

TESTIMONY OF THE HONORABLE EARL E. DEVANEY
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BEFORE THE UNITED STATES SENATE COMMITTEE
ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
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Mr. Chairman and members of the Committee, I want to thank you for the opportunity to address the Committee this morning about several emerging issues that affect the unique role played by Inspectors General (IG). My hope is that we will have ample time for a long overdue dialog this morning on these important issues. I also want to make it clear that my testimony today reflects my own views, which may or may not be shared by my colleagues.

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

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

IG Independence

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

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

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

IG Pay

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

PAS IG salaries are currently capped by statute at Level IV of the Executive Schedule (\$145,400) and are appropriately excluded from the benefits of the performance-based pay system Congress established with the passage of the 2004 Defense Authorization Act for career senior executives (SES). Of course, PAS IGs have, as a matter of practice, chosen not to accept bonuses from Agency Heads since the early 1990's to further preserve their independence.

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

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

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

IG Budget Submissions

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

Relationship between the IG and Agency Head

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

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

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

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

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

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

Integrity Committee

As I mentioned earlier, I have served on the PCIE/ECIE Integrity Committee for over 5 years. Although I have dropped several hints that my time on this Committee has been served, I have not found any of my colleagues eager or willing to take my place.

The truth is that no one could possibly enjoy sitting in judgment of one's peers; it can be a very difficult role to play.

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

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

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

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

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

Conclusion

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

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