

Statement
by
Ms. Eleanor Hill
Before the
Committee on Homeland Security and Governmental Affairs
United States Senate
on
“Strengthening the Unique Role of the Nation’s Inspectors General”

July 11, 2007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In closing, I would only add that I have been genuinely dismayed by reports and suggestions in recent years of less Congressional oversight, coupled with reports of less independence and less professionalism in the IG community. I am no longer in government and, as an investigator, I know better than to prejudge the accuracy of individual reports without access to all the facts. I do not know to what degree all those reports are true. I can only say that, for the good of the country, I hope they are not. My own experience over the years has convinced me that the rigorous, but always objective and fair, exercise of the Congressional

oversight power, bolstered by the work of an independent and professional IG community, is clearly the surest way to promote integrity, credibility, and effectiveness in government. The American people deserve, and quite rightly, expect no less. Thank you and I welcome any questions you may have.