

## TESTIMONY ON INSPECTOR GENERAL REFORM BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND REFORM'S SUBCOMMITTEE ON GOVERNMENT OPERATIONS – April 20, 2021

### Introduction

Good morning, Chairman Connolly, Ranking Member Hice, and members of the subcommittee. Thank you very much for the invitation to testify before you today on the critically important topic of how to further strengthen Inspectors General so that they can play an even greater role in combatting fraud, waste, abuse, and mismanagement. The assault on the Inspector General community over the course of the last few years underscores and highlights the urgent need to amend the IG statute to further empower Inspectors General to do the job that Congress intended for them to do and to further protect them from reprisals for doing so. I will speak briefly about several statutory reforms that I think would help to achieve that objective.

### 1. For Cause Removal and Fixed Terms

First, a for cause removal provision, and, for good measure, a fixed term as well.

The Inspector General Act of 1978 was amended in 2008 to require presidents to notify both houses of Congress in writing of their intent to remove an Inspector General, and their reason(s) for doing so, thirty 30 days in advance. Legislative history indicates that Congress intended this notice provision to dissuade presidents from firing Inspectors General simply because they find their work to be embarrassing or otherwise politically disadvantageous. Thirty days would give Congress time to talk a president who was so inclined out of it, and having to state, in writing, a reason for firing an IG when there is actually no legitimate reason for doing so would be an additional deterrent, the thinking went.

Recent experience has shown this thinking to be flawed, however. Since 2008, in Administrations of both parties (once in the Obama Administration; several times in the Trump Administration), Inspectors General have been removed or demoted under questionable circumstances, either for no stated reason or for no better stated reason than "lack of confidence."

Therefore, in my judgment the time has come to amend the statute yet again, this time to permit a president to remove an Inspector General only for cause, with "cause" being defined as in H.R. 6984, the Inspector General Independence Act introduced in the last Congress and co-sponsored by you, Mr. Chairman, namely: (a) permanent incapacity; (b) neglect of duty; (c) malfeasance; (d) conviction of a felony or conduct involving moral turpitude; (e) knowing violation of law or regulation; (f) gross mismanagement; (g) gross waste of funds; (h) abuse of authority; and (i) inefficiency, though I would modify the latter two causes with the limitation of "gross." And, cause should not be merely asserted, but documented so that the case against an Inspector General can be subjected to congressional scrutiny and tested further in the court of public opinion.

A further means of insulating Inspectors General from political pressure would be to give them a fixed (but renewable) term, say, seven years, as set out in the House-passed version of the 2008 amendment to the Inspector General Act. Given how our political cycles have tended to run in recent decades, a 7-14-year term would almost certainly mean that an Inspector General's tenure would span that of the president who nominated him/her *and* that of a president of the opposite party. Consistently serving through both Democratic and Republican Administrations would further underscore the fact that Inspectors General are unlike other presidential appointees who serve solely "at the pleasure of the

President” and who are therefore supposed to subscribe to and implement the Administration’s policy agenda, and advocate for and advance the Administration’s political interests.

Not only would for cause removal and a fixed term insulate incumbent Inspectors General from political pressure and protect them from political reprisal, it would also help to encourage worthy candidates to seek and accept a presidential nomination to serve in what is, under even the best of circumstances, a difficult and demanding job. They would know that their jobs will be secure, absent good reason to remove them.

## **2. Filling Vacancies Promptly with Permanent Inspectors General, and, in the interim, filling vacancies with qualified and independent officials**

For a number of years now, both the number of vacancies in the Inspector General community and the length of them has been a major problem, given, again, how critically important these positions are to our democratic system of government which demands that government be accountable to the people for its performance. According to Oversight.gov, there are 73 IGs, some appointed by the President and some by the agency head. At present, there are 13 vacancies among the presidentially-appointed positions. Some of these unfilled positions are in some of the most important departments and agencies – DOD, HHS, State, Treasury, Education, the Intelligence Community, and the CIA. Nine of these positions have been unfilled for more than a year. Six have been unfilled for more than two years. Five have been unfilled for more than three years. The longest vacancy is 2,483 days, almost seven years.

A number of reforms are in order in this regard. First, I am supportive of a provision like that in H.R. 23, the Inspector General Protection Act, that would require a president who has left an IG position unfilled for x number of days (210 in that bill) to explain his reasons for having done so and to give a notional date by when a nomination can be expected. It would probably be a constitutional stretch for a statute to require a president to fill a vacancy by a date certain, but a provision like this would seem to be the next best thing.

Even the most qualified and scrupulously apolitical and independent Acting Inspector General operates under infirmities. Agencies tend to take Acting IGs less seriously because they are temporary. The Acting IG’s own staff may be less inclined to follow his/her lead. Their tenure will last only so long, the thinking goes, so they can be “waited out.” And, without the imprimatur of a presidential nomination and Senate confirmation, Acting IGs are perceived to lack the “heft,” for want of a better term, of permanent IGs.

Quite understandably, well-meaning Acting IGs will be hesitant to undertake major changes in personnel, policy, or procedures, however necessary or appropriate the changes may be, because of their limbo-like status. Unscrupulous Acting IGs who aspire to be nominated for the position themselves have an incentive to water down or sit on findings and recommendations that could put the agency and its leadership in a bad light, or to avoid undertaking politically sensitive audits and investigations altogether.

During the pendency of a vacancy, the Inspector General position should be filled temporarily by only someone who meets the qualifications of the IG Act and who has the same political independence as a permanent Inspector General. This means that Acting IGs should come from the ranks of the Office of Inspector General and not from the agency the IG oversees. As in H.R. 6689, the Accountability for

Acting Officials Act, the Acting IG should be the deputy IG if there is one, or failing that, the General Counsel to the IG, or some other SES-level official within the Office of Inspector General. If an Acting Inspector General were to come from the ranks of the agency, with the expectation that he/she would (or might) return to the agency at some point, his/her independence would be questioned and, thus, his/her effectiveness compromised. To have someone sitting in the seat of an Inspector General, for however short a time, who is ultimately answerable to the agency undercuts the very notion behind the creation of the institution of Inspectors General – the conviction that only someone outside the chain of command and, thus, free from the fact and appearance of susceptibility to political pressure, can credibly exercise oversight over an agency.

Furthermore, in my judgment, Acting Inspectors General should not be dual-hatted. For the reason mentioned above, they should not also run an agency program or operation while serving as an Acting IG, nor should they serve as Inspector General of more than one agency at a time. Properly running an IG's office is a full-time job and then some.

### **3. Testimonial subpoena power with respect to former agency employees and government contractors and grantees**

I am hugely supportive of complementing IG's authority to compel by subpoena the production from government contractors and grantees of documents that are relevant to their audits and investigations with the power likewise to compel testimony from both government contractors and grantees and former employees. Any good investigator will tell you that a thorough investigation requires cross-checking the results of an intensive document review with witness interviews. Without complementary testimonial subpoena power, IGs are operating with one hand tied behind their backs.

### **4. Miscellaneous reforms**

In addition to the foregoing major reforms, there are a number of other steps that can, and, in my view, should, be taken to further strengthen IGs, including several that are discussed in the 2018 report by POGO titled "The Watchdogs After 40 Years" in which I participated.

First, consideration should be given to paring down the number of reporting requirements in the statutorily mandated semiannual reports to Congress. So much emphasis is placed on these metrics, many of which are quantitative in nature rather than qualitative, that it discourages Inspectors General from taking on and prioritizing big picture, hot button, politically sensitive audits and investigations that go to the heart of an agency's mission and that relate directly, in one way or another, to the safety, security, health, and/or general welfare of the American people.

Second, all too often, agencies ignore IG recommendations, even those with which they say they agree. Consideration should be given to requiring the implementation of IG recommendations within a reasonable set period of time, say, 6-9 months, or requiring an agency to explain its reasons for not doing so in writing to the applicable congressional oversight committees.

Again, many thanks for the opportunity to testify before you today, and I look forward to answering any questions that you may have.

**Clark K. Ervin. Former Inspector General of the Departments of State and Homeland Security**

## **BIOGRAPHICAL SUMMARY OF CLARK K. ERVIN**

Clark Ervin was appointed by President George W. Bush in 2001 to serve as the Inspector General of the U. S. Department of State and the Broadcasting Board of Governors. He served in that position until 2003, and was then nominated by President Bush to serve as the very first Inspector General of the then-newly-created U.S. Department of Homeland Security, a position in which he served until 2004.

From 2008-2011, Mr. Ervin served as one of the eight members of the Commission on Wartime Contracting in Iraq and Afghanistan, established by the President and the Congress to examine the use of contractors by the Pentagon, the State Department, and U.S. AID in those two war theaters.

Mr. Ervin is a graduate of Harvard College, Harvard Law School, and Oxford University, as a Rhodes Scholar.

## Truth in Testimony Disclosure Form

In accordance with Rule XI, clause 2(g)(5)\* of the *Rules of the House of Representatives*, witnesses are asked to disclose the following information. Please complete this form electronically by filling in the provided blanks.

Committee: Oversight and Reform

Subcommittee: Government Operations

Hearing Date: 04/20/2021

Hearing Title :

Inspector General Reform

Witness Name: Clark K. Ervin

Position/Title: Former Inspector General of the U.S. Department of State and the U.S. Department of Homeland Security

Witness Type:  Governmental  Non-governmental

Are you representing yourself or an organization?  Self  Organization

If you are representing an organization, please list what entity or entities you are representing:

### **FOR WITNESSES APPEARING IN A NON-GOVERNMENTAL CAPACITY**

Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.

Are you a fiduciary—including, but not limited to, a director, officer, advisor, or resident agent—of any organization or entity that has an interest in the subject matter of the hearing? If so, please list the name of the organization(s) or entities.

no

**Please list any federal grants or contracts (including subgrants or subcontracts) related to the hearing's subject matter that your organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the source and amount of each grant or contract.**

N/A

**Please list any contracts, grants, or payments originating with a foreign government and related to the hearing's subject that your organization(s) you represent have received in the past thirty-six months from the date of the hearing. Include the amount and country of origin of each contract or payment.**

N/A

**Please complete the following fields. If necessary, attach additional sheet(s) to provide more information.**

- I have attached a written statement of proposed testimony.
- I have attached my curriculum vitae or biography.

\* Rule XI, clause 2(g)(5), of the U.S. House of Representatives provides:

(5)(A) Each committee shall, to the greatest extent practicable, require witnesses who appear before it to submit in advance written statements of proposed testimony and to limit their initial presentations to the committee to brief summaries thereof.

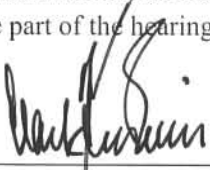
(B) In the case of a witness appearing in a non-governmental capacity, a written statement of proposed testimony shall include— (i) a curriculum vitae; (ii) a disclosure of any Federal grants or contracts, or contracts, grants, or payments originating with a foreign government, received during the past 36 months by the witness or by an entity represented by the witness and related to the subject matter of the hearing; and (iii) a disclosure of whether the witness is a fiduciary (including, but not limited to, a director, officer, advisor, or resident agent) of any organization or entity that has an interest in the subject matter of the hearing.

(C) The disclosure referred to in subdivision (B)(ii) shall include— (i) the amount and source of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) related to the subject matter of the hearing; and (ii) the amount and country of origin of any payment or contract related to the subject matter of the hearing originating with a foreign government.

(D) Such statements, with appropriate redactions to protect the privacy or security of the witness, shall be made publicly available in electronic form 24 hours before the witness appears to the extent practicable, but not later than one day after the witness appears.

**False Statements Certification**

Knowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001). This form will be made part of the hearing record.



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Witness signature

4/14/21

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Date