



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

House of Representatives Committee on Oversight and Government
Reform

concerning

Strengthening Agency Oversight: Empowering the Inspectors
General Community

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Chairman Issa, Congressman Cummings, and Members of the Committee:

Thank you for inviting me to testify at today's hearing. The need for strong and effective independent oversight over agency operations has never been more important. The taxpayers rightly expect much from Inspectors General, and it is important that we have the necessary tools to allow us to conduct our significant oversight responsibilities. The Inspector General Act provides us with many of those tools. However, I and my colleagues in the Inspector General community have identified several areas where our ability to conduct effective and independent oversight can be strengthened. I would like to highlight for you today two of those areas that directly impact the work of the Office of the Inspector General at the Department of Justice.

Access to Documents Relevant to OIG Reviews

For any OIG to conduct effective oversight, it must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its review. This is the principle codified in Section 6(a) of the Inspector General Act, which authorizes Inspectors General "to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." This principle is both simple and important, because refusing, restricting, or delaying an OIG's access to documents may lead to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from correcting serious problems in a timely manner.

Most of our audits and reviews are conducted with full and complete cooperation from Department components and with timely production of material. However, there have been occasions when our office has had issues arise with timely access to certain records due to the Department's view that access was limited by other laws. For example, as this Committee is aware, issues arose in the course of our review of Operation Fast and Furious regarding access to grand jury and wiretap information that was directly relevant to our review. Similar issues arose during our ongoing review of the Department's use of Material Witness Warrants, which we will be reporting on in the coming months. Ultimately, in each instance, the Attorney General or the Deputy Attorney General provided the OIG with permission to receive the materials because they concluded that the two reviews were of assistance to them. And the Attorney General and Deputy Attorney General have made it clear that they will continue to provide the OIG with the necessary authorizations to enable us to obtain records in future reviews. However, requiring an Inspector General to obtain permission from Department leadership in order to be allowed to review critical documents in the

Department's possession impairs the Inspector General's independence and conflicts with the core principles of the Inspector General Act.

We have had similar issues raised regarding our access to some other categories of documents, including FISA information, which is obviously critical for us to review in connection with our national security reviews. And I understand that several Inspectors General at other federal agencies have had similar issues regarding access to records within their agencies. Although our office has not yet had an instance where materials were ultimately withheld from us that were necessary to complete a review, we remain concerned about the legal questions that have been raised and the potential impact of these issues on our future reviews. Moreover, issues such as these have, at times, significantly delayed our access to documents that were essential to conducting our reviews, thereby substantially impacting the time required to complete the reviews.

My view, and I believe the view of my colleagues in the Inspector General community, is straightforward and follows from what is explicitly stated in the Inspector General Act: An Inspector General should be given prompt access to all relevant documents within the possession of the agency it is overseeing. For a review to be truly independent, an Inspector General should not be required to obtain the permission or authorization of the leadership of the agency in order to gain access to certain agency records, and the determination about what records are relevant and necessary to a review should be made by the Inspector General and not by the component head or agency leadership. Such complete access to information is a cornerstone of effective independent oversight.

Limitations on the DOJ OIG's Jurisdiction

Let me briefly turn to an oversight limitation that is unique to my office: Unlike Inspectors General throughout the federal government, our office does not have authority to investigate all allegations of misconduct within the agency we oversee. While we have jurisdiction to review alleged misconduct by non-lawyers in the Department, under Section 8E of the Inspector General Act, we do not have the same jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers – namely, when they are litigating, investigating, or providing legal advice. In those instances, the Inspector General Act grants exclusive investigative authority to the Department's Office of Professional Responsibility (OPR). As a result, these types of misconduct allegations against Department lawyers, including those that may be made against the most senior Department lawyers (including those in leadership positions) are handled differently than misconduct allegations made against law enforcement agents or other Department employees. My office has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department

employees, and such a system cannot help but have a detrimental effect on the public's confidence in the Department's ability to review misconduct by its own attorneys.

This jurisdictional limitation on our office is a vestige of the fact that OPR pre-existed the creation by Congress in 1988 of the Office of the Inspector General for the Department of Justice, resulting in the statutory carve-out on our jurisdiction. The Department has consistently taken the position that because OPR has specialized expertise in examining professional conduct issues involving Department lawyers, OPR should handle professional misconduct allegations against Department attorneys. Whatever merit such an argument may have had in 1988 when the OIG was established by Congress, it is surely long outdated.

Over the past 25 years, our Office has shown itself to be capable of fair and independent oversight of the Department, including investigating misconduct allegations against its law enforcement agents. Indeed, a similar argument was made many years ago by those who tried to forestall our Office's oversight of alleged misconduct by FBI agents. This argument against Inspector General oversight of the FBI was rejected, and we have demonstrated through the numerous investigations and reviews involving Department law enforcement matters since then, including our recent Operation Fast and Furious review, that our office has the means and expertise to handle the most sophisticated legal and factual issues thoroughly, effectively, and fairly. Moreover, Inspectors General across the federal government have the authority to handle misconduct allegations against lawyers acting as such within their agencies, and they have demonstrated that they are fully capable of dealing with such matters. Seen in this context, the carve-out for OPR from our Office's oversight jurisdiction is best understood as an unnecessary historical artifact.

Eliminating the jurisdictional exception for OPR in the Inspector General Act would ensure the ability of our Office to fully review and, when appropriate, investigate allegations of misconduct of all Department employees. Moreover, even with such a jurisdiction change, the Department's OPR would almost certainly remain in place to handle "routine" misconduct allegations that do not require independent outside review by an OIG, much as the internal affairs offices at the FBI and the Department's other law enforcement components remain in place today even though the OIG's jurisdiction was expanded years ago to include those components. The current system with the law enforcement components works well, particularly given the OIG's limited resources. Each day, the OIG reviews new allegations of misconduct involving law enforcement personnel and determines which ones warrant investigation by an independent OIG, such as those that involve high-level personnel, those that involve potential crimes and other serious misconduct, and those that involve significant issues related to conduct by management. Those that we

determine do not meet these standards are returned to the law enforcement component's internal affairs unit for handling, although the OIG frequently requires the internal affairs unit to report back to the OIG on the outcome of its investigation or review.

Our Office's statutory and operational independence from the Department ensures that our investigations of alleged misconduct by Department employees occur through a transparent and publicly accountable process. Unlike the head of OPR, who is appointed by the Attorney General and can be removed by the Attorney General, the Inspector General is a Senate confirmed appointee who can only be removed by the President after notification to Congress, and the Inspector General has reporting obligations to both the Attorney General and Congress. Additionally, the OIG's strong record of transparency is vital to ensuring the Department's accountability and enhancing public confidence in the Department's operations. Giving the OIG the ability to exercise jurisdiction in all attorney misconduct cases, just as it does in matters involving non-attorneys throughout the Department, would enhance the public's confidence in the outcomes of these important investigations and provide our office with the same authority as other Inspectors General.

This concludes my prepared statement, and I would be pleased to answer any questions that you may have.