAIRMAN OF THE INTEGRITY COMMITTEE. AS CHAIRMAN, I AM AUTHORIZED TO OBTAIN AUDIT RESOURCES AS OUTLINED ABOVE AND MAY AUGMENT THOSE RESOURCES WITH INVESTIGATIVE PERSONNEL OF THE FBI. REIMBURSEMENT FOR REVIEWS CONDUCTED IS THE RESPONSIBILITY OF THE AGENCY EMPLOYING THE SUBJECT OF THE ALLEGATION AND WILL BE DONE ACCORDING TO APPLICABLE LAW. UPON COMPLETION OF THE REVIEW, A REPORT IS

ISSUED TO THE INTEGRITY COMMITTEE, AND, BASED ON THE FINDINGS OF THE INVESTIGATION, AN APPROPRIATE RECOMMENDATION IS FORWARDED TO THE CHAIRMAN OF THE PCIE WITH NOTIFICATION TO THE ORIGINAL COMPLAINANT.

DURING MY PREDECESSOR'S PREVIOUS TESTIMONY, SEVERAL WEAKNESSES WERE NOTED REGARDING THE SYSTEM IN PLACE TO ADDRESS CREDIBLE, NON-CRIMINAL ALLEGATIONS AGAINST AN INSPECTOR GENERAL THAT IS WITHIN THE MANDATE OF THE INTEGRITY COMMITTEE. BEFORE THE ESTABLISHMENT OF THE INTEGRITY COMMITTEE, SUCH COMPLAINTS WERE HANDLED AD HOC. PROBLEMS ENCOUNTERED INCLUDED UNCLEAR STATUTORY AUTHORITY TO CONDUCT ADMINISTRATIVE INQUIRIES, REIMBURSEMENT ISSUES, AND PROTRACTED RESOLUTION OF INVESTIGATIVE MATTERS.

TO ADDRESS THE AFOREMENTIONED ISSUES, MR. ESPOSITO ESTABLISHED A MULTI AGENCY WORKING GROUP TO ADDRESS UNRESOLVED ISSUES. AFTER MUCH CONSIDERATION, IT WAS DECIDED TO EMPOWER THE FBI TO OVERSEE THESE INVESTIGATIONS. THE DESIRE OF THE INSPECTOR GENERAL COMMUNITY TO ESTABLISH A SELF-POLICING SYSTEM LED TO THE PURSUIT OF A PRESIDENTIAL EXECUTIVE ORDER WHICH FORMALLY ESTABLISHED THE INTEGRITY COMMITTEE. AS I ALLUDED TO EARLIER, EXECUTIVE ORDER 12993, SIGNED BY THE PRESIDENT ON MARCH 21, 1996, FORMALLY ESTABLISHED THE INTEGRITY COMMITTEE TO 'RECEIVE, REVIEW, AND REFER FOR INVESTIGATION, ALLEGATIONS OF WRONGDOING AGAINST INSPECTORS GENERAL AND CERTAIN STAFF MEMBERS OF THE OFFICES OF

INSPECTORS GENERAL."

AS I AM SURE THAT THE SUBCOMMITTEE HAS RECEIVED A COPY OF THE SIGNED EXECUTIVE ORDER, I WOULD LIKE TO POINT OUT A REQUIREMENT OF THE DOCUMENT (SECTION FIVE) WHICH ORDERS THE INTEGRITY COMMITTEE TO ESTABLISH POLICIES AND PROCEDURES TO ENSURE CONSISTENCY IN THE CONDUCT OF INVESTIGATIONS. THE EXECUTIVE ORDER ALSO REQUIRES THOROUGHNESS OF REPORTING AND THE ARTICULATION OF GUIDELINES FOR DETERMINING THE MERIT OF AN ALLEGATION AND THE AUTHORITY OF THE COMMITTEE TO CONSIDER, REFER, OR DECLINE TO CONSIDER ALLEGATIONS THE INTEGRITY COMMITTEE RECEIVES IF APPROPRIATE TO DO SO.

ACCORDING TO THE EXECUTIVE ORDER REQUIREMENT TO ESTABLISH FORMAL POLICIES AND PROCEDURES, MY PREDECESSOR ESTABLISHED A WORKING GROUP TO DRAFT THE OPERATING PROCEDURES FOR THE INTEGRITY COMMITTEE. THIS WORKING GROUP WAS COMPOSED OF REPRESENTATIVES OF THE INTEGRITY COMMITTEE AUGMENTED BY DESIGNEES FROM THE OFFICE OF MANAGEMENT AND BUDGET AND THE FBI'S OFFICE OF GENERAL COUNSEL. I AM PLEASED TO ANNOUNCE TO YOU THAT THE PROCEDURES WERE SIGNED AND ADOPTED BY THE INTEGRITY COMMITTEE ON APRIL 24, 1997. THE PROCEDURES DETAIL THE MANNER IN WHICH COMPLAINTS ARE ADDRESSED, MAINTAINED, AND PROCESSED.

AS YOU ARE WELL AWARE, THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS REQUESTED THAT THE GENERAL ACCOUNTING OFFICE (GAO) REVIEW THE HANDLING OF ALLEGATIONS OF MISCONDUCT MADE

AGAINST INSPECTORS GENERAL AND SENIOR OFFICE OF INSPECTORS GENERAL OFFICIALS BETWEEN 1990 AND 1995. FOUR AREAS OF CONCERN SURFACED DURING THE GAO REVIEW.

THE AREA OF MOST PRESSING CONCERN WAS A LACK OF LEGAL AND INVESTIGATIVE AUTHORITY ALLOWING THE INTEGRITY COMMITTEE TO CONDUCT ITS WORK. THIS CONCERN DATES BACK TO THE CONCEPTION OF THE ALLEGATIONS REVIEW SUBCOMMITTEE, THE PREDECESSOR OF THE INTEGRITY COMMITTEE. THIS CONCERN WAS ALLEVIATED BY THE SIGNING OF EXECUTIVE ORDER 12993.

COMMITTEE RESOURCES HAD ALSO BEEN A PROBLEM FACED BY THE INTEGRITY COMMITTEE. BEFORE 1995, ONE FBI SPECIAL AGENT WORKED PART-TIME TO SUPPORT THE WORK OF THE INTEGRITY COMMITTEE. MY PREDECESSOR, COGNIZANT OF THE IMPORTANCE OF THE WORK OF THE COMMITTEE, COMMITTED THE RESOURCES OF AN FBI SPECIAL AGENT AND A PROGRAM ANALYST TO SUPPORT THE INTEGRITY COMMITTEE FULL-TIME.

A THIRD AREA OF CONCERN RAISED DURING THE GAO REVIEW WAS THE COMMITTEE'S RECORD-KEEPING AND CASE TRACKING. BEFORE 1992, THE INTEGRITY COMMITTEE HAD NO CENTRAL OR COMPLETE FILE ON ACTIONS TO RESOLVE ALLEGATIONS. EXECUTIVE ORDER 12993 FORMALLY ESTABLISHED THE FBI AS THE CUSTODIAN OF RECORDS FOR THE INTEGRITY COMMITTEE. RECORDS OF THE INTEGRITY COMMITTEE ARE MAINTAINED ACCORDING TO THE STANDARDS BY WHICH THE FBI MAINTAINS INVESTIGATIVE FILES WITHIN THE BUREAU'S CENTRAL RECORDS SYSTEM. ESTABLISHING THE FBI AS THE CUSTODIAN OF RECORDS FOR THE

INTEGRITY COMMITTEE IMPROVED THE TRACKING OF INVESTIGATIONS AND FURTHERMORE GUARANTEES THE PROPER PROTECTION OF PRIVACY ACT CONCERNS.

THE FINAL PROBLEM NOTED DURING THE GAO REVIEW WAS THE TIMELINESS IN WHICH ALLEGATIONS WERE HANDLED BY THE COMMITTEE. BEFORE 1994, COMPLAINTS WERE HANDLED BY THE INTEGRITY COMMITTEE IN AN AVERAGE OF EIGHTEEN MONTHS. HANDLING TIME WAS DRASTICALLY REDUCED TO APPROXIMATELY FIVE MONTHS AFTER THE ADDITION OF A FULL-TIME STAFF.

THE INTEGRITY COMMITTEE HAS HANDLED 162 INVESTIGATIONS SINCE 1990. IN VIEW OF THE SIGNING OF EXECUTIVE ORDER 12993 AND THE RECENT SIGNING OF THE INTEGRITY COMMITTEE'S OPERATING PROCEDURES, IT IS EXPECTED THAT THERE WILL BE A SIGNIFICANT INCREASE IN THE NUMBER OF REFERRALS TO THE COMMITTEE AS EVIDENCED BY THE RECEIPT OF 23 REFERRALS SINCE LAST QUARTER'S MEETING.

LET ME CONCLUDE MY REMARKS BY REASSURING YOU THAT THE FBI REMAINS COMMITTED TO SUPPORTING THE INSPECTOR GENERAL COMMUNITY IN THE RESOLUTION OF ALLEGATIONS AGAINST THOSE IN ITS HIGHEST RANK. THE FBI MAINTAINS ITS BELIEF THAT IT IS THE ULTIMATE RESPONSIBILITY OF INSPECTORS GENERAL TO MAINTAIN THE OVERALL QUALITY AND INTEGRITY OF INVESTIGATIVE AND AUDIT STANDARDS WITHIN THEIR OWN OFFICES. THE FBI CANNOT AND DOES NOT DESIRE TO BECOME A GENERAL REVIEWER OF INSPECTOR GENERAL

INVESTIGATIONS.

IT HAS BEEN A PRIVILEGE TO HAVE HAD THE OPPORTUNITY TO ADDRESS THIS SUBCOMMITTEE TODAY, AND I AM PLEASED TO ANSWER ANY QUESTIONS AT THIS TIME. THANK YOU VERY MUCH.

Mr. HORN. We will now begin with the questioning. Mr. Davis, the gentleman from Virginia, 11 minutes.

Mr. DAVIS OF VIRGINIA. Thank you.

Vice President Gore, when he was a Member of the House, was one of six Representatives who voted against the IG Act. I don't know why he did but it seems likely that it was an adoptive issue and at least to some extent the concept of the skepticism for the IG seems to have continued.

The report of the National Performance Review, led by the Vice President, says that, in quotes, at virtually every agency he visited, the Vice President has heard Federal employees complain that the IG's basic approach inhibits innovation and risk-taking, heavy handed enforcement; the presence of the IG's watchfulness compels employees to follow every rule, document every decision, and fill out every form and has had a negative effect in some agencies.

Do you believe that is fair criticism by the Vice President? I will start over here at State and move forward.

Ms. WILLIAMS-BRIDGERS. There are many aspects of the work of the Office of Inspector General. By law, we are required to undertake audits which are not very intrusive. Agencies often complain that they are burdensome on their staff for having to collect and gather information to respond to the specific objectives of our review.

In our office, the inspection process is probably the most consultative function in the office. I frequently receive compliments, accolades, requests for our inspectors to come to Embassies to assist the Embassies as they are establishing new procedures, to assist them in establishing or reinforcing the internal controls of their process; I rarely, but sometimes receive compliments about the conduct of the investigative process. It is the most abrasive function conducted by the Office of Inspector General. It is generally not pleasant when an individual is subjected to an investigation.

I think that there is a wide range of functions and there is certainly a great deal of response and reaction to the various functions that the OIG's perform. But I think that it is unfair to suggest that the OIG's as a whole do not advance the mission that they were charged with by the Congress, to prevent and detect, to educate as well as to adequately inform both the Congress and the heads of our agencies. So I think that that comment has to be taken in balance and viewed with the perspective of the various functions that we perform and the various tools that are made available to us by law and by regulation to execute those functions.

Mr. DAVIS OF VIRGINIA. I think the Vice President probably, and I have heard him talk about it, and I share the concern that Government has so many of these regulations as opposed to being customer driven or outcome driven, that you are kind of countermanding the ideas that we are trying to get people to focus on the customer and please them regardless of whether the rules and regulations sometimes get in the way. I think that is where the conflict or I suppose somebody has to enforce the procedures and maybe it is common sense aspect of it. I don't know what he is asking about, but I wanted to get your reaction to that. Ms. Hill.

Ms. HILL. I would just point out, when I talk to people about what we do in the IG I like to use the term "by statute." We are

sort of schizophrenic, in two respects, and I think both of those contribute to this question of whether we are going overboard and inhibiting change. The IG's, on the one hand, must report to their department. On the other hand, they report to the Congress. So in that respect, they keep both the agency advised and the Congress advised.

The second part is that we are in DOD, the senior advisor to the Secretary on waste, fraud, and abuse. So we are supposed to work with the Department to help them correct those problems. On the other hand, we are obviously the ones who have broad investigative authority, broad audit authority. No one likes to be audited. No one likes to be investigated. As Jackie said, that can be an abrasive process, particularly investigations.

So we wear two hats. On the one hand, we are supposed to work with them and move the Department forward in a constructive manner. On the other hand, we also are persons, or the organization that has to go out when there is misconduct, especially individuals, these can be very sensitive, very controversial cases. We have to go out and investigate that.

I think since the National Performance Review came out, I think there has been a growing recognition in the community, the IG community, that there needs to be some balance; that we need to not—you can't go both ways, either way—completely to one side and forget the other part of our job.

At DOD, I would say that while we have a very active investigative and audit section, criminal administrative investigations and audit, we have also made a very concerted effort to work with the agency. Particularly at Defense there is a lot of acquisition reform going on and downsizing and all kinds of reengineering. For instance, we do a lot of audits. A significant portion of them we do at the request of management in an effort to help them point out what their problems are, move them in a good direction.

We also have been very actively participating in many of what they call "process action teams" at Defense, which are really management teams that get together to try to solve problems, reform the system; regulations, et cetera, those kinds of things. We work as advisors to those teams and give them the benefit of our experience. So we try not to be just in the situation of always coming up and saying, we got you, you did it wrong. We also try to work with them ahead of time and help them prevent problems down the road. So I think that's what they were getting at with the Vice President's comments and certainly people have made those criticisms. It is really the challenge we face is balancing those very different aspects of our job.

Mr. DAVIS OF VIRGINIA. OK. Thank you.

Mr. BROMWICH. I think there is something to those comments that were made by the National Performance Review about Inspectors General, but I think we need to be careful not to overstate it. I think that the three of us, Inspectors General Williams-Bridgers and Hill and myself, all came in after the National Performance Review was published. So we came in mindful of some of the criticisms that were contained in that report.

I think that what the report highlighted was a perception of arrogance and high-handedness that many people in agencies felt

was exhibited by Inspectors General in some of their work, particularly on the audit and inspection side, but I think also to some extent on the investigations side. For example, I know what my agency now does, and I believe many others do as well, is to do customer surveys, to try to get feedback from people on whom we conduct audits and inspections, and to find out how we do and how we can do better.

Now, we don't expect to win any popularity contests when we accuse people of wasting millions of dollars as we sometimes do. Nevertheless, the structure and nature of our jobs and the fact that we will inevitably be unpopular with some people shouldn't be an excuse for not modifying our practices and changing the way we conduct some of our work in order to be fairer and in order to do our jobs better. So I think there was some truth to some of the things that were said in the National Performance Review about Inspectors General, but I think that in my agency and in others we are compensating for that. We are trying to make changes without at the same time defanging ourselves and really eliminating the important role that we play in making sure that we go after waste, fraud, and abuse and all their ramifications.

Something was said in the hearing before you arrived—Inspectors General are like the Ethics Committees in the Congress. We are inevitably going to be unpopular in much of what we do, and I think all of us at this table, with the exception of Mr. Bryant, are resolved not to win popularity ourselves and to try to do our jobs as best we can, understanding that we will get criticism for what we do and that, as I say, we shouldn't use that as an excuse not to change and improve the way we conduct our business.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. MCFARLAND. About 7 years ago, when I was interviewing for my job, I was asked by the director, why do you want to be an IG? And I explained the reasons. And her comment at that time was, simply, well, you will always be invited to the parties. You just won't be the special guest. And I pretty much took that to heart because that's exactly the way it is. And I don't have a particular problem with that.

We did, I think, as a community of people, I think we took to heart the comments made at the town hall meetings to the Vice President. Some of us, I for sure, was always skeptical of the concern because I knew that in my shop I didn't operate the way it was being depicted in the town hall meetings. Nor would I ever operate that way. So in general, I think the effort of the IG community was to get together, see what we could do to make ourselves more proactive and more helpful to Government.

We did just that. We created what is called the PCIE vision statement and it simply on one side identifies the mandated law, the 1978 law that put us into effect, and on the other side talks about the reinvention principles. Each of us try to abide by that, as has just been discussed, and many of us have added new features to our office.

I have an evaluation and an inspection group that is—I would refer to them as a proactive group. We go out and we solicit some work and we try to jump in the middle of something that might be a problem if we don't get in the middle of it.

We have team efforts going with the Chief Financial Officer so that everything we say is not under criticism but, yet we go in the midst of it trying to help. And we don't have a problem in my office of helping and then being concerned about exercising our independence because we truly believe we can do both.

But I think one of the important things that we have to measure on a daily basis is that we don't get too proactive; we don't want to be seen as in bed with management, ever. So we have to work very closely and guard our independence but yet at the same time be flexible enough to be reasonable and proactive and yet step back and be independent the next day if we have to.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. HORN. Mr. Bryant.

Mr. BRYANT. I would have very little to add to what has already been said but just the fact that the mission of the Inspectors General is to prevent waste, fraud, and abuse and that's a hard job. And they are extremely valuable allies to the FBI in a lot of criminal investigations, as has been related earlier, but it is a very hard job and I think they acquitted themselves very well in most cases.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, my time is up.

Mr. HORN. I will be glad to extend it to 15 minutes to both of you if you want to take three more.

Mr. DAVIS OF VIRGINIA. Let me try one more. The Government Auditing Standards or the Yellow Book that is produced by the GAO establishes a fairly detailed accounting quality standards for auditors. Comparably detailed standards don't exist for investigators.

Why is it that either the audits have mandated procedures but we haven't been able to develop mandated procedures for investigations? Do you think the IG community could operate under one set of investigative standards that are prescribed mainly toward investigative procedures or is that just really not likely? Is there any reaction there?

Ms. WILLIAMS-BRIDGERS. There are standards for conduct of criminal investigations. The PCIE promulgates a red, white, and blue pamphlet that I have seen some members of the panel have. Each OIG office, has a manual that goes into great detail and length about the conduct of criminal investigations, interview techniques, the rights of individuals, the warnings and assurances that our investigators should adhere to. Also, all criminal investigators in all of our offices are all GS 1811's, as they are captured in the general standards job series, all trained at the same Federal Law Enforcement Training Center. They are required to undergo 8 weeks of basic training followed by an additional 2½ to 3 weeks of specialized training for criminal investigators that are employed in the Office of Inspector General.

In addition to that, there is a continuing legal education program that all criminal investigators are required to attend. I believe the standard is once every 5 years. In my office, we require one every 4 years.

Mr. DAVIS OF VIRGINIA. I appreciate that. I know what you are talking about. I guess the difference is as you look at them is the Yellow Book standards are very detailed. These are much more general. It may be the nature of what you are trying to do, but I

would like to at least get on the record, do you think we ought to get more detail or do you think you need more flexibility as this allows each investigator? These are pretty flexible.

Ms. WILLIAMS-BRIDGERS. If I might add.

Mr. DAVIS OF VIRGINIA. Sure.

Ms. WILLIAMS-BRIDGERS. I think there is always room for improvement on the standards. I am not sure when the last time those standards were updated. Perhaps some of my colleagues could better speak to that, but I think that no matter how detailed we try to prescribe in writing the standards for conduct of investigations, we must also allow flexibility for investigators to accommodate the certain circumstances that may exist at the time during pursuit of any particular case.

Also, Mr. Davis, having spent myself 17 years at the General Accounting Office, I am quite familiar with the Yellow Book standards. Although on the face of it they appear to be quite detailed, as an auditor we used to say you could drive a Mack truck through those standards. They allow much flexibility on the part of auditors and increasingly you will see in the audit community exceptions or qualifiers written in the front of audit reports that we take some exception to compliance with the Yellow Book on these particular cases. We call those program evaluations. We call them program analyses, which are increasingly taking into account the various disciplines, the much broader disciplines that have brought some benefit to evaluating how well Government programs are working.

Ms. HILL. I would just echo what Jackie said about having—we do have written manuals and PCIE has investigative standards, but I would point out that—when you think about it, it is true, Audit has a Yellow Book. What Audit does not have is what I think are the preeminent standards for Federal law enforcement: the Supreme Court and case law, which is very specific and it is constantly changing, I might add. Any good criminal investigator, any good prosecutor, has to be very aware of what the rules are on how they investigate, what they can and cannot do in terms of searches, in terms of interviews, confessions, et cetera. All of that is outlined in great detail in the case law and the legal decisions, and certainly the Justice Department.

The other thing that people tend to forget is that in the criminal area when we investigate criminal cases, and our agents are criminal investigators, they work very closely and in close coordination with the Department of Justice's career prosecutors. Those career prosecutors both Mike and I at one point in our careers were career prosecutors for Justice, and I am sure he would echo what I am telling you are familiar, through the Justice Department and through keeping up with the law and the cases, as to what the standards are in conducting criminal investigations. So there is a big difference between audit and criminal investigations in that sense.

Mr. BROMWICH. I agree, Mr. Davis, that the quality standards you have before you are general, but I agree with Inspectors General Williams-Bridgers and Hill that an attempt to codify it or make it tighter than it currently is would be a misguided enterprise and a waste of time. I think that criminal investigators do have the structure of their working lives described by the Supreme

Court and by the Department of Justice, and I think that is adequate.

Mr. DAVIS OF VIRGINIA. OK.

Mr. MCFARLAND. I think, too, Mr. Davis, that what has already been mentioned is pretty much the thrust of where we are coming from in the criminal investigation world, and that is that we have an inordinate—I don't mean inordinate in the sense that it is not reasoned—but we have an inordinate number of oversight reviews done of the IG community, such as this particular committee, and I think we all, without question, applaud exactly what is being done here. But we do have the responsibility of presenting a professional case to the U.S. attorney's office, and subject to any criticism that would be what most of us would consider devastating to our operations.

So, you know, in looking at the Quality Standards for Investigations, that's one of the primary tasks of the Investigation Committee, which I chair, and we are in the process of finalizing the review on that. And it will be out shortly. It is this particular book.

Mr. DAVIS OF VIRGINIA. Right.

Mr. MCFARLAND. So I think, in summing up, what we have to strive for in the PCIE community, and especially in the Investigations Committee, is that we have to keep looking for ways of building our continuity and building the reputation that we want to achieve. We have to work hard at that. And I think that's something that everybody is given to do.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. BRYANT. I have nothing.

Mr. HORN. The gentlewoman from New York for 17, 18 minutes, whatever. As the saying goes, now and then.

Mrs. MALONEY. Mr. McFarland, earlier Mr. Hamilton made the point rather forcefully that much of the work is dedicated to noncriminal matters, over 80 I believe he said, at the State Department. And therefore the IG may not, therefore, be viewed as primarily a law enforcement official. Given those facts, do you believe that some special procedures may be appropriate for IG's when they are interviewing witnesses who are subjects or possible targets in criminal investigations?

Mr. MCFARLAND. No, I do not. No, I do not believe that there should be any difference. The particular pamphlet that the IG for the State Department has put out I think is an exceptionally good pamphlet and something that I personally am going to institute in my office, something similar to it, and I also suggest that the PCIE consider taking it and running with it and building on it and making it something that maybe we can use overall in the community.

But I think to infer that somebody walking into a room, where there is a prosecutor and criminal investigators, without being given prior warning, I simply don't buy that at all for this reason: In many instances, especially in high profile cases, United States attorneys accompany criminal investigators and police officers on the streets when they are about to make an arrest or confront a situation. And they go along primarily to make sure that because it is such a high profile case or such a complex case, that the people that are going to be arrested or questioned are given every opportunity to have due process. I can't imagine a situation of walk-

ing into a room where there is a prosecutor and criminal investigators to be any more suited to due process than that, because when you walk in and there is a criminal prosecutor, I think you better believe for sure that person is going to be advised of every right possible. And the priority of the situation is going to be adhered to.

Mrs. MALONEY. Yet in the cases that Mr. Hamilton referred to that caused him to draft his legislation, he said that was not the case. But were any of these cases ever referred to the PCIE committee for action? Are you aware of the cases that brought Mr. Hamilton to write the legislation?

Mr. MCFARLAND. Well——

Mrs. MALONEY. I guess, Mr. Bryant, right, you are with the PCIE's Integrity Committee. Were they referred to you?

Mr. BRYANT. I don't think these cases were referred to the Integrity Committee.

Mrs. MALONEY. Well, Mr. Bryant, just last week my daughter and I toured the FBI, and it was really a great experience for her. She said of her whole trip to Washington that was her favorite experience, going to the FBI, and you truly have the reputation of being the most effective investigators and law enforcement officers in our country. And that is quite an achievement because you do a good job on so many levels.

Are there really any differences between the FBI's procedures and standards and the investigative procedures and standards used by the IG? Are there differences in how you do your jobs?

Mr. BRYANT. Well, I can't speak for all the Inspectors General, but I think they are generally similar.

Mrs. MALONEY. Very similar?

Mr. BRYANT. I think in a criminal investigation, if I might lay out what we do, if we have a criminal investigation, say on a bank robber, and this is just a typical criminal case and we have about 75,000 of them, not bank robberies but criminal cases, basically we are trying to obtain facts. We have an incident that occurred. Something triggered this. We are trying to obtain facts as to what happened. A lot of times we interview witnesses around the scene. We interview people to try to find out what happened. If the investigation focuses on one person, and we think X might have done this criminal act, a lot of times we don't have very much information and we may interview this person just to try to generally find out where this person was. If I go into an interview with X, though, and I have the intention to arrest him, I am going to advise him of his Miranda rights because that is basically, as Mr. Bromwich pointed out, a custodial type interview. Outside of that, we are trying to gather enough facts to develop probable cause to take to the prosecutor, and I would just add those are the general standards that we work with.

Mrs. MALONEY. Do you believe that possibly it would be a good idea to just accept the procedures and standards of the FBI and have them then apply to the IG's since really the FBI has more experience and is the preeminent investigator and law enforcement agency of the Government?

Mr. BRYANT. I think the standards are pretty similar anyway.

Mrs. MALONEY. But I mean, if you just went ahead and did it, it would be clear.

I guess what I would like to ask, because I am really sort of confused about the testimony from Mr. Goss and Mr. Hamilton, both of whom I respect tremendously, and I respect very much their point-of-view, both of their points-of-view, and both of them appeared to want to accomplish the same thing. Both of them said that it should go across Government. Both of them said that it should be clear, that procedures should be clear, that it should be consistent; that individuals should be aware of what is going on. They also made it very clear that they did not want to in any way impede the ability of any of our investigators in any area of Government in their investigative authority.

So I would just really like to go down the line and just ask Mr. Bryant, I think all of you were in here when they testified, I would like to ask you, No. 1, do you support the Hamilton legislation? Yes or no? If you were to accomplish what Mr. Goss and Mr. Hamilton wanted to accomplish, what would you do? No. 3, do you think we should refer this to this Integrity Committee that already exists in Government to come forward with some guidelines that might help us? And both of them seem to want to accomplish the same thing but were approaching it in different areas, and I just would like wisdom of the opportunity that you have in your jobs, if you could share that with us.

Starting with Mr. Bryant and then just right down the line, if you would like to comment, fine. If you would like to pass, fine. Whatever.

Mr. BRYANT. OK. First of all, on the amendment that I saw, there was language in there that—like formal interview. I am not sure what a formal interview is. There was other language in there that needed to be looked at. I think even Congressman Hamilton's suggestions that some of it was in the work in progress stage. But as the legislation stands now, I personally would not support it because I think it would inhibit investigations. What about situations where we are working undercover? What about situations where there is a consensual monitoring where you are trying to obtain some type of evidence? And those are issues that are legally recognized by the Supreme Court and they are used in a lot of cases that we have and certainly these ladies and gentlemen. And that's the first question.

I think what they are trying to accomplish is to make sure that employees that are under the purview of an investigation have some knowledge of the investigation and what type of investigation. I would think you would find in the vast majority of the investigations conducted by the IG or by the FBI that basically the people are identified as to who is there and what the purpose of the interview is. And that excludes certainly the undercover scenario.

I guess the third issue, as far as the Integrity Committee, basically we are set up to look at allegations of noncriminal misconduct and it is a little bit outside the scope of what we do. I mean, we look at if there are allegations against some of the IG's.

Mrs. MALONEY. But then what do you suggest that we do? I mean, obviously a problem exists when people are trying to write laws or guidelines when they don't do the job. You are the investigators. You do the job. So you have got to tell us how you protect individual rights while at the same time protecting the integrity of

investigations. So possibly if you would individually or jointly want to suggest some language to the chairman of whatever, I don't know. How would you followup? I could see us spending a lot of time drafting a law that we would have another idea in 6 months from now that you would have a lot of problems with.

Mr. HORN. If I might comment on Mrs. Maloney's point where I think we are both in agreement here, I was going to wait until last, am waiting until last. Basically, we would like your advice and help on this, and we won't generate any legislation out of the subcommittee, I would say, until maybe even after the August recess so we are talking September, October. But I can assure you I do intend to put in legislation, and I would ask Mrs. Maloney to be the coauthor of that. Because I think some things here need to be patched up.

So I am delighted she says going right down the line issue by issue because that is what I intend to do eventually. And I would think we would both welcome the advice of Mrs. Hill's committee. I have your letter here that you wrote Mr. Goss after he took action on the floor. And I talked to both Lee Hamilton and Porter Goss before I voted on that and I said, "Frankly, we need to air this issue out. I am going to vote against it, not particularly because I don't think Mr. Hamilton is right—because I think he has some excellent points personally—but simply because I did not want one agency to have that provision going through the House. But maybe you ought to begin with all agencies."

So with that interruption, I will go back to my colleague here.

Mr. MCFARLAND. Your first question, my answer is no, I do not agree with the legislation, very much for what Mr. Bryant gave as his reason. I think there seems to be, in Mr. Hamilton's viewpoint, at least, no differentiation between the employees of the State Department and Government in general, and the general population.

I can't imagine legislation that is going to give Government workers a particular right that the citizens of the country do not have, and yet I think that is where this particular legislation is headed.

In consideration of what a typical police officer may go through during any daily activity, he or she may find themselves going into a building, talking with somebody about a crime, and there is no intention whatsoever prior to that to notify these people or this person what you are doing. And I don't see much difference between that and what Congressman Hamilton is concerned about, somebody walking into a room where there is an IG and a prosecutor.

I personally, if I was going to be charged with a crime or under suspicion, personally, I would rather walk into a room where there was a prosecutor and a criminal investigator together, because I know for sure I am going to have every advantage that the judicial system will provide under those conditions.

Now, I think there is also a gray area in the discussion of an interview. When we talk about an interview, an interview is something pretty simple. When we talk in terms of police interrogation, I think we are in another area. And to me, an interview situation, if you walk in, it is just common courtesy to advise who you are, show the credential of who you are representing, and explain to the

person what is going on. If you are into an interrogation situation, some of these things may not apply because the criminal investigator certainly has the right to be clever and cunning if he or she needs to be, and every right does not have to be given at any given time.

So, anyway, to get to your other point, how this can be accomplished, I think rather than send it to the Integrity Committee, I think probably the best avenue would be the Investigations Committee that I happen to chair right now. And maybe that is part of the answer that we can supply to you, is that I would be happy to look at, from the Investigations Committee standpoint, what can we do to try to resolve the concerns that this committee is dealing with today.

Mrs. MALONEY. Thank you.

Mr. BROMWICH. Mrs. Maloney, I can't speak to the accuracy of the figures you cited, 80 percent noncriminal, 20 percent criminal. My statistics are the flip side of that, 80 percent criminal, 20 public administrative, roughly. So what you would be doing to the extent that you created new rights, you would be creating them for people who are the subjects of criminal investigations. And I, too, would be very concerned as Mr. McFarland is, that you would be creating a new set of rights for a limited class of citizens, not just, as we are hearing, the State Department employees but all Government employees.

I think in a time of great cynicism about the operations of Government, to create new and special rights for Government employees and Government employees alone, I don't think that would help the reputation of any of us for that to happen.

And in response to your specific questions, first, I oppose the Hamilton amendment, as I said in a letter that I submitted with Inspectors General Hale and DeGeorge.

Second question: How do we accomplish what we want to accomplish? I think it is very important that we do a better job of explaining to you what our procedures are, what our practices are, both in criminal and administrative contexts. For example, in an administrative interview, where somebody is not under arrest, we make it clear to someone after advising them of their rights, they cannot be fired for invoking their fifth amendment privilege against self-incrimination. So the element of compulsion that Congressman Hamilton and, to some extent, Congressman Goss were concerned about is vitiated to a substantial degree because people understand because we tell them the voluntariness of the interview; they are there on a voluntary basis. If they decide not to answer any questions, the interview is over and then we look to another day and do whatever we need to do.

So I think we need to do a better job of letting you know what we do, the procedures that we follow. I think our procedures, at least in my agency, differ not at all from the procedures of the FBI relating to criminal matters. The FBI, because they are a criminal law enforcement agency, does not do the administrative matters that we do, and therefore we have a whole separate panoply of procedures that apply to administrative cases that they just don't have because they don't work those cases. But in a criminal case or in cases that could be criminal at the beginning of the investigation,

I don't think there is any difference between the procedures that they follow and the procedures that we follow.

Mrs. MALONEY. But the point that Mr. Hamilton made is, how voluntary is it? It is one thing to get a phone call to go down to the FBI and testify. It is another thing to get it from a city prosecutor. But it is another thing to get a phone call from what is viewed by most employees as their boss, which is the IG within their department and whom you are taught to cooperate with. You are taught to cooperate and work with the IG and help them in any way, and that is part of the code of Government. The IG is there to find fraud and abuse, but also to stop problems, to make things work better, to let people know they are making a mistake, that that is not the way you do things, you are supposed to do them this way, or whatever.

I think the point he was saying was, how voluntary in his testimony? Is it when you get a phone call within your agency to, in effect, you know, respond to questioning from a boss? And so he was making that distinction.

Mr. BROMWICH. Well, we are not really a boss, we are independent; we're statutorily independent from management.

Mrs. MALONEY. But you are part of the agency, and you are part of making Government work better.

Mr. BROMWICH. There is no doubt about that.

Mrs. MALONEY. And you are seen as a superior.

What are IG's, second ranking to the Secretary themselves?

Mr. BROMWICH. Some of us would like to think so, but I don't know exactly where we fit in.

Mrs. MALONEY. I think you are, and I think the testimony of IG's is really important for Congress. They are independent, they are analytical, and they are—IG testimony is just as important, I would say, as a Secretary's testimony before Congress, maybe more so.

So the point he was making is, how free are you?

Obviously, if the FBI calls you, you can say, "Wait a minute; I've got a problem." If the FBI says, "I want to talk to you," you have to think twice about it. But the IG, I don't think most of the employees would think twice about the IG calling them in.

Mr. BROMWICH. I think if you canvassed employees, you would find that their reactions are different. If they are aware of the function that we play and if they get a call to come to the investigator's office for an interview, they are likely to be asked about their conduct or the conduct of somebody else.

Mrs. MALONEY. Do you have many people invoking fifth amendment rights before IG's?

Mr. BROMWICH. Yes, we have lots of people who decline to participate in an interview or at some point in the interview decline to participate further.

Mrs. MALONEY. Can you force an employee to testify?

Mr. BROMWICH. Yes, we can, but then the information they furnish to you during that portion of the interview or that interview for which they have been compelled cannot be used in any criminal prosecution against them. They do have their rights, and we are careful to advise them of those rights.

Ms. HILL. I would say no, I do not support the Hamilton amendment. As to how to accomplish what he is getting at, I think the real crux of his concern was this idea or impression that somehow people are called into criminal investigative interviews and don't understand the importance of the fact that there is a criminal investigation going on. And you suggested, certainly people know when the FBI calls them. They think the FBI conducts criminal investigations and therefore they should know the importance of their interview.

I would suggest to you, first of all, that at least at DOD—and I mentioned this previously—I don't think we have that problem, because our criminal investigators in the IG's office are a separate entity under the name the Defense Criminal Investigative Service. Any time they interview a suspect, they first identify themselves. I have a badge with the DCIS credentials which clearly states, "The Defense Criminal Investigative Service." And most people, if not all in the Defense Department, know who they are before they get that notice. When they see the name, they have to understand. But certainly you would expect them to understand that it is a criminal investigation.

So I don't think that there is that same issue or concern, at least with our operation, that the Congressman has.

To the broader issue of where he wants to go with the amendment, I think, frankly, you are getting into a very dangerous area. I don't think you can treat criminal investigations in a vacuum, just the IG community.

There was much talk when Mr. Hamilton testified about due process and making sure people have due process in criminal investigations. "Due process" is a constitutional term. The Supreme Court and the Federal courts have defined and set forth very clearly what due process requires in criminal investigations, and they have made no distinctions between due process for IG criminal investigations and due process for FBI criminal investigations.

So if you are talking about creating new due process rights, outside what the Constitution requires, you are talking about giving additional rights to people who are investigated by IG's, employees in the case of the Hamilton amendment.

At DOD, for instance, we investigate people who are not employees. We investigate DOD contractors. Under the Hamilton amendment, employees would have more rights than contractors, and certainly the employees would have far more rights than the rest of the American public in similar criminal investigations. We do joint investigations with the FBI and other law enforcement agencies. You would end up with situations where certain interviews would have to recognize certain rights, others would not, in the same investigation.

So, my own personal opinion is, I think our procedures we need to address more to the committee and maybe educate people as to what they are, because I think they are sufficient. They certainly comply with the law and with the Supreme Court's idea of due process. If you go beyond that and start creating new due process rights in criminal investigations, I think you cannot do it only for the IG. You would have to go to the entire Federal law enforcement

community, including the Justice Department, to get their input on how to do that.

Mrs. MALONEY. Thank you.

Ms. WILLIAMS-BRIDGERS. Mrs. Maloney, I think your opening comments were very telling. This is a very confusing area. I, too, as I am sure many of my colleagues at this table, would agree with most of what Mr. Goss and Mr. Hamilton said on the first panel. We want fairness in the conduct of our investigations, we want objectivity, we want consistency throughout the OIG community, and we want to be able to continue to adhere to the larger Federal law enforcement investigative standards.

Where I depart in company from Mr. Hamilton is the specific provisions of his amendment that we provide advance notice and advance identification of any of those law enforcement entities accompanying us on an interview, for reasons that Mr. Bryant articulates and others on the panel articulated, because in certain circumstances, not all and perhaps not even the majority, but in certain circumstances we do not want to, in any way, compromise the integrity of the investigation. We do not want documents destroyed. We do not want witnesses and potential testimony influenced.

Mrs. Maloney, I have seen cases that we have conducted where, in the course of our fact-finding, e-mails have been mysteriously lost, documents have been erased, witness testimony amazingly word-for-word verbatim, and we have to believe that had it not been for the tools that were available to us when those tools can be fully exercised and are exercised properly, that we can maintain the integrity of the information prior to witnesses having an opportunity to destroy or alter that information.

As Ms. Hill mentioned, it is quite clear to us that most employees, perhaps not all—and that is a point I want to get back to later—but most employees know the difference between an OIG investigator and an OIG auditor and inspector.

Ms. Hill mentioned the credentials. This is the badge that our investigators carry. It looks just like that of any local policeman or any FBI agent that approaches you. It is quite clear when someone shows this badge from our office—and only investigators carry this badge—that we are there for a particular reason.

When we approach the subject of an investigation in an interview, we inform them they are the subject of an investigation—if our investigation has progressed to that point where we have sufficient evidence to make that conclusion, that they are the subject of the investigation, that they have certain rights: the right to remain silent; that we give them certain assurances, just as Mr. Bromwich mentioned. We have them sign a form that spells out in writing all of those rights and assurances.

I must also mention that Mr. Bromwich's counsel and my counsel teach the IG's a course on administration of rights. So if I might, with the chairman's permission, submit with my testimony copies of those rights and warnings statements so that you can see that they are all the same, we adhere to the same standards.

Mr. HORN. Without objection, they will be inserted in the record at this point. That is one of the more interesting questions to see what they do across agencies, so the staff will be following up in July and August.

[The information referred to follows:]

U.S. Department of Justice

Office of the Inspector General

The Inspector General

Washington, D.C. 20530

July 31, 1997

The Honorable Stephen Horn
Chairman, Subcommittee on Government
Management, Information & Technology
Committee on Government Reform and
Oversight
U.S. House of Representatives
Washington, D.C. 20515-6145

Dear Mr. Chairman:

I want to again express my appreciation for the hearing on Office of Inspector General (OIG) investigative practices that your Subcommittee held on June 24. I think it was a constructive way to handle the complaints that had been made concerning certain OIG investigative practices and to deal with suggestions that changes in such practices be dealt with by legislation. The hearing began what I hope will be a continuing and productive dialogue between your Subcommittee -- and the Congress generally -- and the various Offices of Inspector General. Such a dialogue would promote a greater understanding of the kinds of cases handled by the OIGs throughout the executive branch and of the kinds of investigative practices and techniques employed during the course of those investigations.

After reviewing the draft transcript of the hearing, I wish to clarify and amend the portions of my testimony in which I suggested a greater degree of uniformity in the information provided to witnesses during Justice Department OIG investigative interviews than is in fact the case. I stated that "in virtually every case" the person being interviewed is advised at the outset of the interview about the voluntary nature of the interview and that they are free to leave at any time. I further said that the witness is given a form that describes the voluntary nature of the interview. This general statement did not adequately reflect the differences in our procedures depending on whether the investigation is criminal or administrative, whether the witness is a subject (or target) of the investigation or a mere witness, whether the witness is a government employee or a civilian, and -- in criminal investigations -- whether the witness is in custody.

For subjects or targets of criminal investigations, our policy calls for an oral discussion of the voluntariness of the interview and the right of the witness to terminate the interview at any time. We also provide a form which states that the witness is free to stop the questioning at any time, thereby emphasizing in writing the voluntary nature of the interview. Our policy does not require the voluntariness issue to be discussed in interviews of other witnesses, although witnesses who ask whether the interview is voluntary are told that it is and witnesses who ask whether they are free to terminate the interview and leave at any time are told that they are. The form that is provided to them does not specifically address the issue of voluntariness. In general, the specific warnings, advice of rights, and related information given to witnesses depend on the nature of the investigation (criminal vs. administrative), the status of the witness (subject/target vs. witness; government employee vs. civilian), and the circumstances of the interview (custodial vs. voluntary). Our policies and practices on these matters are consistent with those of other federal law enforcement agencies.

As to other questions raised during the hearing, we do identify all of the participants in our investigative interviews and provide at least a brief description of the scope of the interview at the outset. While aggressive in our investigations, the Justice OIG is scrupulous about observing the Constitutional rights of all witnesses whom we interview -- whether they are Justice Department employees or not -- and hold ourselves to very high standards of fairness and propriety.

Because this letter serves to clarify and amend portions of my hearing testimony on June 24, I respectfully request that it be included in the record of the hearing. I hope this letter will help to shed additional light on some of the important issues raised during the Subcommittee hearing. I again thank you for your support of the Inspector General community and the opportunity to appear before your Subcommittee to discuss these vital topics.

Very truly yours,

Michael R. Bromwich
Inspector General

cc: The Honorable Carolyn B. Maloney
Ranking Minority Member
Subcommittee on Government Management,
Information & Technology
Committee on Government Reform
and Oversight

Ms. WILLIAMS-BRIDGERS. Thank you very much.

And one last point: What are the possible outcomes of this hearing? I think this conversation is one of the most productive outcomes, because clearly there is a misunderstanding about what the roles, the functions, and the full authorities invested in the Offices of Inspector General.

Also, Mr. Hamilton's point is very good about the need for regular and frequent communication with employees about what their rights are. It is just, at what particular point in time do you advise the person of those rights? And there we want to remain in concert, in compliance with Federal case law.

Mrs. MALONEY. Thank you very much.

Mr. HORN. If I might add, no one is asking you to go beyond Federal case law at this point, though Congress does have a right to grant rights, even if the Supreme Court doesn't, which I think we would all agree under the Constitution.

I am going to go through a series of questions here that are not in any particular logical order, because I have been scrawling them as I have listened to the witnesses.

I guess the first question I want to ask Ms. Williams-Bridgers is, obviously Mr. Hamilton has taken certain items from a State Department investigation, and that is the basis for his testimony. And I know you have commented in your written statement, but I would like to hear it orally and look at me in the eye: Is he wrong on some of these on what he is stating, and, if so, what are they?

Ms. WILLIAMS-BRIDGERS. As I heard Mr. Hamilton repeat his understanding of the case, some of the information is mixed. The cases have been mixed. Information related to the course of investigation of at least two cases have been mixed.

As I read his statement very quickly before coming to this table, the third case, I am not familiar with what he cites in his written statement. In one of those cases that he mentions a Presidential appointee that was involved.

The Clinton passport investigation, that was not a criminal investigation involving that individual. So discussion of what happened to that individual does not even fall within the purview of much of the discussion this morning about being subjects of criminal investigations and what are your rights.

Mr. HORN. What about the question of somebody on the Inspector General's staff leaking information to the media?

Ms. WILLIAMS-BRIDGERS. Again, that was not an unauthorized disclosure. We did have a pending investigation. It had been referred to the Department of Justice.

When calls came in from the press—well, actually before the calls came in from the press, anticipating that there would be much public interest in that particular case, we consulted with the prosecuting attorney on that case and asked him, what is your guidance? What shall we do? That prosecuting attorney specifically advised us: Say that you have referred this matter to the Department of Justice. Refer all questions to my office.

Mr. HORN. In other words, you are saying your people didn't mention the person by name, they just said on this case——

Ms. WILLIAMS-BRIDGERS. When the press called, they asked: Do you have a case on this individual? And we said all questions re-

garding that particular case should be referred to the Department of Justice.

Mr. HORN. And you gave them someone in Justice to whom they should call?

Ms. WILLIAMS-BRIDGERS. Yes.

Mr. HORN. And it is the belief of the members and the staff in the Department of State that the leak came from the Department of Justice?

Ms. WILLIAMS-BRIDGERS. I am not going to characterize it as a leak, but I do believe, from my read of recounts in the press, that the Department of Justice did have a conversation with members of the press.

Mr. HORN. If one of your staff did do something like that, what would be the punishment?

Ms. WILLIAMS-BRIDGERS. If a member of my staff provided information to any member of the public without prior authorization, I would take swift action against that individual. It is my policy to not comment on ongoing investigations unless I have been specifically advised to do otherwise by the Department of Justice, and only by the Department of Justice.

Mr. HORN. What does "swift action" mean to you? Are you going to fire them on the spot, and can you?

Ms. WILLIAMS-BRIDGERS. Well, it is certainly within my purview to take administrative action, which includes removal from the office, for any misconduct of employees in my agency. But in that case, what I would probably do is refer it to the PCIE, the Integrity Committee, or another Office of Inspector General's Office of Investigations for investigative followup.

Mr. HORN. Well, what I would like from all of you—and Mrs. Maloney pursued a lot of it—is the basic information you think employees should get in a timely way, and the degree to which they should be notified who is present, and the opportunity to consult counsel, at what point in the process should that occur.

And, obviously, no one is talking about an undercover investigation. I mean, let's face it, you have got an undercover investigation; fine; keep going. That is not the context in which Mr. Hamilton's case, right or wrong, is. It is going into a room of investigators who are not undercover. But if you don't know completely who is in the room in the way some people might say, well, the good-cop-bad-cop routine, some try to get them just to tell everything, and they do not realize that that can be used against them.

And let's face it, we have had problems with the Naval Investigative Service over the years. Poor training of people. They have hit the headlines numerous times for violating people's rights. And there are a lot of other agencies in this town that try to get away with certain things, and I think that is why the Congress is here to hear these complaints and that is why you are there as responsible executives to clean house if there are problems like that.

And one of these bad apples—and I have seen one or two since I have been here—on your staffs, that were absolute self-publicity freaks, if I have ever seen any—and I have seen a lot in the State of California. Their testimony before congressional committees was designed to make a headline. It wasn't designed to lay out the fairness of the case one way or the other.

So I had my fill of that in 1993, and I don't think the person is with us anymore, thank God. But it bothered me, because I have seen the same mentality in the State audit folks in California. I happened to get along with them, and I learned a lot from them, because I always had a private interview with them to say, OK, tell me some other experiences in other places. I wanted to be aware of those things.

You said that on criminal investigations at the State Department, 80 percent is not criminal, it is really more administrative investigations program? Is it audit?

Ms. WILLIAMS-BRIDGERS. That was not my figure. I believe someone else offered that.

In the area of investigations, almost 100 percent of our investigations at initiation are criminal. Then when that case is referred to the Department of Justice, if the Department of Justice declined, it usually moves into an administrative phase.

Perhaps that figure comes from a look at the total resources, the total operating budget, for State Department OIG. We employ about 35 criminal investigators out of a staff of 300. So about 10 percent of the staff, a few more dollars are attached to our investigations. Because of the nature of our work, we travel worldwide, and that is expensive. But I am not sure where that 80 percent figure came from.

Mr. HORN. We will leave it with a look at Mr. Hamilton's comments on the floor and just file for the record anything you feel that is not accurate.

[The information referred to follows:]

July 23, 1997

OIG Response to Statement of Honorable Lee H. Hamilton before the Subcommittee on Government Management, Information and Technology of the Committee on Government Reform and Oversight on Tuesday, June 24, 1997

The Office of Inspector General at the United States Department of State has been asked by Chairman Horn to respond for the record to statements about our investigative process made by Mr. Hamilton before the Subcommittee on Government Management, Information and Technology on June 24, 1997. Despite Mr. Hamilton's assertions that OIG has not been "sufficiently attentive" to the due process rights of individuals, OIG is unaware of any violation of the due process rights of any employee by members of OIG's investigative staff.

Mr. Hamilton has stated that his intention is not to limit OIG's investigative authorities. However, the unfortunate by-product of his suggested amendment indeed would be the diminution of OIG's investigative authorities. Further, Mr. Hamilton asserts that his intention is simply to provide individuals with the basic information they are entitled to in a federal criminal investigation. Nevertheless, that information Mr. Hamilton would like OIG to provide would go well beyond any now required under federal criminal law or procedure, and would result in a small group of federal employees being provided with warnings and other information not now required to be provided to any other American citizen in similar circumstances.

OIG is unaware of any complaints emanating either from the Courts or the Department of Justice which would suggest that OIG investigators have violated any rules, procedures or regulations with which they are required to comply. OIG's criminal investigative procedures are not materially different from those of any other federal law enforcement entity. It would appear that the erroneous information being provided to Mr. Hamilton and his staff is coming from the subject or targets of OIG criminal or administrative investigations. Despite the paucity of factual information contained in Mr. Hamilton's statement, OIG responds below as fully as possible given the existing constraints.

Statement by Mr. Hamilton:
"I offered the IG amendment at the International Relations Committee markup to address my concerns that the Inspector General at the State Department was not sufficiently attentive to the due process rights of individual under investigation." (Page 2 of Hamilton Statement).

OIG Response:
With respect to concerns raised by Mr. Hamilton related to certain procedures used by OIG in the conduct of criminal investigations, which he mistakenly refers to as the "due process rights" of individuals under investigation, OIG would like to clarify that "due process rights" are not the issue and never have been. Mr. Hamilton is primarily concerned with advance notice to individuals under investigation of both the scheduling of the interview and who will

be present, as well as notification that an individual has a "right" to counsel in a non-custodial interview situation. None of these issues either addresses or raises fundamental due process rights. Rather, they concern procedural issues which are addressed by State OIG in much the same way as all other federal law enforcement organizations.

Due process is defined first by the United States Constitution and is then interpreted through court decisions, federal statutes, and federal regulation. OIG has not and will not violate the Constitutional Due Process rights of U.S. citizens, be they State Department employees or anyone else. Further, the OIG has and will conform scrupulously to all other federal law enforcement standards. Due process rights represent a legal "bright line" in the federal investigative arena, clearly recognized and understood by OIG investigators. They recognize that if they were to violate an individual's due process rights they would be subject to serious potential administrative and criminal sanctions, as well as to possible civil actions for violations of Constitutional rights. OIG is not aware of any "due process" violations committed by its investigators.

Rather than protect the "due process" rights of individuals under investigation, in our view, the proposal by Mr. Hamilton would instead grant additional, unprecedented procedural rights to a narrow spectrum of American citizens, federal employees investigated by this OIG, and would fundamentally alter long-standing and widely accepted investigative standards. Such a change would have a deleterious effect on the ability of State OIG, and other law enforcement entities affected by the legislation, to bring criminals to justice without at all enhancing the "due process" protections of those under investigation.

Statement by Mr. Hamilton:
"My provision was intended to provide individuals basic information in a timely manner: notice of basic rights, identification of who will be present at the formal interview, an opportunity to talk to counsel." (Page 2 of Hamilton Statement).

OIG Response:
Mr. Hamilton's proposed amendment does far more than provide individuals under investigation with "notice of basic rights." Rather, it would provide individuals under investigation with advance notice of the scheduling of interviews as well as advance notice of which law enforcement organizations would be represented at the interview. Further, during the interview, the proposed amendment would require that an individual be provided with full *Miranda* rights despite the fact that the individual is not in police custody. These additional "rights" are dangerous and unprecedented and can only lead to less cooperation in OIG investigations. Further, the additional information mandated to be provided to individuals under criminal investigation would have a serious potential to lead to interference with and obstruction of the investigation. For very good reason, these additional "rights" are not presently mandated in federal criminal investigations.

The Supreme Court's *Miranda* decision presently mandates that an individual being interviewed in police custody be informed of certain basic rights: That he or she has the right to remain silent, that any statement made can be used as evidence against him or her in a

court of law or other proceedings, that he or she has the right to speak to a lawyer for advice prior to answering any questions and to have the lawyer present during any questioning, and if he or she cannot afford a lawyer, one will be provided without cost.

A mandate that State OIG, as distinct from all other federal investigative entities, be required to provide *Miranda* type warnings to employees in a formal interview situation where they are the "likely" subject or target of a criminal investigation is not a "due process right" presently recognized either by the Supreme Court of the United States or by the U.S. Department of Justice. Existing federal law requires *Miranda* warnings only when an individual is being interviewed while in a custodial situation (usually considered to be under arrest). The Supreme Court has repeatedly refused to extend these same rights to individuals who are free to end a police interview simply by leaving the room. Legislation such as that suggested by Mr. Hamilton would have the effect of overturning a long line of Supreme Court cases refusing to extend *Miranda* warnings to non-custodial interview situations, but would do so only for federal employees investigated by State OIG.

Statement by Mr. Hamilton [descriptions of three OIG cases]:
"Without using individual's names, I can describe the specific problems or situations a few individuals encountered."

(1) [Hamilton example #1] "In the early part of the first Clinton administration, a Republican appointee was caught up in an IG investigation involving a search of the President's passport records."

"In summary, the Inspector General's Office carried out a hurried investigation of the individual's actions, reached conclusions about the need for disciplinary action, referred the matter to the Department of Justice, and released its report to the press. At each step along the way, the individual under investigation was provided inadequate notice and opportunity to review and/or respond to the serious allegations against him. None of the allegations against him were substantiated by the Independent Counsel's review. (Page 2 of Hamilton Statement)."

OIG Response:
This case involved a report which was issued by OIG on November 18, 1992. The individual being discussed here, an Acting Assistant Secretary for Legislative Affairs, was in no way deprived of his due process rights during the OIG inquiry and the Independent Counsel never found that he was. Rather, the Independent Counsel disagreed with OIG's contention that the employee had been involved in improper partisan political activity while he was employed by the State Department.

Indeed, the individual was provided with *Garrity* rights warnings prior to two separate interviews. The *Garrity* case mandates that an individual be apprised that he has the right to remain silent if his answers may tend to incriminate him, that anything he says can be used against him in either an administrative or criminal proceeding, and that if he refuses to answer questions because the answers may tend to incriminate him that he cannot be

discharged from employment solely as a result of his remaining silent. The employee acknowledged receipt of the *Garrity* warning by signing the warnings form provided to him. He was also given ample opportunity during several interviews to present his side of the case.

The Foreign Affairs Manual (FAM) sets out the procedures to be followed in a disciplinary hearing. The Department first reviews the report of investigation to determine what if any administrative sanction may be appropriate. It is only after that threshold determination has been made that the employee has the right to review and rebut the administrative report. It is not the policy of this office to share draft administrative misconduct reports with the subject of such reports and allow them to comment prior to the time formally prescribed in Department regulation. The opportunity to respond and to rebut is granted by the Department during the formal disciplinary stage, where the individual is provided a copy of the final report, along with the statements of witnesses against him, and is given a full opportunity to voice any concerns about perceived errors in the report.

Moreover, the individual being discussed here was not the subject of a criminal investigation at all. Indeed, neither was he ever subject to the Department's formal disciplinary procedures. He was being investigated by OIG for administrative misconduct and, as a political appointee, he was removed from his position as Acting Assistant Secretary by Secretary Eagleburger because the Secretary believed that his conduct was inappropriate and the Secretary lost confidence in his ability to continue in the acting position. Further, the referral to the Department of Justice to which Mr. Hamilton refers was not of conduct attributed to this individual but to another individual whom OIG special agents believed had lied to them during the course of the inquiry. That referral was made only after consultation with the section of the Criminal Division responsible for independent counsel investigations.

(2) [Hamilton example #2] "In another case involving a Democratic appointee who was being investigated for sharing intelligence information with a Member of Congress, the IG's office gave no notice about the type of interview to which the individual would be subject."

"Here we have an individual who was placed under investigation and called to an interview as a target without receiving advance notice and where the prosecutor rather than the IG conducted the interview. That prosecutor also confirmed to the newspaper most sensitive to the individual in his position at the time that the individual was under criminal investigation. The spokesperson for the Inspector General seconded that confirmation, despite policy guidance that the OIG did not comment in any way on pending investigations." (Pages 3 and 4 of Hamilton Statement).

OIG Response:
As in the previous example, this investigation was conducted in full compliance with standard law enforcement practices and procedures and, indeed, a federal prosecutor provided advice to OIG throughout the investigation.

Mr. Hamilton states that the individual under investigation was called to an interview without receiving "advance notice" and without knowledge that a federal prosecutor may take part in

the interview. It is not generally the practice of OIG or other federal law enforcement officials to provide "advance notice" to individuals under investigation of the type of interview which will be conducted or which particular law enforcement organizations may be present during or taking part in the conduct of the interview.

An individual who is provided early or advance notice of an interview, or who is told at an early stage of an investigation that other federal law enforcement entities will participate, may use such information to figure out the investigative strategy and possibly use the information against investigators to identify confidential informants and other witnesses against them. Such advance notice would in our view also foster opportunities for the subject to destroy incriminating evidence, fabricate exculpatory evidence, and attempt improperly to influence the testimony of or to otherwise intimidate witnesses. Finally, advance notice would preclude the possibility of State OIG engaging in any type of Justice Department sanctioned undercover investigative activity.

It is not at all uncommon for prosecutors to become involved in significant interviews during high-level investigations. Indeed, it is the preferred course for many prosecutorial and investigative offices to have the prosecutor involved in the investigation from the beginning. To suggest that this participation is somehow inappropriate or in any way improper is not correct. Indeed, if the investigation proceeded to the grand jury stage, the prosecutor would be interviewing all witnesses without participation by the investigator and without the presence of defense counsel. The prosecutor chose not to provide a Garrity warning to the individual in this matter because he believed at the time of the interview that he had not sufficiently focused on the individual as the target of the investigation. Prosecutors, not investigators, are charged with making precisely these investigative calls.

Moreover, at the start of the interview with this individual, the OIG Special Agent and the Assistant United States Attorney properly identified themselves. The individual under investigation immediately invoked his right to remain silent, requested an attorney and walked out of the room. At the subsequent interview, the individual was represented by a former United States Attorney for Miami and a former member of the State Department's Legal Adviser's Office. At the conclusion of the investigation, OIG forwarded its report of investigation to the Department for consideration of appropriate disciplinary action. OIG's findings in this investigation eventually were upheld when a special committee appointed by the Director of Central Intelligence refused to reinstate this individual's special access clearances.

With respect to alleged improper press disclosures concerning the ongoing investigation, OIG is aware of no such improper disclosures from this office or from the Department of Justice. Just prior to State OIG and DOJ receiving a number of press inquires from a Miami newspaper, the person under investigation had retained a prominent Miami attorney to represent him in the investigation. Calling with very detailed information about OIG's ongoing inquiry, the press sought confirmation of details of the investigation. OIG refused to provide confirmation of such details, but at DOJ's specific request OIG referred the reporter to the Department of Justice where the matter had been referred. Confirming the referral to

Justice in no way compromised the inquiry nor in any way constituted the "release" of sensitive investigative information.

(3) [Hamilton example #3] "In another case involving a civil service employee, the IG had the individual under investigation, a physician, called to a medical review board as a pretext to elicit information, and later used against him the statements he made before the board. The IG's office also devoted extensive staff and financial resources to overseas travel in the course of the investigation. In the end, the case was settled administratively with a de minimis financial penalty imposed on the individual." (Page 4 of Hamilton Statement).

OIG Response:
The facts as described by Mr. Hamilton do not correspond to any known investigation by this office. The closest case with facts similar to those represented involved allegations of gross negligence against a State Department physician which resulted in the death of the spouse of a foreign service officer. The case, which began as an allegation of misconduct in June 1993 developed into a criminal investigation as a result of evidence of false documentation involving the alteration of medical records which was discovered during the course of the inquiry. The doctor was represented throughout the inquiry by a very experienced criminal defense attorney, including in December 1994 when he entered a guilty plea in U.S. District Court to a one count misdemeanor offense of Making a False Statement in an Official Writing in violation of 18 U.S. Code, Section 1018. The Doctor was sentenced to one year probation and resigned from the Foreign Service. The plea agreement and conviction are a matter of public record.

While a Credential Review Committee was conducted by the Department's Medical Bureau (M/MED) during the period that the OIG investigation was underway, OIG was not in any way responsible for calling the doctor before that board as a pretext in order to elicit information to be used against him in the criminal or administrative proceeding. Indeed, details of that proceeding were specifically "walled off" from OIG investigators precisely to preclude allegations of this sort. As part of his plea bargaining agreement, the doctor specifically agreed, in a document filed with the U.S. District Court, that the Department of State would forward the results of the M/MED Board's inquiry to any appropriate medical licensing authorities in all jurisdictions where the doctor was licensed to practice medicine.

With regard to Mr. Hamilton's criticism of OIG's expenditure of resources in this inquiry, OIG would point out that the Post in question was a great distance from Washington, D.C., and required a significant amount of time and travel to properly investigate. Given, the circumstances of the investigation, we apologize to no one for investigating and convicting a member of the medical profession for altering the medical records associated with the death of an American citizen who was the spouse of an employee of the Department.

Statement by Mr. Hamilton:
"There are several other cases which have been called to my attention, cases involving career officers and selective prosecution . . ." (Page 4 of Hamilton Statement).

OIG Response:
The vast majority of cases opened by OIG's Office of Investigations are opened in the first instance as criminal investigation. Because these cases are criminal investigations, they are referred for a prosecutorial opinion either to the Department of Justice or to one of the 94 U.S. Attorney's Offices around the country. While different U.S. Attorneys Offices have varying thresholds for accepting cases for criminal prosecution, OIG has absolutely no control over such decisions once they are referred to DOJ. Any so called "selective prosecution" would have to occur after the cases are referred to a federal prosecutor. Selective prosecution is a grave charge and can result in the dismissal of a criminal indictment under appropriate circumstances. We know of no basis for a charge of selective prosecution and consider the charge to be baseless.

Statement by Mr. Hamilton:
"Inspectors General are in a gray zone. They appear to view themselves as identical to federal law enforcement agencies. But they are not prosecutors or statutory law enforcement, although incrementally -- through executive branch agreements and other means -- they have gained broad investigative authority in recent years." (Pages 4 and 5 of Hamilton Statement).

OIG Response:
While it is indeed clear that OIG special agents are not prosecutors, it is undisputed that Offices of Inspectors General who are signatories to the 1995 Department of Justice Memorandum of Understanding exercise full law enforcement authorities pursuant to that agreement. It is a distinction without a difference to suggest that OIG special agents are not "statutory law enforcement." In the conduct of federal criminal investigations, OIG investigators operate under the same guidelines and exercise the same authorities as other federal law enforcement entities such as the FBI, the DEA and the INS.

Statement by Mr. Hamilton:
"Upon finding himself in an unanticipated criminal investigation, the employee may realize that he may insist that the interview be halted until he has an attorney present. In practice, individuals often are too intimidated at that point in the process to recall and/or exercise their right to counsel, particularly when they are not specifically informed that such a right exists." (Page 5 of Hamilton Statement).

OIG Response:
Under current federal criminal law guidelines as established by Supreme Court case law and Department of Justice regulation, an individual has no Constitutional right to be apprised of his or her right to counsel unless he or she is being interviewed by law enforcement authorities in an custodial arrest situation. See our first response above for a further discussion of this point.

Statement by Mr. Hamilton:
"I do not believe an IG's unique position should be used to expand prosecutors' activities without appropriate review." (Page 5 of Hamilton Statement).

OIG Response:
OIG does not believe it has used its position to "expand prosecutors' activities without appropriate review." As stated above, nothing OIG did in the investigations referred to were at all unusual or out of step with federal law enforcement with regard to its reliance upon federal criminal prosecutors for investigative oversight and prosecutorial determinations. At all times, both the OIG investigators and the federal prosecutors were operating under the supervision of their respective chains of command and nothing has been brought to our attention which would suggest that our actions vis a vis the Department of Justice prosecutors were either inappropriate or improper.

Statement by Mr. Hamilton:
"The information pamphlet developed several years ago by the IG's office is inadequate in content and in availability." (Page 6 of Hamilton Statement).

OIG Response:
We believe the OIG investigative pamphlet is unique in federal law enforcement in providing notice and information to employees concerning the OIG's criminal investigative process and in informing them of the panoply of rights which may be available to them. That pamphlet was widely distributed after both of its publications and was readily provided in training sessions and upon request. OIG has already begun to update the pamphlet (last printed in 1993) and to ensure that every employee of the Department receives a copy.

Ms. WILLIAMS-BRIDGERS. Sure.

Mr. HORN. The next question I have concerns these nice little brochures. This is from the Department of State's Office of Inspector General Investigative Process. And I asked the question—and maybe it has already happened—with Federal agencies, is there one basic set of content that your committees, both the investigative committee and the legislation committee, could put together that should be utilized by all Federal agencies, with the allowance that if something is so unique to a particular agency, they would add whatever they feel is related to that uniqueness?

Can't we agree on some language across the Federal Government as to how you inform employees of what their rights are, how the process works? That isn't just a rights question, it is also to assuage worry about what the process is? And you can't assume everybody knows that. You are all lawyers or advanced degrees and all of that, and I understand that, but the average citizen doesn't understand that, and I am interested in what the average citizen knows, not what every lawyer in town knows.

You chair the legislation committee?

Ms. HILL. That's right. I would say—certainly the IG investigative standards which Mr. McFarland referred to, they are very general, but they supposedly cover across the board for the IG community. They talk in terms of what standards we want to fulfill in investigations and in all of our work, in investigations, per se.

Mr. HORN. Is that an issuance of the Office of Personnel Management or the committee that you chair on investigations?

Mr. MCFARLAND. No; this is the result of the PCIE putting it out in 1985.

Mr. HORN. This is the 1-year update?

Mr. MCFARLAND. Yes, we are updating this now.

Mr. HORN. This was put out when?

Mr. MCFARLAND. 1985.

Mr. HORN. Twelve years. And you are in the process of changing it?

Mr. MCFARLAND. Yes, that's right.

Mr. HORN. It seems like a lot has happened in 12 years with the Supreme Court decisions.

Mr. MCFARLAND. Court decisions, yes, Mr. Chairman. But really, this book doesn't get into that field of court decisions and case law as much as it tries to cover the general and the qualitative standards that are necessary for criminal investigations.

Mr. HORN. Yes, now this is really more for the investigator than it is for the average employee.

Mr. MCFARLAND. Yes, strictly.

Ms. HILL. It sets forth some general standards that we go by. If you get to something more specific, such as the pamphlet I believe the State Department has, which I have not read, but I assume it gets more to their particular procedures and policies and the way they are set up, I think it is difficult to be effective unless you would go agency by agency. The IG's—there are 28 statutory IG's, and the offices are very, very different. We have broad general authorities, but how they are set up, which parts do investigations, which ones don't. In our case at Defense, you have the added issue

of the military, and they have certain rights that civilians don't have.

So I think it would be more helpful to the employee to have something designed or targeted to their own agency. Certainly at Defense, we do not have such a pamphlet. When I saw the State Department pamphlet or was told about it, I didn't have any particular objection to doing that; I think it is probably a good idea. I don't know that everyone is going to read that and remember what they read.

The problem that we have at Defense in doing that is just simply the logistical one. We would have to hand out almost 4 million pamphlets, and to make sure that everybody got one would be very difficult. If you didn't get it to certain people or missed it, you would be accused of not giving it to them. I am not saying it is impossible, but it would be a significant undertaking for us.

Mr. HORN. Well, I guess I am not too sympathetic with that because of all the paper that the Defense Department gives to employees. You could add the one that is important to constitutional rights.

Ms. HILL. I would agree with that.

Mr. HORN. The pamphlet to which I am referring is titled Quality Standards for Investigations. The publication source is the President's Council on Integrity and Efficiency and says copies may be obtained from the U.S. Department of Labor, Office of Inspector General.

Now, that was not the GPO? Was this one of the Defense prints and not using the Government Printing Office?

Mr. MCFARLAND. The situation at that time was that one of the Inspectors General raised his hand and he got the job of printing it.

Mr. HORN. And paying the postage.

Mr. MCFARLAND. I believe so.

Mr. HORN. Any other comments on this discussion?

Mr. MCFARLAND. If I may add, Mr. Chairman, with your permission, I would be inclined to, and most happy to pursue through the Investigations Committee, some possible answers to your concerns. I am not sure at this point exactly what we would do, but we have a committee with a lot of years of experience, and that is what primarily we are all about, is looking at things like this, and we would be happy to do our best. I cannot make a guarantee, but I can guarantee that we will do it.

Mr. HORN. Why don't you initiate it and keep it simple. Don't write for the Department of Justice solicitor general as a case going to court, but put it in simple English.

In other words, it is fine with me to have you all initiate this. We reserve the right to, obviously, change it. But I would like to have your thoughts based on your knowledge of the law, what employees in general need to know about the Office of Inspector General on certain types of investigations, and what they ought to be informed when they come in. I can't criticize this pamphlet for the Department of State.

The question is, to what point do you remind people, after, let's say, they have had it in employee orientation, and I think we can, given the several million employees of this Government—I think

we can afford to do that—10 cents a head or whatever it would be with GPO.

Placed in the record at this point, without objection, the Office Inspector General Investigative Process prepared by the U.S. Department of State. Sherman M. Funk was the Inspector General. And it has a date on it March 1992, Department of State publication 9938. Hopefully, there were not 9937 items in their brochure when they joined the Department.

Ms. WILLIAMS-BRIDGERS. Mr. Horn, may I ask that the most recent copy of our pamphlet be included in the record? We have one.

Mr. HORN. Certainly, without objection. We are delighted to do that.

[The brochures referred to follow:]

be required in cases involving loss or misuse of government funds or property. Administrative actions also may be pursued in addition to, and separate from, criminal prosecution.

The OIG Hotline

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Office of Inspector General
HOTLINE
P.O. Box 19392
Washington, D.C. 20036-9392
(202) 647-3320

Department of State Publication 9938
March 1992

United States Department of State
Washington, D.C.

The Office of Inspector General Investigative Process

THE OIG INVESTIGATIVE PROCESS

The investigative process is an essential part of Office of Inspector General (OIG) efforts to prevent and detect waste, fraud, abuse, and mismanagement in Department of State operations. OIG's Office of Investigations examines allegations that may involve misconduct or criminal activity and ascertains the facts in order to substantiate *or to disprove* such allegations. In this regard, my staff and I are committed to the concept of accountability. If we find that someone has *knowingly* violated a law or standards of ethical conduct or has been *consciously* responsible for waste, abuse, or mismanagement, we will recommend prosecution or disciplinary action. We will, with equal vigor, work to clear the name of any employee who is improperly accused.

This publication will acquaint you with the investigative process, including the manner in which investigations are conducted, the types of situations that may warrant investigation, and the ways in which you can assist OIG in this process. I ask for your cooperation in ensuring the success and effectiveness of OIG investigations.

Investigative operations are conducted with the fullest possible attention to confidentiality of sources and the rights of the individuals involved. OIG operational controls and the provisions of the Whistleblower Protection Act also provide for protection from reprisal. If you believe that you have suffered reprisal as the result of having registered a complaint or having cooperated with an OIG investigation, I urge you to notify my office.

Sherman M. Funk
Inspector General

The Foreign Service Act of 1980 expanded the responsibilities of the Inspector General to include investigations of programs and operations.[1] Since the establishment in 1987 of an independent Office of Inspector General for the Department of State and the U.S. Arms Control and Disarmament Agency, these activities have been conducted by OIG's Office of Investigations, headed by the Assistant Inspector General for Investigations.

What Is an Investigation?

Investigations are conducted in response to allegations from various sources including Department management and employees, other OIG units, the OIG Hotline, law enforcement agencies, Congress, and the public. The role of the OIG investigator is to examine objectively and thoroughly situations that may involve violations of law, abuse of rules and regulations, or other actions that could compromise the integrity and effectiveness of Department programs and operations. Often, an investigation will determine an allegation to be unfounded. In other cases, investigation may disclose activities that clearly violate the legal and ethical standards appropriate to Department employees and contractors of the U.S. Government. Assistance is enlisted from OIG auditors and inspectors or other experts as necessary to augment investigative operations and to confirm details of the matter under investigation. An investigator may also need to interview Department employees who might be able to provide information about a situation that is being examined.

[1] The investigative jurisdiction, standards, and authorities of the Office of Inspector General are set forth in Volume 2, Section 135, of the Foreign Affairs Manual.

Employee Rights

As a State Department employee, you have the right to a fair, objective, and timely investigation, conducted free of any conflict of interest or appearance of impropriety. You have the right to an investigation conducted with minimal intrusion into your legitimate privacy interests, consistent with our mandate to find the truth. You have the right to have any personal information disclosed during the investigation kept confidential and handled with respect and care. You have the right to expect equal treatment from this office in conformance with EEO standards and without regard to your position in the Department, your placement in the Civil or the Foreign Service, or your status as a Foreign Service national employee. You have the right to expect an investigator of this office to conduct himself or herself with integrity and impartiality and to be polite, tactful, and considerate during any questioning.

When interviewed, you have the right:

- to be advised whether you are the subject of a criminal investigation or whether you are being interviewed simply as a witness;
- to be informed of the nature of the inquiry being conducted; to be told whether the investigation could lead to criminal, civil, or administrative action; and to have your attorney or union representative present;
- to be advised of your Federal constitutional rights and of your rights as an employee of the Department of State; and
- to furnish a voluntary statement free from any promises, threats, pressure, or coercion of any kind or, if you are the subject of a criminal investigation, to make no statement at all.

Employee Responsibilities

Employee cooperation is essential to the success and fairness of OIG investigations. By assisting in investigations and reporting to the OIG matters that appear to violate law, regulations, or standards of ethical conduct, employees help to maintain public confidence in the integrity and efficiency of Department operations.

Employee and management responsibilities with respect to OIG investigations, as described in the Foreign Affairs Manual (FAM 1 FAM 135), include:

- promptly reporting information concerning the possible existence of violations of laws or regulations or instances of waste and mismanagement and refraining from initiating or independent inquiries into such matters;
- providing assistance and information requested by OIG special agents in the conduct of official investigations and special inquiries; and
- avoiding discussion or disclosure of investigative information to unauthorized parties or to the subjects of inquiries.

When alerting OIG to situations that they believe warrant review, employees should provide as much information as possible, including any supporting documents and other factual information that may be available. This will facilitate the investigative process and reduce the chance of inaccurate or incomplete reports that may infringe upon the rights of individuals against whom an allegation is made.

Confidentiality

Confidentiality may be granted to anyone reporting a problem to OIG, in accordance with the provisions of Section 7(b) of the Inspector General Act of 1978. These require that the identity of employee complainants not be disclosed without their consent, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation. (It should be noted that, to date, no such determination has ever been made by the State Department OIG.) Those calling or writing to OIG may also choose to remain anonymous.

In addition to OIG controls designed to protect the identity of sources, Federal laws offer protection against reprisal actions. Employees who believe they have suffered reprisal as a result of complaints or assistance to OIG or other authorities should notify OIG of the circumstances.

How Inquiries Are Started

Each allegation provided to the Office of Investigations is reviewed promptly and carefully. If an allegation involves possible criminal activity or civil fraud, a special agent is assigned to the case. Noncriminal matters may be referred to Department management with a request to report its findings to OIG. In cases requiring further OIG review, the Office of Audits, of Inspections, or of Security Oversight also may be asked to examine the situation.

The Investigative Process

Every effort is made to review complaints as quickly and efficiently as possible. Various factors may, however, affect the progress of an investigation, including the demands of higher priority cases, the availability and proximity of involved parties, and the need to protect the identity and rights of those under investigation.

"...my staff and I are committed to the concept of accountability. If we find that someone has knowingly violated a law or standards of ethical conduct... we will recommend prosecution or disciplinary action. We will, with equal vigor, work to clear the name of any employee who is improperly accused."

When possible, OIG will notify appropriate Department officials of investigations affecting programs or operations under their responsibility. Because prior notification may be impractical or inappropriate, however, OIG cannot assure that management will receive advance information about an investigation. For example, because of the potential for damage to an employee's reputation, unconfirmed allegations of employee misconduct are not disclosed to management until an investigation has been completed, except in cases where withholding such information could harm Department operations. OIG does not provide status reports on investigations in progress to Department managers or interested parties unless there is a clear and compelling need to do so. As added protection to the integrity of the investigative process and the privacy of those involved, it is OIG's policy not to release publicly the details of an ongoing investigation.

OIG conducts investigations according to established investigative procedures, which include reviews of relevant files and documentation and interviews with and written statements from complainants, witnesses, technical experts, and subjects of inquiries. Because of the worldwide scope of State Department responsibilities, OIG investigations often require travel to overseas locations. During investigations involving overseas operations, OIG special agents cooperate with Department and embassy security personnel and, as necessary, with host country police and security forces. Domestic investigations may involve cooperation with local, state, or Federal law enforcement agencies, including the Department of Justice.

If an investigation discloses sufficient evidence of criminal misconduct, the case is referred to the Department of Justice (or, in the case of foreign nationals, to host country authorities) for prosecution. If the Justice Department declines to prosecute the case, the matter may be referred to state or local authorities for criminal prosecution or to Department of State officials for administrative action or for prosecution under the Program Fraud Civil Remedies Act.[2] Noncriminal matters, such as violations of standards of ethical conduct, are referred to the Director General of the Foreign Service and Director of Personnel for appropriate administrative action, which may include admonishment, reprimand, demotion, suspension, or termination of employment. Restitution may

2 The Program Fraud Civil Remedies Act allows agencies to administratively prosecute false claims and statements of less than $150,000 without resorting to judicial or criminal proceedings.

which may include admonishment, reprimand, demotion, suspension, or termination of employment. Restitution may be required in cases involving loss or misuse of government funds or property. Administrative actions also may be pursued in addition to, and separate from, criminal prosecution.

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Office of Inspector General
HOTLINE
P.O. Box 19392
Washington, D.C. 20036-9392
(202) 647-3320

April 1993
Department of State Publication 10051
Revision of Publication 9938, March 1992

United States Department of State
Washington, D.C.

The Office of Inspector General Investigative Process

THE OIG INVESTIGATIVE PROCESS

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This publication will acquaint you with the investigative process, including the manner in which investigations are conducted, the types of situations that may warrant investigation, and the ways in which you can assist OIG in this process. I ask for your cooperation in ensuring the success and effectiveness of OIG investigations.

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[1] The investigative jurisdiction, standards, and authorities of the Office of Inspector General are set forth in Volume 2, Section 135, of the Foreign Affairs Manual.

Employee Rights

As a State Department employee, you have the right to a fair, objective, and timely investigation, conducted free of any conflict of interest or appearance of impropriety. You have the right to an investigation conducted with minimal intrusion into your legitimate privacy interests, consistent with our mandate to find the truth. You have the right to have any personal information disclosed during the inves- tigation kept confidential and handled with respect and care. You have the right to expect equal treatment from this office in conformance with EEO standards and without regard to your position in the Department, your placement in the Civil or the Foreign Service, or your status as a Foreign Service national employee. You have the right to expect an investigator of this office to conduct himself or herself with integrity and impartiality and to be polite, tactful, and considerate during any questioning.

When interviewed, you have the right:

- to be advised whether you are the subject of a criminal investigation or whether you are being interviewed simply as a witness;
- to be informed of the nature of the inquiry being conducted; to be told whether the investigation could lead to criminal, civil, or administrative action; and, at your request, to have your attorney or union representative present;
- to be advised, when appropriate, of your Federal constitutional rights and of your rights as an employee of the Department of State; and
- to furnish a voluntary statement free from any promises, threats, pressure, or coercion of any kind or, if you are the subject of a criminal investigation, to make no statement at all.

Employee Responsibilities

Employee cooperation is essential to the success and fairness of OIG investigations. By assisting in investigations and reporting to the OIG matters that appear to violate law, regulations, or standards of ethical conduct, employees help to maintain public confidence in the integrity and efficiency of Department operations.

Employee and management responsibilities with respect to OIG investigations, as described in the Foreign Affairs Manual (2 FAM 135), include:

- promptly reporting information concerning the possible existence of violations of laws or regulations or instances of waste and mismanagement and refraining from initiating independent inquiry into such matters;
- providing assistance and information requested by OIG special agents in the conduct of official investigations and special inquiries; and
- avoiding discussion or disclosure of investigative information to unauthorized parties or to the subjects of inquiries.

When alerting the OIG to situations that they believe warrant review, employees should provide as much information as possible, including any supporting documents and other factual information that may be available. This will facilitate the investigative process and reduce the chance of inaccurate or incomplete reports that may infringe upon the rights of individuals against whom an allegation is made.

Confidentiality

Confidentiality may be granted to anyone reporting a problem to the OIG, in accordance with the provisions of Section 7(b) of the Inspector General Act of 1978. These require that the identity of employee complainants not be disclosed without their consent, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation. (It should be noted that, to date, no such determination has ever been made by the State Department OIG.) Those calling or writing to the OIG may also choose to remain anonymous.

In addition to OIG controls designed to protect the identity of sources, Federal laws offer protection against reprisal actions. Employees who believe they have suffered reprisal as a result of complaints or assistance to OIG or other authorities should notify OIG of the circumstances.

How Inquiries Are Started

Each allegation provided to the Office of Investigations is reviewed promptly and carefully. If an allegation involves possible criminal activity or civil fraud, a special agent is assigned to the case. Noncriminal matters may be referred to Department management with a request to report its findings to OIG. In cases requiring further OIG review, the Office of Audits, of Inspections, or of Security Oversight also may be asked to examine the situation.

The Investigative Process

Every effort is made to review complaints as quickly and efficiently as possible. Various factors may, however, affect the progress of an investigation, including the demands of higher priority cases, the availability and proximity of involved parties, and the need to protect the identity and rights of those under investigation.

"My staff and I are committed to the concept of accountability. If we find that someone has knowingly violated a law or standards of ethical conduct... we will recommend prosecution or disciplinary action. We will, with equal vigor, work to clear the name of any employee who is improperly accused."

When possible, OIG will notify appropriate Department officials of investigations affecting programs or operations under their responsibility. Because prior notification may be impractical or inappropriate, however, OIG cannot assure that management will receive advance information about an investigation. For example, because of the potential for damage to an employee's reputation, unconfirmed allegations of employee misconduct are not disclosed to management until an investigation has been completed, except in cases where withholding such information could harm Department operations. OIG does not provide status reports on investigations in progress to Department managers or interested parties unless there is a clear and compelling need to do so. As added protection to the integrity of the investigative process and the privacy of those involved, it is OIG's policy not to release publicly the details of an ongoing investigation.

OIG conducts investigations according to established investigative procedures, which include reviews of relevant files and documentation and interviews with and written statements from complainants, witnesses, technical experts, and subjects of inquiries. Because of the worldwide scope of State Department responsibilities, OIG investigations often require travel to overseas locations. During investigations involving overseas operations, OIG special agents cooperate with Department and embassy security personnel and, as necessary, with host country police and security forces. Domestic investigations may involve cooperation with local, state, or Federal law enforcement agencies, including the Department of Justice.

If an investigation discloses sufficient evidence of criminal misconduct, the case is referred to the Department of Justice (or, in the case of foreign nationals, to host country authorities) for prosecution. If the Justice Department declines to prosecute the case, the matter may be referred to state or local authorities for criminal prosecution or to Department of State officials for administrative action or for prosecution under the Program Fraud Civil Remedies Act.[2] Noncriminal matters, such as violations of standards of ethical conduct, are referred to the Director General of the Foreign Service and Director of Personnel for appropriate administrative action,

2 The Program Fraud Civil Remedies Act allows agencies to administratively prosecute false claims and statements of less than $150,000 without resorting to judicial or criminal proceedings.

may be used against him or her in a criminal proceeding. If the employee has been told in writing that his or her answers will not be used in a criminal proceeding but may only lead to disciplinary or other administrative action, the employee is required to furnish all pertinent information relating to the scope of his or her employment. (The investigator is required to notify the employee in writing that his or her responses will not be used against the employee in a future criminal proceeding.) While in this situation an employee's responses cannot be used in a criminal proceeding, they can be used against him or her in a future civil proceeding or in an administrative case (e.g., discipline, suitability, etc.).

Sworn Statement

The investigator may prepare a written statement from the answers that the employee has given during the interview which the employee will be asked to sign. In some circumstances, AFSA has found that the written statements tend to reflect inculpatory statements and omit exculpatory statements. That is, they focus on incriminating statements made by the employee, rather than those tending to exonerate the employee. Therefore, the employee should both take care that his or her oral statements during the interview are not vague and verify that the investigator's written statement accurately reflects the employee's statements.

A person should not sign a statement containing blanket legal conclusions. Any statement such as "all laws, regulations, and policies have been complied with" is a particularly dangerous statement to sign since it is not clear which regulations are at issue in the investigation. The employee should state that he or she believes a certain policy or regulation has been adhered to and the relevant policy or regulation should be identified, to the maximum extent possible.

It is critical that the employee carefully read the statement prior to signing it to ensure that his or her statements have not been misinterpreted. An employee has the right to terminate the interview prior to signing the statement so that a union representative or attorney may review the statement.

Summary

To sum up the foregoing, if an employee is contacted by an OIG, DS, or other investigator, he or she should attempt to ascertain whether he or she is the subject of the investigation and what type of investigation (criminal or administrative) is being undertaken before meeting with the investigator. If an employee is unable to obtain this information from the investigator prior to the meeting and the employee has a reasonable belief that some type of criminal or administrative action could be taken against him or her as a result of the investigation, contact AFSA immediately for assistance. AFSA suggests that employees who are the subject of investigations, and especially those who may be subject to criminal prosecution, be represented by AFSA or a legal representative at the interview.

The above information provides general guidance for all employees interviewed by the OIG, DS, or other agency. Questions regarding specific cases should be referred to AFSA's Labor Management office at tel. 202-647-8160, fax 202-647-0265, or DOSNET e-mail or internet (afsa@afsa.org for attention of AFSA Labor Management).

AFSA's

Guidance for Employees Involved in Investigations

This advisory was prepared by AFSA to apprise Foreign Service employees of their rights and responsibilities during Office of the Inspector General (OIG), Diplomatic Security (DS), Federal Bureau of Investigation (FBI) and other interviews and investigations. This guidance is applicable to each type of interview, except where otherwise provided. Persons being interviewed by an OIG, DS, or other investigator have the following rights:

Right to Union or Legal Representation

An employee always has the right to consult with an AFSA representative or legal counsel prior to an OIG, DS, or other interview and to be represented by legal counsel at the interview. However, whether the employee has the right to be represented *at the interview* by an AFSA representative depends upon who is conducting the interview. Employees in the bargaining unit have the right (the so-called "Weingarten Right") to be represented by an AFSA representative at any interview or investigation conducted *by a representative of the employing agency* which the employee reasonably believes could result in disciplinary action. Under this rule, employees have the right to be represented by AFSA at interviews conducted by DS and, under current case law, the OIG. [Note: There is a split in the circuit courts regarding whether the Weingarten Right applies to OIG investigations; the Federal Labor Relations Authority's latest decision is that the Weingarten Right applies to OIG investigations – FLRA v. NASA (July 28, 1995). In any event, it has generally been the practice of the OIGs from the foreign affairs agencies to permit AFSA to represent employees at these interviews.]

In those instances where the OIG or an outside agency has asserted that the employee does not have a right to have an AFSA representative present, an AFSA attorney has on occasion attended as the employee's legal representative in interviews conducted in Washington. If the OIG does not permit an AFSA representative to attend, please contact AFSA Washington immediately.

If an employee finds him or herself alone in an interview situation or an investigator requests a "quick, informal meeting that won't take a lot of time" an employee should immediately ascertain from the investigator whether the employee is the subject of the investigation and whether it could lead to criminal or administrative action. If the answer to either of these questions is yes, the employee should specifically request the right to speak to a union representative or attorney and terminate/delay the interview until he or she has done so. It is especially important that employees accused of criminal misconduct, even those who believe they have done nothing wrong, follow this advice. When the allegations against employees could result in criminal prosecution, we strongly recommend that they be represented by an experienced criminal attorney. AFSA has a list of criminal attorneys in the Washington, D.C. area which we can provide to you. In many cases, these attorneys can represent you even if you are overseas.

In administrative cases, the presence of an AFSA representative serves several useful purposes. The AFSA representative can help to ensure that the investigator affords the employee all of his or her rights and conducts the interview in an appropriate and professional manner. The representative can also take contemporaneous notes so that the employee will have a record of the interview. This is particularly helpful if there is a discrepancy between the investigator's record of events and the employee's recollection of what he or she said.

Right to Know the Nature of Charges

Employees should attempt to gather as much information as possible from the investigator regarding the nature of an interview before the personal interview. If the investigator refuses to provide this information at that time, the investigator should, at the outset of the interview, advise the employee: whether he/she is a subject of an investigation or merely a witness; the nature of the inquiry being conducted (e.g., the statute or regulation which the employee is alleged to have violated); and whether the investigation could lead to criminal, civil or administrative action. Investigators typically ask employees to sign a form acknowledging that they have been advised of the foregoing information.

Preparation for the Interview

It is important to realize that an interview requires preparation. If the employee knows the subject matter of the investigation prior to the interview, he or she should refresh his memory by reviewing pertinent documents, if appropriate. The employee may also want to bring copies of relevant documents to the interview to leave with the investigator.

Participation at the Interview

When participating in an interview, employees should take the following steps to limit possibly damaging testimony. First, the employee should only testify as to facts known to the employee. Do not speculate! Honest mistakes of fact on the employee's part during the course of the interview may be subsequently misinterpreted by the investigator as contradictory. When answering questions, an employee should distinguish between what he or she knows first-hand and what he or she has been told by others. In addition, if an employee is making a statement based on records compiled by someone else, the investigator should be told this.

If the investigation may lead to criminal charges, the employee may invoke the protection of the Fifth Amendment which allows the employee to refuse to provide information which

Mr. HORN. So staff will check, and you could help us. Do each of the agencies with the statutory IG's have a pamphlet? And if so, what is it? And we would likely gather that.

We would like to have more feedback if your committees can do that, on the audit versus nonaudit type of situation. I realize there are different things you get into. Obviously, the criminal area is the one that we certainly put a lot of concern on. And, again, I would say I would think OPM would be issuing some guidance in this area on behalf of Federal personnel, and you are sort of wearing two hats there, Mr. McFarland.

Mr. MCFARLAND. OPM certainly will issue any guidance regarding personnel issues, but as far as this type of brochure, I think the genesis of it certainly has to be us, and we will do that.

Mr. HORN. And obviously the question is, when? Joining the organization is one. I would think most people would agree that employees ought to know about what your office does when they join the organization. Then second, prior to entering the room where somebody is called in to participate in an investigation, an inquiry or whatever, at that point in the time, in your judgment, should be known and, if known, under what circumstances or it should be not known under certain circumstances? And I am going to leave it to those two committees to give us the answer by the end of August.

We got into leaking information to foreign diplomats in one case, but I will not get into that.

Let's see. If a witness comes into one of your inquiries, shall we say, they may be investigations, and they happen to bring their microcassette recorder with them, would you let them tape that inquiry?

Do you want to start down the line with State Department?

Ms. WILLIAMS-BRIDGERS. It is not our general practice to allow people to tape record conversations unless our investigators are also tape recording conversations.

Mr. HORN. I would hope you would tape record an inquiry. You don't? You just take notes?

Ms. WILLIAMS-BRIDGERS. No. We generally take contemporaneous notes and then rewrite the notes and type them up for records of the interview. That is the standard practice.

Mr. HORN. Does the person who was interviewed ever see those notes?

Ms. WILLIAMS-BRIDGERS. Yes, if we are taking a formal deposition, they review and then sign each page.

Mr. HORN. In other words, they can correct it if they feel it was in error?

Ms. WILLIAMS-BRIDGERS. That's correct; in a formal deposition.

Mr. HORN. You don't have a stenotypist in the room?

Ms. WILLIAMS-BRIDGERS. No, we do not. Generally we do not. We may use an interpreter, because we are dealing quite often in U.S. Embassies, and if we have a language problem there is an interpreter, and then we take contemporaneous notes through an interpreter.

Mr. HORN. Do you all work the same way as State?

Ms. HILL. We are a little bit different, because we have two shops. One is criminal, DCIS; the other is DI, Departmental Inquir-

ies. DCIS follows the same practice, to my knowledge, as most other Federal law enforcement agencies in criminal cases. They do not tape record interviews. They take notes and have agents' reports of investigation.

Obviously, that is part of the criminal justice system which, if you work in a Federal criminal justice system, the place for sworn testimony is the Federal grand jury, and at that point the witness would be under oath and sworn testimony for the record. I don't think the FBI——

Mr. HORN. There would be a stenotype transcript of that?

Ms. HILL. The grand jury? Right. Short of the Federal grand jury, in criminal investigations we do not tape record witnesses or take stenographic transcripts. But, again, I would say that is the practice throughout the Federal law enforcement community, and I think it is a practice that the Justice Department would prefer and has approved in criminal investigations.

On the administrative side, Departmental Inquiries does tape recorded interviews of witnesses, and they are entitled to a copy of the transcript.

Mr. HORN. Mr. Bromwich.

Mr. BROMWICH. Justice is also the same as identified by the two Inspectors General. We generally do not tape-record interviews. We have agents present to take notes and write up memoranda of interviews. On occasion, we do tape-record the interview. On other rare occasions in very important matters, generally administrative or management matters, we will actually have a court reporter present and have a transcript prepared. But that is the exception, not the rule. The rule is not to have the session tape-recorded or transcribed.

Mr. HORN. Even if the individual says, "By the way, I want a record of what I have told you"?

Mr. BROMWICH. That is correct. We would not permit them to record the interview.

Mr. HORN. You would not permit them? Do you think that is fair under the Constitution?

Mr. BROMWICH. I think it is fair under the Constitution. I believe it has been found to be fair under the Constitution. The witness will then not have the ability to take the tape and play it for other prospective witnesses in the investigation and thereby tip them off as to precisely the questions that are likely to be asked of that subsequent witness or the answers that this specific witness gave.

We cannot stop the witness from orally telling a prospective witness down the road what he believes he told the interviewers, but we like to try to stop a verbatim version of what that witness told us by not permitting tape recorders in the room.

Mr. HORN. You didn't really answer the question. Do you permit the witness—if they came in with a microcassette recorder, could they tape record?

Ms. HILL. Our policy would be no, that we would not. In the criminal area, particularly the concerns that Mr. Bromwich just mentioned and the prosecutor's concerns would be that they don't want a verbatim transcript of the interview. That is why we don't tape-record them. We take notes, and on the administrative side

we don't allow them to tape it, because we have a tape recorder there. There is a tape done, and they get a copy of the transcript.

Mr. HORN. Who gets the copy of the transcript?

Ms. HILL. The witness.

Mr. HORN. The witness does get it?

Ms. HILL. Right.

Mr. HORN. They certify, certainly.

Ms. HILL. They read it and can verify that it was accurate.

Mr. HORN. Mr. McFarland.

Mr. MCFARLAND. Our practice is the same as Mr. Bromwich. We do not permit tape recorders to be used.

Mr. HORN. Has that been a problem for you?

Mr. MCFARLAND. No, to date it has not been a problem.

Mr. HORN. And usually the witness doesn't have time, I would think, to scratch down too many notes; right?

Mr. MCFARLAND. Well, probably not in most circumstances. They wouldn't be taking many notes. But, you know, the interview that is written up is for their signature, and that is their chance to correct something.

Mr. HORN. And let me consult here a minute on this question. I am going to get to that. But I take it it is clear you would not permit the witness coming in to use their own microcassette. Mr. Bromwich has stated one of the reasons why they might not.

Here is what I am saying. I have a letter—Office of Personnel Management employee letter from Mary Lou Lindholm, the Assistant Director for Personnel. Subject: Notice of right of employees in exclusive bargaining units to request union representation. January 27, 1992. It is required by the agreement between the AFGE Local 32 and the OPM Central Office, OPM Central Office bargaining unit employees are to be advised of their right to union representation every year, during the month of January every year. Specifically, article 2, section 6, of the negotiated agreement states, quote: An employee has the right, upon request, of union representation at any time he or she is being examined by one or more agency representatives in connection with an investigation when the employee reasonably believes the investigation may result in disciplinary action against him or her. Each year during January, the agency shall send to each employee a memorandum quoting this section of the contract, unquote. Signed, Mary Lou Lindholm, Assistant Director of Personnel.

Is this policy, Mr. McFarland, still pursued in the Office of Personnel Management?

Mr. MCFARLAND. Well, it is pursued, Mr. Chairman, but my office abides by the district court decision as opposed to the Third Circuit Court decision that says that the union representative is permitted. We do not permit the union representative.

Mr. HORN. Two things. One, every January you remind them of their rights that they have union representation in the meeting.

Mr. MCFARLAND. OPM does; we don't.

Mr. HORN. OPM does?

Mr. MCFARLAND. Yes, sir.

Mr. HORN. I thought you represented OPM in that sense?

Mr. MCFARLAND. Not in that sense.

Mr. HORN. But you are an employee of OPM?

Mr. MCFARLAND. Yes, I am.

Mr. HORN. Do you know if this 1992 agreement still stands?

Mr. MCFARLAND. Well, I don't think it still stands, no.

Mr. HORN. So presumably you have negotiated it out. Let's get you and the staff to get us the answer as to what is the current practice of OPM on this particular 1992 language.

Mr. MCFARLAND. All right.

[The information referred to follows:]

United States
Office of
Personnel Management

Washington, D.C. 20415-0001

In Reply Refer To: Your Reference:

JUL 7 1997

MEMORANDUM FOR ALL EMPLOYEES

FROM ROSE M. GWIN, DIRECTOR
OFFICE OF HUMAN RESOURCES AND EEO

SUBJECT: NOTIFICATION

In accordance with 5 U.S.C. 7114(a)(3), bargaining unit employees are notified that:

An employee has the right, upon request, to Union representation at any time the employee is being examined by one or more agency representative(s) in connection with an investigation when the employee reasonably believes the investigation may result in disciplinary action against the employee.

OFFICE OF
THE INSPECTOR GENERAL

UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415-0001

July 2, 1997

Honorable Stephen Horn
Chairman
Subcommittee on Government Management,
Information and Technology
House Committee on Government Reform and Oversight
Washington, DC 20515

Dear Chairman Horn:

I would like to thank you for the opportunity to testify before your subcommittee last week regarding the Investigative Practices of Inspectors General. As chair of the Investigations Committee of the President's Council on Integrity and Efficiency (PCIE), I appreciate the chance to talk to the subcommittee regarding investigative issues impacting the Inspector General community.

In addition, I would like to clarify my answer to a question you posed regarding whether union representatives are permitted to be present at investigative interviews conducted by special agents at the Office of Personnel Management. My response at the hearing was that representatives are not present during investigative interviews. That statement reflects our practice in interviews involving cases which have been determined to have potential criminal law implications or exposure. However, you should be aware that, as a matter of policy and practice, our special agents have the flexibility to permit a union representative to be present at interviews in cases where we have not yet reached a decision as to the type of remedy we may pursue (i.e., criminal, civil, or administrative) or where it is clear the matters under investigation are not criminal in nature. In these situations, if the subject of the interview requests a representative and the special agent determines that the representative's presence may facilitate our ability to obtain needed information and will not present a conflict of interest or a potential compromise of sensitive information, the representative may be permitted to attend.

In a related matter which was discussed at the hearing, we have verified that, since 1992, OPM has not issued the requisite annual advisory to its employees regarding their rights to union representation during investigations conducted by management representatives. We have called this matter to the attention of the appropriate agency officials, and have received assurances that this omission will be addressed expeditiously. My office will monitor agency action to assure that it is completed promptly.

I look forward to working with the subcommittee as the PCIE addresses concerns raised at the hearing regarding investigative practices of inspectors general.

Sincerely,

Patrick E. McFarland
Inspector General

Mr. HORN. Go ahead on when you permit union representatives in the meetings.

Mr. MCFARLAND. No, I would not, and we do not.

Mr. HORN. Mr. Bromwich.

Mr. BROMWICH. Same answer.

Mr. HORN. Ms. Hill.

Ms. HILL. I would say in both our criminal investigations manual and in our administrative investigation manual, we do recognize the right of an employee, if they request it, to have a union rep present during the meeting. So we do allow them to do that.

Ms. WILLIAMS-BRIDGERS. Our practice is the same as Ms. Hill's. We do allow, if requested, a union representative to attend during the interview.

Mr. HORN. So it is two to two with this randomly selected panel. OK. Now let's see what remains here.

Mr. BROMWICH. Mr. Bryant has offered to break the tie, Mr. Horn.

Mr. HORN. Well, I have one closing question, not on this subject. When I have all of this talent before me, I tend to take advantage of it.

Well, Mr. McFarland, let me get back to you. At one point you said you cannot imagine Government workers being given a right that the average citizen does not have. And I really would like you to sort of tell me your thinking on, what rights has this dialog elicited that the average citizen doesn't have?

Mr. MCFARLAND. Well, I think it kind of goes to the heart, Mr. Chairman, of some of the things that were said today about the pamphlets that are given to employees when they start Government, the EEO briefings that they may get, the ethics briefings that they may get, the warnings that they may get, as opposed to the average citizen, who may well have taken a civics course and that may be the extent of the knowledge that they have regarding their rights.

Mr. HORN. Do you regard it as unreasonable that we give an employee a pamphlet that tells about the role of the Inspector General and what their rights are?

Mr. MCFARLAND. No, I don't see that as unreasonable at all.

Mr. HORN. OK. I know that the OPM memo was sent by the IG yesterday, I guess, dated 6/23/97, time of 13:49. And that just goes with that document in the record.

Now, having exhausted some of that, we always reserve the right to ask you questions later, and you can submit in writing, and you are still under oath in our rules.

Let me move to a law in which Mrs. Maloney and I have a great interest, and often the Inspector General functions to save money through improving program management.

In the Debt Collection Improvement Act, which I authored, and Mrs. Maloney is a cosponsor, and came out of the Chief Financial Officers Group of the executive branch, Congress authorized what some people call gain sharing for the agency. But what it is, the agencies can keep a percent of what they collect to improve the technologies with which they are enabled to more efficiently and effectively collect debts owed to people of the United States in a particular agency.

What do you think about agencies receiving part of the money from such a collection program to improve the technology? And has this funded and can it be used, in your judgment, to fund some of the Inspector General work which improves credit and debt management programs? It is now 1 year old, that act. Have IG's benefited in any way under the act?

Ms. HILL. I am not familiar with whether the IG's have directly benefited. I have not looked at the exact wording of it and whether or not we would be able to get any financial benefit from it.

I can tell you in principle that I think the Federal Government needs every incentive it can get to improve debt collection. I mean, when I was a prosecutor, I saw problems in debt collection. When I worked in the Senate on the Student Loan Program, I saw horrendous problems in debt collection. And at the Department of Defense we have problems in debt collection.

So anything we can do to encourage agencies to get their efforts going stronger I would endorse, and certainly if there is a way, we will explore whether, under the act, the IG could take part in that, because we do look at issues like that, collection. We would certainly do that.

Mr. HORN. Good.

Mr. BROMWICH. I am also not familiar with the provisions of the debt collection statute, but I agree with Eleanor Hill that Government needs every instance to collect the debts that it is owed, and there is no greater challenge facing agencies than upgrading their communications and computer systems. I don't know if we would be entitled to get a share, but our system technology needs upgrading, and this is certainly something that needs to be looked into.

Mr. HORN. Any other comments? One last one for Ms. Hill.

You mentioned the service IG's. What is the relationship between what the IG's do historically with the military branches versus your office?

Ms. HILL. Right. Their role is a little different than ours. Honestly, they predate us.

Mr. HORN. 200 years.

Ms. HILL. Von Steuben, I believe.

They have a large inspection function in addition to their investigative function. In addition, they are also a place where the service member can go for help on any number of problems, some of which may just be logistical and advice and that sort of thing. We work closely with them.

I meet with the service IG's regularly, and our biggest interaction with them is probably in the area of senior official and whistleblower investigations, administrative inquiries, because, as I outlined in my statement, even though we have broad authority on administrative inquiries in the Department, we don't have the resources to do all of those whistleblower cases or all the senior official cases or all of the investigative cases that pertain to the military. And what we do, by necessity, is, we delegate out many of those cases to the service IG's, and then we try to maintain oversight of what they do.

So we work closely with them in trying to get the cases moving, make sure they are done right. Sometimes we send them back to them if we don't think they are done properly. I can tell you that—

and this is nothing adverse to the service IG's, they are very strained on resources, and it is one of our biggest concerns, my concern as well as their own concern, are time limits. There are tremendous numbers of whistleblower cases that they handle, and they don't have the resources to adequately handle them, and we are constantly meeting to try to come up with ways to improve the process and improve their process to get out credible, quality investigations on a more timely basis.

Mr. HORN. Would anybody else like to comment or any similar relationship within their own Department's historically? I have forgotten, frankly, about the Coast Guard, which would be in transportation unless in times of war, and some of the other things.

Well, let me just thank you all for spending this morning here to help clarify a lot of matters that Members have been talking to us about since that issue came up on the floor. We will look forward to your reaching out to your fellow IG's and getting back to us by the end of August some suggestions as to what would be appropriate in this area. I think there is a problem here. Now, the question is, we don't want a solution that is worse not that problem. So we welcome your advice on it.

And then I would to thank the staff that helped prepare this hearing: The staff director and chief counsel for the majority, Russell George, sitting on the back wall taking in all that surrounds us; and Mark Uncapher, the counsel for this particular hearing on my left. John Hynes, professional staff member, is not here. Andrea Miller is here, the clerk; Mark Stephenson for the minority, the once majority. Sorry, Mark. Hope springs eternal; right? Very helpful. He writes excellent questions. Jean Gosa, clerk for the minority, is here with us; and our two reporters, because we knew that all of you, the way you would talk very long this morning, so there was a relief team, Mindi Colchico, court reporter; and Joe Strickland, court reporter. We thank you all.

And with that, this hearing—two interns? Jeff Cobb and Darren Carlson. Thank you, interns.

They work for nothing. Is that a violation of some employee rule of OPM?

Mr. MCFARLAND. Probably.

Mr. HORN. Or it will be.

The meeting is adjourned.

[Whereupon, at 12:32 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]

SENIOR EXECUTIVES ASSOCIATION

P.O. BOX 7610 • WASHINGTON, D.C. 20044
202-927-7000

July 14, 1997

The Honorable Stephen Horn
Chairman
Government Management Information
and Technology Subcommittee, GROC
Room B-373
Rayburn House Office Building
Washington, D.C. 20515
ATTN: Mark Uncapher

Re: Hearing on Oversight of Investigative Practices of Inspectors General Held Tuesday, June 24, 1997

Dear Chairman Horn:

The Senior Executives Association represents the interests of career members of the Senior Executive Service, and other career executives in equivalent positions in the Executive Branch.

The Association has had many interactions with Inspectors General of the various agencies in the course of our representation. In addition, in my private practice and as General Counsel to SEA, my firm has represented hundreds of federal employees over the past fifteen years during IG interviews.

On June 24, 1997, I attended a portion of the hearings concerning the IG interview process. While SEA is not intimately familiar with the pros and cons of the proposal of Cong. Lee Hamilton, we are familiar with a number of instances where federal employees have been apparently "tricked" into admissions by IG investigators because they were not told at the outset of the interview that they were the target of the investigation, or that information potentially criminal in nature was being sought by the questioning.

It is axiomatic that federal employees are required to answer questions in matters of official interest, and that failure to do so can be grounds for their discharge from federal employment. See 5 C.F.R. Part 2635, specifically Section 2635.101(b)(11). See also the decisions of the Merit Systems Protection Board including Weston v. Department of HUD, 14 M.S.P.R. 321 (1993), aff'd 724

F.2d 943 (Fed. Cir. 1983). It is also axiomatic that the IG investigator has an obligation to inform the employee who is being required to answer questions as the target of an investigation, that the answers given by the employee will not be used against them in a criminal proceeding. See Schwartz v. Secretary of Treasury, 364 F. Supp. 344 (D.D.C. 1973) and Sternburg v. Department of Defense, 41 M.S.P.R. 46 (1989). This originally rule arose out of a case called Kalkines v. United States, 473 F.2d 1391 (Ct. Cl. 1973) issued by the then U.S. Court of Claims. The warning given to employees came to be known as the "Kalkines warning" and essentially was that an employee under investigation had an obligation to answer questions in matters of official interest, so long as they were informed that in answering those questions, the information sought would not be used against them in any subsequent criminal action. This rule came about because of the need to balance employees' Fifth Amendment right not to incriminate themselves in criminal matters with their obligation as a federal employee to answer questions in matters of official interest.

In most instances, IG investigators at the outset of their interrogations will provide employees with a Kalkines warning if requested. However, in the absence of counsel, most employees do not know to ask for such an assurance. They presume that they are required to answer questions but are often not told the information they provide may be used against them in criminal proceedings if they voluntarily provide the information in the absence of the Kalkines warning. IGs apparently have taken the position that when employees are called in for an interview, they are not in custody, and thus do not have the right to Miranda warnings. On the other hand, since they are not in custody, IGs state the employees have the right to refuse to answer questions and to leave the interrogation at any time they wish. They also take the position that unless employees refuse to answer questions and are subsequently ordered to do so, there is no necessity for a Kalkines warning since these are merely in the nature of conversations between IG personnel and employees.

The bottom line is that in numerous situations, employees do not know that they have the option of not answering questions or of requesting a Kalkines warning. Thus, in some instances, they can wind up providing information which subsequently can be used against them in a criminal proceeding.

We have long sought a rule that employees be told at the outset of an interrogation whether they are the target of the investigation or there is a reasonable possibility that they could become the target of the investigation, versus merely being a witness. It is not unusual for an employee to be questioned, and

after sufficient information is provided to the investigators, for the investigators to stop the interrogation and provide the employee a Miranda warning, because the information provided now raises possible criminal prosecution options.

There is a delicate balance between an employee's rights and responsibilities in the IG interrogation process. We believe that employees should have the following rights:

1. The right to be told of the right to have counsel present during the investigation;

2. The right to be told at the outset of the investigation in writing whether they are a witness or that they are, or could become, the target of the investigation if possible criminal matters are being investigated; and

3. The right to be provided with a written Kalkines warning or, if appropriate, a Miranda warning at the beginning of any interrogation.

Ironically, employees have the most problems in being given the above rights in the agencies involved in law enforcement. Until recently for example, the DEA would not allow their law enforcement personnel who were being questioned the right to counsel during the questioning. To the best of our knowledge, the INS still takes the position that it will not allow one of its investigators who are being interviewed to have counsel. The IG investigators argue that counsel can be obstructive, sometimes urging the employee not answer when they should; or they seek to frustrate the investigation. In our view, counsel should be allowed to advise the employee and to request clarity in particular questions that are asked. If counsel becomes obstructive, then the employee can be told that they have an obligation to answer the questions and if they do not, because of improper counsel advice, then they can suffer the consequences of that decision. Obviously, the employee could have an action against their counsel if they were wrongly advised. However, it is clear that the employee is the individual obligated to answer appropriate questions.

STATEMENT BY DOD IG BEFORE THE SUBCOMMITTEE

SEA believes the problem that Cong. Hamilton seeks to address is most clearly set forth in the written testimony of The Honorable Eleanor Hill, DoD IG.

We first wish to state that the DoD IG has probably the best record among all IGs of being fair to employees. One way they do

this is by dividing their potentially criminal and/or criminal investigations from their administrative investigations. They then use separate staffs for criminal and administrative investigations, and clearly inform the employee whether the matter is potentially criminal or administrative. If administrative, the employee is notified of the investigation before it begins and is given the opportunity to comment on the results of the investigation prior to any information being provided to management to determine whether disciplinary action is necessary. See Discussion of Administrative Investigations on pp. 9-10 of Ms. Hill's statement before the Subcommittee on June 24, 1997.

However, Ms. Hill's statement clearly sets forth the dilemma for employees in potentially criminal investigations. In the last full paragraph on page 8 of her statement, she sets forth the practice followed by DoD IG investigators in interviewing or interrogating a suspect in custodial settings. However, the last two sentences of that paragraph concerning non-custodial interviews states as follows:

> The requirement to advise civilian interviewees of their rights regarding self-incrimination and the right to counsel do not apply in non-custodial situations. Of course, in non-custodial situations the person has no obligation to submit to an interview. (emphasis added).

This is an incorrect statement. In fact, in non-custodial interviews employees do have an obligation to submit to the interview and can be fired from their jobs in the federal service by refusing to participate in the interview and/or refusing to answer specific questions. See Weston v. HUD, supra. They are thus faced with two options: cooperate and potentially be prosecuted even though they did not know they were the subject or target of an investigation; or be fired for refusing to answer questions or provide information to the IG's office. (See generally the MSPB and federal court decisions cited above). In our view, the statement by the DoD IG provides the strongest possible support for enactment of the Hamilton proposals. Federal employees, as do all other citizens, have constitutional rights. However, they have responsibilities beyond those of other citizens, in that they must cooperate with the IG investigators and answer questions about matters of official interest or possibly lose their jobs. In order not to be improperly entrapped or accused, they should have a concomitant right of being properly notified of their rights prior to the interview by the investigators. This would provide the proper balance, without limiting the ability of IG investigators to carry out their duties.

Finally, for your information, we are enclosing two attachments which we received alleging improper investigative activities by the Inspector General of the EPA, and allegedly improper management activities by the Inspector General at the Office of Personnel Management. The first, entitled "Mac Long Experiences" involves what was allegedly an investigation gone awry. Often career executives feel particularly targeted by IGs, because they are the "big fish" which make for headlines when the IGs release their reports to Congress and to the public. We trust that your subcommittee can determine better than we whether the information and newspaper article provided about the "Mac Long Experience" is accurate, whether the EPA IG acted properly, and whether some action is necessary.

The second attachment is an anonymous letter recently received from an alleged group at the Office of Personnel Management concerning wrongdoing on the part of the IG and the Deputy IG. While we hesitate to pass on anonymous letters, this one contains information with sufficient specifics that it would appear possible and appropriate to inquire about the allegations to determine whether improper activities in violation of the merit system principles are occurring within the IG office at OPM.

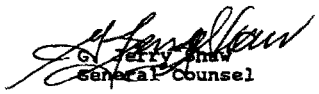
This second attachment also states that the Integrity Subcommittee of the President's Council on Integrity and Efficiency merely refers back to the agency allegations concerning the management of the IG office. If true, it would seem to be a particularly inappropriate response. It apparently has resulted in this group reaching outside the customary forums for assistance in resolving wrongdoing they believe is taking place.

The duties of IGs in federal agencies is crucial to the integrity and efficiency of government. Inspectors Generals themselves are individuals of generally unquestioned probity, and are closely examined, prior to confirmation, concerning their reputations for integrity and honesty. However, as with any law enforcement agency, it is easy to succumb to the notion that those against whom allegations are made and who are investigated, are in fact "guilty parties," and that the IG's job is merely to find evidence to convince others of their guilt. We, on the other hand, believe that it is the duty of the IGs not only to find wrongdoers, but to clear those wrongly accused. In too many cases, the latter does not occur. We have previously identified for the PCIE cases which have gone on for five or more years without resolution. In these cases, career federal employees have sometimes been denied promotions, bonuses and other opportunities, and their careers ruined because of the suspicion created by the investigation. We think it appropriate that the Inspector General community keep this in mind. We believe they must strive to ensure not just statistics

proving their prowess at bringing criminals to heel, but statistics proving their fair and evenhanded application of the law, and their investigative authority. They should therefore work just as hard in order to weed out unsubstantiated and unfounded allegations, and provide clearances for those who are wrongly accused. We know accomplishing either or both of these goals is difficult, but accomplishing one without the other is to wrongly condemn the federal community in the eyes of the citizens of this country.

Thank you for this opportunity to provide our comments and information. We look forward to cooperating with your subcommittee as your oversight of the IG community continues.

Sincerely,



G. Jerry Shaw
General Counsel

Enclosures

cc: Members of the Committee

Congressman Lee Hamilton

Congressman Peter Goss

February 7, 1997

SUBJECT: Mac Long Experience

FROM: Samuel W. Karickhoff
Research Chemist

TO: Fellow EPA Researchers

As you are probably aware, select portions of the EPA have been subjected to intense audits and investigations dating back to the early 90's by the Office of the Inspector General (IG). For the Athens Lab this saga, which began in 1992, reached a milestone on January 6, 1997, with the settlement of the Mac Long suit in the US Federal Court in Billings, MT. Mac's case came up late in the investigation and received little attention inside or outside the Agency, probably because of its lack of 'significance' (low buck, low ranking employee, lack of 'covert' appeal -- junior scientist tries to better himself and the Agency). In late '94, however, after other questionable issues raised against the Lab were swept off the table, Mac's case came to the fore for two reasons: (1) the IG investigation had not produced results in Athens; at that time IG staff performance evaluation was linked directly to inflicted punishment (i.e., firings, lawsuits, disciplinary actions, etc.), and (2) Mac was perceived as a possible way to net a bigger fish. Thus, the lawsuit and the beginning of 2 years of literal hell for Mac and Nan Long. The enclosed newspaper article, which resulted from the efforts of David Lewis to bring public attention to innocent victims of the IG activities in the Office of Research and Development (ORD), is an excellent documentation of Mac's ordeal, but I want to present some personal addenda and offer words of caution to all EPA employees lest we become too complacent about the institutional integrity of this organization and some of its functions. That is, given we are dedicated, hard working, honest, and productive we may believe that our careers will be nurtured and that we will be protected by this organization.

Over the past 25 years, ORD staff have been confronted with a rapidly expanding mission and a concomitant shrinking (or at best status quo) Fed work force. Managers and scientists were encouraged and in some cases directed to rely more and more on extramural resources (both people and dollars), but there was flexibility to build integrated research programs using R&D sponsored research to augment/complement the Fed effort. There existed an air of mutual accommodation throughout the Agency, both ORD management and Grants Administration, to use existing vehicles (cooperative agreements and contracts) to get the job done. As a scientist, I felt my primary responsibility was the science aspects of program development. Although I was periodically 'trained' in grants administration, I relied on managers and procurement specialists to assist me in the procedural and policy aspects of program development and management. Furthermore, given their approval, I assumed I was 'in compliance' and free from risk. The IG investigation and in particular the Mac Long case has seriously shaken if not destroyed my confidence in our system.

The IG investigation in Athens focused primarily on assistance and procurement activities. They didn't uncover fraud and abuse; it was more that they didn't like what we were doing and didn't like existing ORD policies and procedures. They took the most restrictive/conservative viewpoint on every policy and procedural issue. In addition, 'the appearance of impropriety' (judged through their eyes) was sufficient cause to cite or even indict. The fallout from this investigation was a much-talked-about explosion in policy and much more restrictive procurement system, but for Mac Long, there was a much more significant ramification. Under fire, our 'nurturing and accommodating' system turned its back. Some Headquarters management and oversight officials withdrew or even denied previous support, pushing the ultimate responsibility for program 'legitimacy' (even on policy and procedural issues) to the lowest possible level. In the end, Mac was essentially on his own to defend himself and the system that created his program. The newspaper article is an accurate rendition of Mac's case; the following are anecdotal addenda that accentuate the gravity of it all. As I stated previously, a major reason for suing Mac was to try to catch a bigger fish,

namely the Athens Division Director or the Chemistry Head at Montana State University (MSU). At the outset Mac was offered a reduced penalty for setting up and conducting canned interviews. Before tendering this offer, the IG investigators had gone so far as borrowing sophisticated recording/transmission equipment from the IRS for live monitoring of these meetings by the Athens Police or Federal Marshals to supposedly insure Mac's safety. Makes one wonder what sort of operation they thought we had here. When Mac refused to participate in this entrapment scheme, the IG pushed the case into and through the federal court. Failing in Georgia, they took the case to Montana where US attorneys built their case from IG files without as much of a phone call to corroborate or refute any of the evidence. In arguing against a change in venue, they cited 12 key witnesses at MSU; in the end only 3 were deposed in Bozeman, MT as opposed to 7 in Athens, GA and 9 in Washington, DC.

In IG and Court documents, the defendant (Jesse MacArthur Long) was referred to by a wide variety of names and aliases, often interjecting the name 'James' (my 'favorite' being James a.k.a. Jesse). Whereas these name discrepancies may have been carelessness, ineptitude, or deliberate character assaults, the meaning of the language in these Court documents was unmistakable. Mac was accused of everything from "running a scam" in Montana and instructing an MSU accountant to "cook the books" to hide the fraud, to complicity with the Athens Lab Director to deceive higher management and grants administration officials. This character and integrity bashing continued until this past August when, in the last brief before the settlement, the US attorney wrote,

> **"In neither cause of action in this case has the United States accused the defendant of violating the law or breaching a contract. ... The United States is not seeking penalties or multiple compensatory damages that could in any way be construed as punishment for wrongdoing."**

What they were now saying, after 2 years of accusing him of wrongdoing, was that Mac had, in fact, done nothing wrong, but

> **" may have benefitted from the wrongful conduct, or breaches, of third persons."**

and as such must make restitution to the Government. Mac now faced the dilemma that, instead of defending himself of wrongdoing, he must now defend the process/system, or some unspecified third party or parties for some unspecified wrongful conduct that may have happened. To make matters worse, in the aftermath of the IG investigation, Mac could no longer count on key players outside the Athens Lab to be forthright in their roles in, or knowledge/support of, his program — thus, the incentive to settle. In addition, settlement was the best option financially; a trial would have cost more than the settlement.

My final reflection concerns the cost of it all. The newspaper article was unclear on this; the final cost to Mac and Nan was $114,444.47. This does not include annual leave and the enormous number of hours of personal time spent fighting this lawsuit. Staff at the Athens Lab have contributed over $4000 to a defense fund for Mac. I have never been the sort of person to beg or even ask for money, but I provide here the name and location of the fund. In many ways, Mac Long took a hit for us all — it could have happened to any of us.

Checks payable to:	Mac Long Defense Fund
Address:	Athens First Bank and Trust
	P.O. Box 188
	Watkinsville, Georgia 30677

Contributions are anonymous and not tax deductible. Please put the account number 0551529316 on your check.

03:46PM 202 833 8082 P.10/15

THE ATLANTA CONSTITUTION

TUESDAY, JAN. 1997

Focus on EPA INVESTIGATION

An aggressive government effort led by Inspector General John Martin to find waste, fraud and abuse at the EPA has turned up no violations, but scientists say the tough crackdown is discouraging the EPA from expanding its research expertise and basing its policy decisions on strong science.

Cleared chemist's victory leaves bitter tast

Photos by CHAS BANK / S

My wife and I "have both suffered an enormous physical, emotional, financial disaster. It was a terrible injustice t decent, honest, hardworking people should not have had to endure."

MAC LONG
EPA research chemist

By Jeff Nesmith
WASHINGTON BUREAU

Washington — More than three years after the U.S. government accused Jesse MacArthur "Mac" Long of defrauding taxpayers out of the cost of obtaining a Ph.D., the complaint against the Environmental Protection Agency scientist has been dropped.

But to Long, a 53-year-old chemist at the EPA research laboratory in Athens, Ga., the legal papers closing the case represented a bitter victory.

In return for a U.S. attorney's agreement to take no further action against him, Long agreed to pay $24,000 in "reimbursement" for taxpayers' money that paid for tuition and other expenses associated with the doctorate.

Before closing the case, government lawyers said they never intended to accuse him of wrongdoing, violating any law or breaching any contract. But, they said, in receiving the degree from Montana State University he may have benefited from "wrongful conduct" on the part of someone else.

Long says he did nothing wrong but that in order to pay legal costs and the agreed-to settlement, he and his wife have exhausted their life savings and been forced to put a second mortgage on their home in Athens.

"We are good people and we did not deserve this," said Long, a former chemistry teacher at Osborne High School in Marietta.

The doctorate that got Long into trouble had been a proud achievement. It meant he had come far since the day more than four decades earlier when his father walked out on the family, leaving Long's mother, a poor, uneducated Georgia woman, with no support and six children to feed.

At a special lecture, marking his successful presentation of a doctoral thesis, the university provided a pot of coffee and Long brought cookies.

As Long discussed his research, he did not know that two government investigators were seated in the audience. They had filed quietly into the lecture hall, helped themselves to some of his cookies and sat down.

He had never met either of them and did not know he was under investigation. Yet they would recommend a week later that the U.S. attorney in Macon obtain an indictment against him in connection with the Ph.D.

Many of Long's co-workers, who have raised $3,300 in a legal defense fund, say he is an honest, dedicated government worker, whose career and savings were laid waste by a ruthless effort to find examples of "fraud, waste and abuse" in government.

Some career EPA scientists see his ordeal as much more than one man's fight to save his reputation. The charges against him grew out of a wide-ranging investigation of several EPA research laboratories by the EPA Office of Inspector General (IG), the agency's internal "watchdog" organization.

"EPA scientists and their frontline managers received brutal treatment during IG investigations that federal hearing examiners subsequently ruled were carried out in bad faith," said EPA microbiologist David Lewis, also of Athens.

During the IG's investigations of EPA labs, dozens of scientists were interrogated, and some were threatened with criminal charges. Several were fired, suspended or demoted — only to be reinstated when actions against them were appealed. In some cases, the government was ordered to pay their legal fees.

Long's case and others growing out of the IG probe raised a raft of thorny public policy issues, including the direction of the agency's scientific programs and the level of expertise expected and encouraged at EPA.

EPA has failed to establish a reputation as an outstanding scientific organization. A chorus of complaints about the agency's science has been led primarily by regulated industry, especially chemical manufacturers. However, university researchers, environmentalists and even some EPA managers have charged that scientific achievement at EPA is stagnant.

David Lewis says EPA scientists and managers "received brutal treatment" in the investigations.

Ironically, it was Long's attempt to broaden his expertise that caused him to run afoul of the controversial investigation by Inspector General John Martin. Martin launched probes of the Athens lab and several others while under stinging criticism in Congress for allegedly failing to more vigorously expose examples of fraud, waste and abuse at EPA.

To allay criticism from a House subcommittee, Martin rewrote the criteria under which his top investigators received their annual federal employee job performance evaluations. The new standards pressured them to produce indictments, administrative action or civil lawsuits in at least 25 percent of the cases they supervised.

They were awarded extra "points" when one of their cases attracted the interest of a member of Congress or got publicity for Martin's office.

IG investigators, perhaps with an eye on the pressure to get formal charges filed against an EPA employee, concluded that beginning in 1989 Long manipulated bureaucratic processes to obtain benefits to which he was not entitled — the Ph.D. — at taxpayers' expense.

"I didn't grow up with a lot of money," Long said in an interview. "But because of the way I grew up, it was instilled in me that the most important values you can have are honesty and integrity. That's what this lawsuit is challenging, the two values I hold most dear."

Long worked as the school janitor while attending high school in Jackson, Ga., in the early 1960s. A state Board of Regents scholarship helped pay for his education at the University of Georgia.

After graduating f[illegible] the university, he taught at the h[illegible]etta high school — and still speaks proudly of the year students dedicated the yearbook to him. In 1975, he joined the EPA laboratory in Athens. In 1985, he was assigned to assist the director of the Athens laboratory, Rosemarie Russo, with administrative tasks.

In 1988, Long applied for a training program under which EPA sponsors a limited number of employees for postgraduate studies. He was turned down.

Five years ago, an independent panel convened by then-EPA Administrator William K. Reilly concluded that the agency had provided "insufficient incentives to reward the production of high-quality science."

Long said that after he was rejected for the long-term training, Russo directed him to prepare the paperwork to have himself temporarily detailed to Montana State to do the research he had proposed.

The transfer was approved by EPA officials in Athens and Washington. Long and his wife packed their belongings into a U-Haul truck and drove to Bozeman, where he enrolled for the 1989-90 academic year.

His research was devoted to gas chromatography, a technique used by chemists to detect minute concentrations of chemicals.

He says his work advanced the state of the art in gas chromatograpy. The Ph.D. was an unintended outcome, he says.

Court records show that although the IG's office proposed that Long be indicted, the Macon prosecutor declined to take the case. Lorraine Fairchild, an IG investigator, was directed by her superiors to seek an explanation. Fairchild said later she was told the case did not involve "drugs or guns and a bunch of peanut farmers" on the Georgia jury would not understand it.

The failure to get an indictment did not end the IG's interest in Long, however. On Nov. 9, 1994, Fairchild and another investigator knocked on the front door of Long's home in Athens. They handed him a letter, advising him that the U.S. attorney in Billings, Mont., intended to file a civil lawsuit against him for $117,317.83, the amount the investigators had concluded the government paid in salary.

tuition and other expenses involved in the degree.

As Long stared at the letter, Fairchild said, she asked him to engage laboratory director Russo in a secretly recorded telephone conversation in an effort to implicate him in the case.

Although Fairchild said she told Long the demand for damages could be reduced if he cooperated, he refused. The Montana U.S. attorney filed the lawsuit on Dec. 13, 1994, charging that Long had manipulated the EPA grant process to set up his own Ph.D. program at government expense.

In a sworn deposition in the court case, Fairchild described the mid-evening visit to Long's home, the effort to get him to wear the recording device, her efforts to get the U.S. attorney in Macon to take the case to a federal grand jury and his refusal to do so — and how much she enjoyed eating Long's cookies at the Ph.D. ceremony.

Marsin retired this month, coincidentally on almost the exact day the lawsuit against Long was being closed. A few weeks before leaving the job, he said the probe by his office of agency research laboratories, and of scientists such as Long, had identified numerous management problems that needed to be corrected.

He said the pressure placed on his supervising investigators to produce "criminal and/or administrative action" against the people they investigated was a "sort of incentive program" designed to encourage them to select significant cases.

But the series of audits and investigations of the EPA laboratories has sent a different message, some scientists say.

"The most amazing thing to me about the whole thing is they spent literally weeks with auditors and investigators here, and they didn't find anybody who as much as stole a pencil," said Sam Karickhoff, a research chemist at the Athens lab.

"It appeared to me that the IG people came, at least to our lab, with a preconceived idea of guilt and an agenda to prove their preconceived notions," said Robert Swank, director of research at the 70-employee laboratory. "I think the results have been a major negative impact on morale and productivity."

Late last year, the federal judge presiding over the case in Montana began to pressure the government and Long to settle it without a trial. The government offered to drop all charges if Long would pay the reduced sum of $24,000.

Stanley Kaleczyc, Long's Montana lawyer, said the expense of going to trial would probably add more than that to Long's legal bills.

"In the end, he's probably going to spend about as much on his defense as they are trying to get out of him," Kaleczyc said in an interview. "But he believes his integrity has been impugned and he's fighting it."

Long said he decided he and his wife could fight no longer, so he agreed to the settlement.

"Prior to this, the only black marks on my record were two speeding tickets," he said. "We have both suffered an enormous physical, emotional, financial disaster. It was a terrible injustice that decent, honest, hardworking people should not have had to endure."

July 2, 1997

G. Jerry Shaw, Esq.
Senior Executive Association
815 Connecticut Avenue, N.W.
Suite 800
Washington, D.C. 20006

Dear Mr. Shaw:

We are writing you to request assistance in exposing wrongdoing on the part of the Inspector General and the Deputy Inspector General at the Office of Personnel Management. Your past efforts to correct and hold Inspectors General accountable met with great success. We are hopeful that inquiries by you or the association may have some impact on this egregious behavior.

For several years the IG and Deputy IG have flaunted personnel rules and regulations dealing with promotions, evaluations, and hiring. While the agency recognized what was occurring, they stood idly by and did nothing. Lately, within the last 2-3 months, the IG and Deputy have been on a promotion kick. They have upgraded positions, which are supportable on paper but in actuality the employees do not perform the revised duties, and promoted at will.

Up until now they have stayed out of the senior executive service, but now they have preselected Gary Yauger for the newly upgraded position of Assistant Inspector General for Investigations. Mr. Yauger has been told by the IG and Deputy that the SES position is his for the asking. The vacancy announcement number is 97-SES-003 and closes on July 30, 1997.

Mark our words, Mr. Yauger will be selected. The IG and Deputy have made a mockery of the civil service promotion system and now they are going to extend it to the senior executive service.

We have written Director James King in the past but evidently the agency is afraid to take on the IG. It's understandable since he's the most ruthless person we've ever met. Our concern is so great that we are afraid to identify ourselfs for fear of retaliation. They have ruined careers before and would not hesitate to now. Since this is an administrative matter, the Integrity Subcommittee of the President's Council on Integrity and Efficiency will only refer it back to the agency for handling, and as we've stated, the agency has and will do nothing.

For your information, in the recent past we have notified the agency of the following

G. Jerry Shaw, Esq.

preselections by the IG and Deputy IG:

Gary Acker	*OPM vacancy announcement # 97-080-EST*	*GS-14*
Hattie B. Dickens	*OPM vacancy announcement # 97-105-EST*	*GS-09*

(The Deputy's former secretary.)

Charles Gillum	*OPM vacancy announcement # 97-118-EST*	*GS-13*
Michael Kortick	*OPM vacancy announcement # 97-118-EST*	*GS-13*
Charles Zimmerman	*OPM vacancy announcement # 97-118-EST*	*GS-13*
Michelle Schmitz	*OPM vacancy announcement # 97-118-EST*	*GS-13*

*(These four promotions will place **all** the investigators above the journeyman level!)*

Delores Fogle	*OPM vacancy announcement # 97-136-EST*	*GS-09*

(The Deputy's current secretary. Unfortunately, she cannot perform basic word processing, which is a key element of the position.)

Joseph Frech	*OPM vacancy announcement # 97-154-EST*	*GS-12*

(The position description was modified to include duties to support the grade increase, but not performed by the incumbent.)

It has become such an embarrassment that the OIG no longer informs the employees when selections are made. The first two positions, Mr. Ackers' and Ms. Dickens', were never announced in the OIG. The remaining positions, as far as we know, have not been selected yet, but they won't be announced either.

We have a unique problem here, where the agency is afraid of the IG and therefore he is allowed to violate civil service rules and regulations at will. We are hopeful that maybe questions from an outside entity might provide a little backbone for the agency to stop this abuse.

○