



Office of the Inspector General
United States Department of Justice

Statement of Robert P. Storch
Deputy Inspector General, U.S. Department of Justice

before the

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

concerning

"Five Years Later: A Review of the Whistleblower Protection Enhancement
Act"

February 1, 2017

Mr. Chairman, Ranking Member Connolly, and Members of the Subcommittee:

Whistleblowers perform an invaluable service to the public when they come forward with what they reasonably believe to be evidence of wrongdoing, and they never should suffer reprisal for doing so. Thank you for inviting me to speak with you today about the important role that the Offices of the Inspectors General play with regard to informing whistleblowers about their rights and protections.

I have served as the Whistleblower Ombudsperson at the Department of Justice Office of the Inspector General (DOJ OIG) since our program was established in the summer of 2012. In November of that year, the Whistleblower Protection Enhancement Act of 2012 (WPEA) was enacted, amending the Inspector General Act of 1978 to require the creation of such positions in the offices of all Presidentially-appointed, Senate confirmed Inspectors General. A number of other designated federal entity IGs, who are appointed by agency leadership, have created such programs as well. Under the WPEA, the Whistleblower Protection Ombudsmen have the responsibility of educating agency employees and managers about the prohibitions on retaliation for making protected disclosures of suspected wrongdoing, and informing employees who have made or are contemplating making such disclosures about their rights and remedies against retaliation for doing so. Pursuant to the statute, this provision will sunset five years from enactment, or in November of this year, absent Congressional action to the contrary. The DOJ OIG strongly supports reauthorization of this important provision of the WPEA.

OIGs have performed and continue to perform an important function under the WPEA by ensuring that information regarding whistleblower rights and protections is effectively disseminated to agency personnel and others. This is consistent with the importance of whistleblowers as key sources of information for OIGs regarding the activities of personnel within the agencies that we oversee. Section 7 of the Inspector General Act reflects this important principle by specifically providing for OIGs to receive and investigate complaints or information provided by agency employees, by providing for the protection of the confidentiality of such person's identity, and by prohibiting the taking of personnel actions as reprisal for employees coming forward with what appears to be evidence of wrongdoing. In this sense, whistleblowers are very much at the front lines, direct witnesses to potential wrongdoing, and they play a critical role in bringing forward information to the OIGs or other appropriate recipients so that it can be looked into and any appropriate action taken. Ensuring that whistleblowers are comfortable, informed, and protected in coming forward is, therefore, entirely consistent with the OIGs' core mission of detecting and deterring waste, fraud, abuse, and corruption, and the OIG Whistleblower Ombudspersons have played an important role in ensuring that they have the information necessary to enable this to occur.

At DOJ OIG, as at many of our sister OIGs, we have carried out the important responsibilities entrusted to us under the WPEA by creating and disseminating training materials – at DOJ OIG, we filmed an instructional video in which I discuss various aspects of whistleblower rights and protections with two Department employees interspersed with relevant portions of an interview with one

of the whistleblowers from the Fast and Furious investigation who describes his experiences with the process. The Department has made this video required viewing for all DOJ managers and supervisors, and made it available online for all employees. We also prepared informational posters on whistleblowing and whistleblower retaliation that the Department has required to be posted in offices throughout all DOJ components, with contact information for the OIG and also the Office of Special Counsel (OSC), which of course plays a central role in addressing many cases of suspected reprisal. We also have worked with the Federal Bureau of Investigation (FBI) and the other Department components to develop particularized training programs that are tailored to their workforces and, in the case of the FBI, address the somewhat different requirements applicable to its employees under the law. At DOJ OIG, as at many of our counterpart agencies, we also created a robust page on our website with a range of information regarding whistleblower rights and protections, including a link to our video, answers to frequently asked questions, specific information for FBI whistleblowers and also for whistleblowers employed by Department contractors, subcontractors and grantees, who also have the ability to come to the OIG if they believe that they have suffered reprisal for protected whistleblowing, and we have included links on the website to a variety of additional relevant resources and websites.

Early on following the passage of the WPEA, it became clear that the development of the whistleblower protection ombudsmen programs would benefit from collaboration and sharing of information across the Inspector General community. Therefore, we worked through the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to create a working group, which has met quarterly since 2013 to share information, discuss best practices and current issues and developments, and host speakers from within and outside government who have provided information to the OIG ombudsmen on a wide range of issues related to whistleblowers and their protections. OSC also has been an active participant in the working group, both providing its expertise and facilitating coordination and cooperation between it and the OIGs. The working group has also served as an important vehicle for liaison with Congress, which has resulted in several meetings with Members and staff of the bipartisan Senate Whistleblower Caucus and, more recently, the bipartisan House Whistleblower Caucus at which we have shared information regarding the implementation of the WPEA and whistleblower programs across the OIG community. We also worked with OSC and the Department of Labor Occupational Safety and Health Administration to partner with Congressional staff on a celebration of National Whistleblower Appreciation Day at the Capitol this past summer, at which the DOJ Inspector General served as Master of Ceremonies and the FBI Director delivered keynote remarks addressing the important role of whistleblowers in government.

As the Congress considers reauthorization of this provision of the WPEA, I would like to mention a couple of areas for additional consideration that have repeatedly surfaced within the working group related to the title of the position and the resources necessary to do this important work. With regard to the title in the current statute, the work we do under the WPEA generally does not include much of what is often done by traditional ombudsmen and, indeed, some such things might

be seen as inconsistent with our independent role and consideration of complaints as OIGs. Given the current title, there have been concerns expressed that some employees may be confused and expect us to perform such functions, even though the WPEA specifically provides that the ombudsman shall not act as a legal representative, agent, or advocate. I would be pleased to work with the Committee to discuss possible alternative ways to identify this important work.

Second, many of the working group discussions have reflected in one way or the other what we ourselves have found at DOJ OIG, namely that both educational activities regarding whistleblower rights and protections and, where OIGs have jurisdiction to conduct them, the investigations of alleged reprisal against whistleblowers are resource intensive, and our ability to fulfill these responsibilities and do so in a timely fashion is significantly impacted by the limitations on our available staffing and resources. OIGs have developed various structures to accomplish this important work based on what best fits their own organizational structures and agencies but, however it is organized, all of this requires time and resources. While OSC, of course, has primary jurisdiction to address the underlying reprisal claims raised by many employees under Title 5, OIGs also have seen increasing numbers of reprisal cases, for instance the employees of contractors, subcontractors, and grantees that I mentioned above, allegations of actions affecting access to classified information under Presidential Policy Directive PPD-19 and, for DOJ OIG, FBI whistleblowers. This work is only expected to increase as protections are expanded and made permanent, and as there is additional information disseminated by OIGs and others about whistleblower rights and protections.

I would be pleased to work with you and your staffs on these issues going forward. This concludes my prepared statement, and I would be happy to answer any questions that you may have.