



### **Questions for Ms. Kathy A. Buller**

Inspector General, Peace Corps

Legislation Committee Chair, Council of the Inspectors General on Integrity and Efficiency  
Legislation Committee

### **Questions from Chairman Gerald E. Connolly, Subcommittee on Government Operations**

April 20, 2021, Hearing: "Restoring Independence: Rebuilding the Federal Offices of Inspectors General"

---

**1. What was Mr. Michael Atkinson's reputation in the inspector general (IG) community?**

I agree with the statement issued by Michael Horowitz, who was the chair of CIGIE and is currently the IG at the Department of Justice. In reaction to the removal of Mr. Atkinson he remarked that "Inspector General Atkinson is known throughout the Inspector General community for his integrity, professionalism, and commitment to the rule of law and independent oversight. That includes his actions in handling the Ukraine whistleblower complaint, which the then Acting Director of National Intelligence stated in congressional testimony was done "by the book" and consistent with the law."

See the full statement of CIGIE Chair Horowitz: [Statement -- CIGIE Chair Horowitz.pdf \(ignet.gov\)](#)

**2. Is there anything about Mr. Atkinson's actions regarding the Ukraine whistleblower that the Council of the Inspectors General on Integrity and Efficiency (CIGIE) or its Integrity Committee believes would warrant investigation or removal?**

No, not to my knowledge. According to a letter provided by White House Counsel to Senator Grassley<sup>1</sup>, President Trump's reasons for removing Mr. Atkinson centered around the speed at which he sought to bring whistleblower information to Congress. On October 22, 2019, I was one of the IGs that signed a letter to Assistant Attorney General Engel expressing the IG community's concern with a legal opinion by the Office of Legal Counsel (OLC) that effectively overruled the determination by Mr. Atkinson regarding an "urgent concern" complaint under the Intelligence Community Whistleblower Protection Act (ICWPA) that Mr. Atkinson concluded appeared credible and therefore needed to be transmitted to Congress<sup>2</sup>. In that letter the IG community expressed its support for the position advanced by Mr. Atkinson, that the OLC opinion could seriously undermine the critical role whistleblowers play in coming forward to report waste, fraud, abuse, and misconduct across the federal government. Additionally, we noted that the opinion had the potential to undermine IG independence across the federal government. If employees and

---

<sup>1</sup> See Congressional Record, Volume 166, Number 113 (Thursday, June 18, 2020), Senate, Pages S3097-S3098.

<sup>2</sup> [https://www.ignet.gov/sites/default/files/files/CIGIE\\_Letter\\_to\\_OLC\\_Whistleblower\\_Disclosure.pdf](https://www.ignet.gov/sites/default/files/files/CIGIE_Letter_to_OLC_Whistleblower_Disclosure.pdf)

contractors believe that independent IG determinations may be second guessed, effectively blocking the transmission of their concerns to Congress, and raising questions about the protections afforded to them, they will lose confidence in this important reporting channel and their willingness to come forward with information will be chilled. So, in this respect Mr. Atkinson was removed for simply doing his job as the ICIG.

**3. What about Mr. Steven Linick, Mr. Glenn Fine, Mr. Mitch Behm? Were they respected in the IG community? Did CIGIE or the Integrity Committee find that any of their actions would warrant removal?**

Yes, all three individuals are well known and respected within the IG community. As far as Mr. Linick is concerned, I had the privilege of working with him as he served for a time as Vice Chair of the CIGIE legislation Committee. I have always known Mr. Linick to be a person of integrity and honor. However, beyond my personal experience, I had an opportunity to read the report on Mr. Linick issued by the Integrity Committee of CIGIE and publicly released by Chairman Engel. This report was in response to numerous misconduct allegations that were referred by the Under Secretary for Management of the Department of State to the Integrity Committee after Mr. Linick's removal. The report exonerated Mr. Linick of all the allegations against him. In one case they determined no formal investigation was needed because the nature of the matter –an alleged internal policy violation - did not rise to the level of misconduct meriting action. The Integrity Committee further determined there remained no reasonable basis to believe that Mr. Linick abused his authority in the exercise of official duties or while acting under color of office. Nor did he otherwise engage in substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation, or conduct that undermines the independence or integrity reasonably expected of an Inspector General. The decision was unanimous.

**4. Please explain what testimonial subpoena authority is and how it is important to IGs?**

Testimonial subpoena authority would provide OIGs with a means to require former employees, contractors, grantees and others engaged in business with the government to speak with OIGs on matters directly related to investigations, audits, or other matters.

OIG oversight can be substantially hampered by the inability to compel the testimony of witnesses who have information that cannot be obtained by other means. Congress could address this concern by providing IGs with the authority to subpoena the testimony of certain witnesses as necessary in the performance of the functions of the IG Act, the National Security Act, and the Central Intelligence Agency Act. For example, this authority is especially important in cases where a Federal employee resigns and/or retires. Without testimonial subpoena authority, that employee's resignation can limit an IG audit, investigation, or other review into matters pertaining to that individual's former responsibilities. IGs also face difficulty accessing key information during an inquiry into other individuals or entities with whom the Federal government does business.

Examples include subcontractors or subgrantees that have no direct contractual relationship with the Federal government but are suspected of defrauding a federally funded program; in these cases, IGs have limited recourse if employees of contractors refuse to provide information to the IG during an audit or investigation.

Granting this authority to all IGs would be most effective if it does not limit the allowable recipients of a subpoena. Requiring that the testimonial subpoena be necessary for performance of the functions assigned by the IG Act, the National Security Act, and the Central Intelligence Agency Act provides the same limitation found in our existing authority to subpoena documents.

That authority does not specify the recipients to whom IGs may issue subpoenas; rather, it only requires that it must be necessary in the performance of our work.

**5. During the hearing, you expressed CIGIE's support for Representative Porter's Accountability for Acting Officials Act. Why are the reforms in this legislation important for the IG community?**

Amending the Federal Vacancies Reform Act by refining who is eligible to temporarily serve as acting IG to include senior OIG officials will broaden the eligible pool of qualified, independent leaders from within the IG community, enhancing the operational efficiency and independence of acting Inspectors General. What CIGIE proposed in its legislative priorities addressed independence challenges associated with acting IG appointments not only by broadening the pool of OIG personnel but by excluding politically appointed, senate confirmed agency officials. The appointment of a political appointee or senior employee from the agency the OIG oversees creates actual and apparent conflicts of interest that affect the ability of the acting IG to maintain the required independence. Agencies themselves and the public benefit when an acting IG is independent in both fact and appearance. That independence allows IGs to be a critical, credible source for oversight of agency spending as well as to provide answers when controversial allegations of mismanagement or wrongdoing arise. Further, by limiting who can serve in an acting IG role, agency employees would be less reluctant to blow the whistle if they suspect a senior agency employee or political appointee has committed wrongdoing. In CIGIE's view, the institutional independence of all OIGs would be strengthened by enacting such reforms.

**6. What can the IG community and Congress do to ensure robust and effective oversight and counter attempts by federal officials to thwart that oversight by making reference to executive privilege?**

There is no silver bullet to address claims of executive privilege given that this doctrine is recognized in law. Having said that there are a few things that can be done.

First, an agency claiming executive privilege should be forced to assert it and explain why it thinks that the information in question is the subject of the privilege. OIGs should assess if this is a good faith claim.

Second, if there is delay in access to documents and it impacts the "timely access" provisions of Section 6(a)(1)(A) of the IG act the OIG should report it to Congress through their Semiannual Report to Congress or seven-day letter process. In this regard, the CIGIE legislation committee has also proposed that Congress include in the general provisions of the appropriations act a rider which prevents an agency from expending funds to deny an OIG timely access to records, documents, and information under the IG act. The language would also include a notification to Congress within 5 days of the denial.

Finally, if Congress is notified of such situations, the relevant committee should conduct robust oversight of the agency involved through their power to investigate and hold hearings. If they find out that the agency is abusing its authority, they have the option to consider other measures to influence the executive branch such as the power of the purse.

**7. What advantages and disadvantages do you see to imposing term limits on IGs?**

Given the number of vacancies that have traditionally existed in the community I do not believe term limits are beneficial to oversight. There is natural turnover within the IGs. Some stay for a few years and some stay for more than a decade.

In theory the advantages of forced turnover would be that new IGs could bring in fresh blood and new ideas. Such turnover may lessen any perception that an IG is beholden to a job or party. However, under current law, IGs are selected without regard to political affiliation based on certain expertise laid out in the IG Act. This statutory reliance on expertise instead of political connections already provides some degree of assurance that IG independence will not be affected by allegiance to a political party or agenda.

Being the IG for an agency that has term limits for almost all of its direct hire employees, I am very familiar with the disadvantages associated with them. For example, term limits would likely make finding interested, qualified candidates more difficult. If a person knows there is a set number of years, they may not be interested in the position, especially if the person is in the middle of their career and there is no guarantee of employment beyond the set term. If they do take the position, they will likely be conducting their job search a year or more before their term expires, if they in fact finish their term. Effective, independent oversight relies on a thorough understanding of the agency and time to build effective relationships with the agency the IG oversees. The IG Act envisions the role of IGs beyond protecting and detecting waste, fraud, abuse, misconduct, and mismanagement. IGs are also expected to provide advice and assistance. The loss of institutional memory due to turnover and ability to provide useful advice and assistance gained through experience overseeing the agency would also be negatively impacted by term limits. There has been some discussion concerning making the term renewable, however, doing so would present at very least the appearance of a conflict of interest for the IG whose future employment depends on the head of the agency that they are overseeing.