Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

U.S. House of Representatives
Committee on Oversight and Government Reform

concerning

"Inspectors General: Independence, Access and Authority"

February 3, 2015

Mr. Chairman, Congressman Cummings, and Members of the Committee:

Thank you for inviting me to testify regarding the continued challenges to the independence, access, and authority of Inspectors General. During my nearly three years as the Inspector General of the Department of Justice (DOJ OIG), I have faced several challenges in these areas. Among the most serious is the continued refusal by the Department to recognize that Section 6(a) of the Inspector General Act authorizes the DOJ OIG to obtain access to all records in the Department's possession that we need in order to perform our oversight responsibilities.

In January, I also became the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and I am honored to serve the Inspector General community in that position. As DOJ Inspector General and CIGIE Chair, I look forward to working with this Committee to ensure that Inspectors General have the independence and tools they need to do their jobs on behalf of the American people, including making sure they have complete and timely access to agency information that is critical to performing their mission. We appreciate the bipartisan legislation in this area that was proposed by this Committee last year, and we look forward to continuing our work with the Committee to assist you in developing the legislative reforms that will help improve our ability to conduct strong and effective oversight.

Achievements of Inspectors General

Year in and year out, the Inspector General community has demonstrated its ability to root out waste, fraud, abuse, mismanagement, and misconduct through our audits, investigations, inspections, and reviews. Our efforts result in agencies that are more effective and efficient. The foundation for this work is our independence and central to that is our ability to access information that is in the possession of the agencies that we each oversee.

Inspectors General have a track record of delivering measurable and significant benefits to the taxpayers. For example, in FY 2013, the approximately 14,000 employees at the 72 federal Offices of Inspector General (OIG) conducted audits, inspections, evaluations, and investigations resulting in the identification of approximately $37 billion in potential cost savings and approximately $14.8 billion from investigative recoveries and receivables. In comparison, the aggregate FY 2013 budget of the 72 federal OIGs was approximately $2.5 billion, meaning that these potential savings represent about a $21 return on every dollar invested in the OIGs, in addition to the other valuable guidance we provide in the management of our agencies' operations and programs. And all of this was accomplished during a time of sequestration, when many of us in the Inspector General community, including the DOJ OIG, were faced with significant budget cuts that directly impacted our work. For example, staffing in my office fell by nearly ten percent, which inevitably affected our workflow, and is still below pre-sequestration levels. As we once again face the prospect of sequestration next year, many of us in the Inspector General community are concerned about the potential impact that another period of sharply limited resources could have on our ability to continue to

perform the kind and range of audits, inspections, evaluations, and investigations that are expected of us.

Speaking specifically for my Office, the DOJ OIG also has delivered outstanding value to the taxpayer. In FY 2014, the DOJ OIG identified over $23 million in questioned costs and nearly $1.3 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in the imposition or identification of almost $7 million in fines, restitution, recoveries, and other monetary results last fiscal year. This is in addition to the $136 million in audit-related findings and over $51 million in investigative-related findings that the DOJ OIG identified from FY 2009 through FY 2013. These monetary savings and recoveries, however, do not take into account some of our most significant reviews, which cannot be translated into quantifiable dollar savings but which address fundamental issues affecting national security, civil liberties, safety and security at federal prisons, effectiveness of law enforcement programs, and the conduct of Department employees. Examples include our reviews of the FBI's use of its authorities under the Patriot Act and the FISA Amendments Act, the government's information sharing prior to the Boston Marathon bombing, ATF's Operation Fast & Furious, the BOP's management of the compassionate release program, the Department's handling of known or suspected terrorists in the Witness Security Program, the FBI's management of the terrorist watchlist, nepotism by Department personnel, and our investigation of the FBI's corrupt relationship with James "Whitey" Bulger.

In addition, we have taken a number of significant steps during my tenure as DOJ Inspector General to address whistleblower issues, which are critical to ensuring that Department employees are encouraged to report waste, fraud, abuse, and misconduct, and that they can do so without fear of retaliation. The DOJ OIG was instrumental in creating and continues to chair CIGIE's Whistleblower Ombudsmen Working Group. I am proud of the efforts of this CIGIE Working Group and look forward to working with my fellow Inspectors General as CIGIE Chair to continue to move forward on important whistleblower issues.

Challenges Facing Inspectors General

While the Inspector General community has been able to generate impressive results, we face significant issues and challenges. For example, timely access to information in our agency's files remains an important issue and challenge. As I have testified on multiple occasions, in order to conduct effective oversight, an IG must have timely and complete access to documents and materials needed for its audits, reviews, and investigations. This is an issue of utmost importance, as evidenced by the fact that 47 Inspectors General signed a letter in August 2014 to the Congress strongly endorsing the principle of unimpaired Inspector General access to agency records.

The Inspector General Act could not be clearer – Inspectors General are entitled to complete, timely, and unfiltered access to all documents and records within the agency's possession. Delaying or denying access to agency documents

imperils an IG's independence, and impedes our ability to provide the effective and independent oversight that saves taxpayers money and improves the operations of the federal government. Actions that limit, condition, or delay access have profoundly negative consequences for our work: they make us less effective, encourage other agencies to take similar actions in the future, and erode the morale of the dedicated professionals that make up our staffs.

My Office knows these problems all too well, and we continue to face challenges in getting timely access to information from Department components. In particular, the FBI continues to take the position it first raised in 2010 that Section 6(a) of the Inspector General Act (IG Act) does not entitle the DOJ OIG to all records in the FBI's possession and therefore has refused DOJ OIG requests for various types of records. As I have indicated in my prior testimony before this Committee, the DOJ OIG and CIGIE strenuously disagree with the FBI's position, which we have both made clear to the Department's leadership.

In May 2014, in an attempt to resolve this dispute, the Department's leadership asked the Office of Legal Counsel to issue an opinion addressing the legal objections raised by the FBI. However, over eight months later, we are still waiting for that opinion even though, in our view, this matter is straightforward and could have been resolved by the Department's leadership without requesting an opinion from OLC. I cannot emphasize enough how important it is that OLC issue its opinion promptly because the existing process at the Department, which as described below essentially assumes the correctness of the FBI's legal position, undermines our independence by requiring us to seek permission from the Department's leadership in order to access certain records. The status quo cannot be allowed to continue indefinitely.

We appreciate the strong bipartisan support we have received from Congress in trying to address these serious issues. Most significantly, in December 2014, a provision was included in the Fiscal Year 2015 appropriations law – Section 218 – which prohibits the Justice Department from using appropriated funds to deny, prevent, or impede the DOJ OIG's timely access to records, documents, and other materials in the Department's possession, unless it is in accordance with an express limitation of Section 6(a) of the Inspector General Act. While the law only recently went into effect, it is clear that the Department has taken notice of it and it has already had an impact on our ability to get access to records in certain reviews.

However, despite Congress's reaffirmation in Section 218 of its support for DOJ OIG's access to records in the Department's possession, the FBI continues to maintain that Section 6(a) of the IG Act does not authorize access to certain records in its possession, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information, because of disclosure limitations in statutes other than the IG Act. As a result, the FBI is continuing the costly and time-consuming process it put in place prior to Section 218's enactment of reviewing documents responsive to DOJ OIG requests prior to producing them to us. The FBI has been undertaking this process in order to withhold from the DOJ OIG records that the FBI believes we are not legally entitled to receive, despite the absence of

any such limitation in the IG Act. Prior to the enactment of Section 218, this FBI document review process, in addition to consuming the FBI's resources, significantly impacted the FBI's timely production of material to us in several of our matters, including whistleblower retaliation investigations. As we are directed to do by Section 218, the DOJ OIG will be reporting to Congress impediments imposed by the FBI, or any DOJ component, to our timely access to records in the Department's possession that we are entitled to receive under Section 6(a) of the IG Act.

It is time to resolve this legal dispute. The FBI's position that Section 6(a) of the IG Act does not authorize the DOJ OIG to have access to various categories of records in its possession contradicts the plain language of the IG Act, Congress's clear intent when it created the DOJ OIG (as confirmed by the recent enactment of Section 218), the FBI's and the Department's practice prior to 2010 of frequently providing the very same categories of information to the DOJ OIG without any legal objection, court decisions by two different federal District Judges in 1998 and 1999 stating that the DOJ OIG could receive grand jury material, and the reasoning of a 1984 decision by the Office of Legal Counsel concluding that grand jury material could be provided to the Department's Office of Professional Responsibility.

The Department, in response to the FBI's questioning of our legal authority to review these types of records, has imposed a process whereby the Attorney General or the Deputy Attorney General may grant permission to the DOJ OIG to access such records if they conclude that specific reviews will assist them in the performance of their duties, and they have done so in each such review so far where the issue has arisen. However, no such permission is necessary under Section 6(a) of the Inspector General Act. Moreover, requiring an OIG to obtain permission from agency leadership in order to review agency documents seriously impairs Inspector General independence, creates excessive delays, and may lead to incomplete, inaccurate, or significantly delayed findings or recommendations.

We remain hopeful that the OLC opinion that has been sought by the Department's leadership will conclude that the IG Act entitles the OIG to independent access to the records and information to which we are entitled under the express terms of the IG Act. This will be one of the first topics that I intend to discuss with the Department's new leadership. However, should OLC interpret the IG Act in a manner that undercuts Congress's clear intent and limits the DOJ OIG's access to documents, I would be pleased to work with the Committee to develop a legislative remedy to address this issue.

Let me briefly mention other areas where I personally think the ability of Inspectors General to conduct strong and effective oversight could be enhanced. I expect that CIGIE will shortly be providing the Congress with a letter identifying the legislative priorities for the entire Inspector General community.

One such area is the capacity of Inspectors General to obtain testimony from former agency employees, contractors, and grant recipients. While the IG Act provides us with the ability to subpoena documents and records from those individuals, we are unable to require them to provide testimony, even if they have

critical evidence of fraud or of agency misconduct. I have seen several instances during my tenure as Inspector General where former employees of the Department (including those who resigned or retired immediately prior to a DOJ OIG interview), contractors, and grant recipients have refused to speak with the DOJ OIG, thereby impeding our ability to gather potentially valuable and relevant evidence. While I believe any authority granting Inspectors General the ability to compel testimony should include protections to ensure the authority is used appropriately and only when necessary, and that it does not inadvertently impair Justice Department prosecutions, I am confident based on my years as a former federal prosecutor and as a senior official in the Department's Criminal Division that such protections can readily be developed while also empowering Inspectors General to carry out their responsibilities. I look forward to discussing this issue further with the Committee.

Another area where legislation could enhance the ability of Inspectors General to conduct strong and effective oversight is in addressing the limitations on our ability to obtain and match readily available information across Executive Branch agencies in furtherance of our efforts to combat fraud and misconduct. These limitations arise out of the Computer Matching and Privacy Protection Act (CMPPA). The information at issue currently exists within the possession of government agencies – it does not require any further collection of documents or information – and Inspectors General of the agency are already entitled to access it under the IG Act. Yet the CMPPA contains provisions that impact the ability of Inspectors General to efficiently obtain information from another agency and to share it with each other. The timely use of such data by Inspectors General to identify those who improperly receive federal assistance, federal grants or contracts, or duplicative payments will improve program efficiency, enhance recovery of improper payments, and empower Inspectors General to better address waste, fraud, and abuse in federal programs. In my view, exempting Inspectors General from the CMPPA would greatly assist our ability to ensure that federal programs are effective and efficient without undermining the purposes of that law.

Finally, I am aware of the recent questions that have been raised relating to the work of CIGIE's Integrity Committee, including with respect to the timeliness of its work and the transparency of its efforts. One of my first meetings as Chair of CIGIE was with the Assistant Director of the FBI, who chairs the Integrity Committee, in order to discuss ways to address these issues. OIGs must maintain the highest levels of accountability and integrity, and as Chair of CIGIE I will make it a top priority to improve the procedures for the Integrity Committee.

Conclusion

In conclusion, I look forward to working closely with this Committee to ensure that Inspectors General continue to be empowered to provide the kind of independent and objective oversight for which they have become known, and which the taxpayers deserve. This concludes my prepared statement, and I will be happy to answer any questions the Committee may have.