



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

Senate Committee on Homeland Security and Governmental Affairs
Subcommittee on the Efficiency and Effectiveness of Federal
Programs and the Federal Workforce

concerning

The Roles and Effectiveness of Oversight Positions
Within the Federal Workforce

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Chairman Tester, Senator Portman, and Members of the Subcommittee:

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. And that is what we do at the Office of the Inspector General (OIG) for the Department of Justice (Department or DOJ) – conduct thorough audits, investigations, evaluations, and reviews in order to assess whether the Department is operating effectively and efficiently, and to root out waste, fraud, abuse, mismanagement, and misconduct. The taxpayers rightly expect much from us, and I believe we have consistently demonstrated the value and importance of the work that we do. I am pleased to highlight for you some examples of the recent oversight work that the dedicated staff in our office has performed and the impact it has had, as well as to outline for you some of the obstacles that we have faced in conducting that independent oversight.

Examples of Recent DOJ OIG Oversight

During my 18 months as Inspector General, our office has issued numerous important reports. For example, our report on Operation Fast and Furious and Operation Wide Receiver detailed a pattern of serious failures in both the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) and the U.S. Attorney's Office's handling of the investigations, as well as in the Department's response to Congressional inquiries about those flawed operations. Our interim report on the Department's handling of known or suspected terrorists in the federal Witness Security (WITSEC) Program detailed significant information sharing failures that may have enabled WITSEC Program participants who were on the Transportation Security Administration's No Fly list to fly on commercial airplanes using their new government-issued identities. Another recent OIG report examined the ATF's use of income-generating undercover operations and found a serious lack of oversight by ATF, the misuse of proceeds, and failures to properly account for cigarettes with a retail value of over \$100 million and other assets purchased during the investigations.

We also have conducted, and continue to conduct, extensive oversight of the Department's use of its various national security-related authorities, including those under the Patriot Act. For example, we issued reports on the Federal Bureau of Investigation's (FBI) activities under Section 702 of the *Foreign Intelligence Surveillance Act (FISA) Amendments Act*; the Department's coordination of its efforts to disrupt terrorist financing; and the FBI's Foreign Terrorist Tracking Task Force's sharing of information. Additionally, we expect to issue in the near future reviews on the FBI's use of National Security Letters (NSL), Section 215 Orders, and Pen Register and Trap-and-Trace Authorities under FISA, and the management of terrorist watchlist nominations. Additionally, we recently reviewed the Department's domestic use of drones or

unmanned aircraft systems (UAS), the privacy implications of the use of UAS, and the Department's support and provision of UAS to local law enforcement agencies and non-profit organizations.

We also have completed many reports that did not necessarily make headlines but will help make the Department's operations more effective and efficient and result in important savings of taxpayer dollars. In the past 12 months, we issued 90 reports, which included annual financial statement audits, information security audits, and audits of grant recipients. During this same period, our Investigations Division received more than 12,000 complaints, had dozens of arrests and convictions resulting from corruption and fraud cases, and investigated allegations that resulted in more than 250 administrative actions against Department employees.

The independent oversight conducted by our office routinely produces measureable benefits for the taxpayer. Over the past 10 fiscal years, our office has identified over \$900 million in questioned costs – more than the OIG's budget during the same period. In addition, we have identified nearly \$250 million in taxpayer funds that could have been put to better use by the Department, and our criminal and administrative investigations have resulted in more than \$118 million in civil, criminal, and non-judicial fines, assessments, restitution, and other recoveries over that same period.

Moreover, when we issue our audits and reviews, we regularly make recommendations to the Department on how it can reduce costs and improve its programs. While many of our recommendations have already been implemented and resulted in improvements at the Department, hundreds of OIG recommendations remain open. The Department must redouble its efforts to adopt and implement these recommendations.

I am particularly proud of having instituted the first-ever DOJ OIG whistleblower ombudsperson program, and I am committed to ensuring that whistleblowers in the Department can step forward and report fraud, waste, abuse, and misconduct without retaliation. I have seen first-hand the important role that whistleblowers play in advancing the OIG's mission to address wasteful spending and improve the Department's operations, and whistleblowers should never suffer reprisal for coming forward with what they reasonably believe to be evidence of wrongdoing. The whistleblower ombudsperson program recently prepared a video entitled "Reporting Wrongdoing: Whistleblowers and their Rights and Protections," which was used in training programs for all OIG employees, and the OIG is working to provide this important training to other Department components. Our efforts were recognized this fall when the U.S. Office of Special Counsel certified that our Office had met its statutory obligation to inform its workforce about the rights and remedies available under the Whistleblower Protection Act. We will continue to do all we can to ensure that we are responsive to complaints that

we receive, and to respond appropriately to allegations of retaliation against whistleblowers.

Challenges Facing the DOJ OIG

Our audits, reviews, and investigations exemplify the professionalism and determination of the OIG staff to conduct thorough oversight, even in an environment of uncertain resources and occasional impediments. I would like to briefly highlight for you some of the challenges we face in conducting that oversight.

Impact of Sequestration

As we all know, these are difficult budgetary times across the government, including for Inspectors General. Even under these challenging resource constraints, we have produced quality reports and continued to conduct thorough investigations.

Yet, sequestration is having a real impact on Inspectors General. Because the great majority of our budget supports salaries for personnel, the substantial budget reduction for our office in FY 2013 combined with the uncertain budget situation for FY 2014 has caused me to lower our staffing ceilings by approximately 40 FTE since my arrival in April 2012, representing approximately 8 percent of our staff. While we always strive to improve our productivity and efficiency, further reductions in personnel will inevitably require us to reduce the number of audits, investigations, and reviews that we conduct, and may impact how we proceed with the audits, investigations, and reviews that we are able to perform.

In addition to reducing our staff through attrition, we also have implemented a number of significant cutbacks that have had an impact on how we perform our work. For example, our need to drastically curtail travel costs required us, in some instances, to limit the scope of reviews, to put entire audits on hold, and to emphasize the importance of cost considerations in selecting audits at the expense of substantive considerations. It has long been our belief that an on-site inspection is necessary in most cases in order to achieve the highest quality of review that is properly expected of an OIG. These visits allow our auditors and inspectors to better gauge how processes are conducted and, in turn, to potentially offer the most useful recommendations for improvement. Yet, our ability to conduct these on-site inspections has been necessarily limited due to budget cutbacks.

Despite these financial challenges, I am confident that the dedicated professionals in our office and in all OIGs will continue to provide extraordinary service to the American public.

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 relates 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 access to certain records due to the Department's view that access was limited by other laws. For example, issues arose in our review of Operation Fast and Furious regarding our access to grand jury and wiretap information that was directly relevant to our review, and to wiretap information that was directly related to our ongoing review of the Department's use of Material Witness Warrants. Ultimately, in each instance, the Attorney General and the Deputy Attorney General provided the OIG with written permission to receive the materials because they concluded that the two reviews were of assistance to them. While 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, requiring an Inspector General to obtain a memorandum from Department leadership in order to be allowed to review critical documents in the Department's possession impairs our independence and conflicts with the core principles of the Inspector General Act.

We have had similar issues 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 our 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, delayed our access to documents that were essential to conducting our reviews, thereby substantially impacting the time required to complete the review.

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 approval 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 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 conclude by briefly turning to a limitation on our oversight ability that is unique to my OIG: unlike OIGs 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 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 any that may be made against the most senior Department lawyers (including those in Departmental leadership positions), are handled differently than those made against agents or other Department employees. The OIG has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by others, and this disciplinary 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 OIG for the Department of Justice, resulting in the statutory carve-out on our jurisdiction. The Department has repeatedly 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 OIG oversight of alleged FBI agent misconduct. This argument against OIG oversight of the FBI was rejected, and as we have demonstrated through our

hundreds of reviews involving Department law enforcement matters since then, including our recent Fast and Furious review, our office has the means and expertise to handle the most sophisticated legal and factual issues thoroughly, effectively, and fairly. Moreover, other OIGs across the federal government handle misconduct allegations against lawyers in their agencies, and they have demonstrated that OIGs are fully capable of dealing with such matters. Seen in this context, the carve-out for OPR from the OIG's oversight jurisdiction is best understood as an unnecessary historical artifact.

Eliminating the jurisdictional carve-out for OPR in the Inspector General Act would ensure the ability of the OIG to fully review and, when appropriate, investigate allegations of misconduct of all Department employees. The OIG's statutory and operational independence from the Department ensures that the investigation of allegations of misconduct against Department employees occur through a transparent and publically 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 these cases, just as we do in matters involving non-attorneys throughout the Department, would enhance the public's faith 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.