



Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

Senate Committee on Homeland Security and
Governmental Affairs

concerning

Strengthening the Unique Role of the
Nation's Inspectors General

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I. Introduction

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

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

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

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

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

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

II. The Role of Inspectors General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Proposals to Strengthen the Role of Inspectors General

1. Fixed Term of Office and Removal for Cause

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

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

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

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

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

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

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

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

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

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

2. Statutory Councils of Inspectors General

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

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

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

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

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

3. Training

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

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

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

4. Resources and Direct Budget Submission

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

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

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

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

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

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

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

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

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

I recognized that this Committee cannot solve the resource issue on its own. However, it can implement a proposed change to the IG Act that would provide greater transparency on the subject. I agree with the proposal to allow

OIGs to submit their budget requests directly to the OMB and Congress and independently make the case for resources.

5. Inspector General Pay

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

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

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

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

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

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

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

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

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

6. Selection of Inspectors General

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

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

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

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

7. Miscellaneous Amendments to the IG Act

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

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

III. Limitation on the Jurisdiction of the DOJ OIG

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

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

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

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

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

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

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

² The OIG now generally investigates allegations against FBI and DEA employees that are criminal, involve high-level employees, or concern matters of significant public interest or those that would present a conflict of interest for the FBI or DEA internal affairs units to investigate. The OIG normally refers other allegations back to the FBI or DEA internal affairs units for them to handle.

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

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

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

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

This concern is not merely hypothetical. Recently, the Attorney General directed OPR to investigate aspects of the removal of U.S. Attorneys. In essence, the Attorney General assigned OPR – an entity that does not have statutory independence and reports directly to the Deputy Attorney General and Attorney General – to investigate a matter involving the Attorney General's and the Deputy Attorney General's conduct.⁴ The IG Act created OIGs to avoid this type of conflict of interest. It created statutorily independent offices to investigate allegations of misconduct throughout the entire agency, including

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

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

actions of agency leaders. All other federal agencies operate this way, and the DOJ should also.

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

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

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

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

IV. Conclusion

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

I would be pleased to answer any questions.