



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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DEC 27 2004

MEMORANDUM FOR CIVILIAN AND MILITARY OFFICERS AND EMPLOYEES
ASSIGNED TO THE OFFICE OF THE INSPECTOR
GENERAL OF THE DEPARTMENT OF DEFENSE

Subject: Inspector General Act Implementation and Office of Inspector General
Policy Guidance (Revision 2)

References: (a) Inspector General Act of 1978, as amended
(b) IG Policy 2003-28, "Inspector General Act Implementation and OIG
Policy Guidance (Rev. 1)," November 7, 2003
(c) Declaration of Independence
(d) United States Constitution
(e) through (ddd) continued on pages 2 through 4

Purpose: This directive-type memorandum establishes policy to reaffirm implementation of reference (a), supercedes and cancels reference (b), consolidates references (e) through (dd), and incorporates the guidance in references (ee) through (ddd). The 25 more specific policy memoranda at references (e) through (dd), implementing various explicit duties in reference (a), are hereby canceled.

OIG Policy: Reference (a) established this Office of Inspector General (OIG) as an "independent and objective unit" within the Department of Defense. As the organic statute for this OIG, the letter and spirit of reference (a), along with the letter and spirit of the organic laws of the United States of America, references (c) and (d), shall be infused whenever possible into all prescribed policies, procedures, and activities of this "independent and objective unit."

Policy Guidance: Attachment 1 incorporates and updates the duty-by-duty policy contained in references (e) through (dd). Attachments 2 through 5 provide exhibits supporting specific duties as noted in Attachment 1.

Effective Date: This Policy memorandum is effective immediately.


Joseph E. Schmitz

Attachments

REFERENCES continued

- (e) IG Policy 2004-17 [Section 2], “Policy on Internal Investigations of OIG Senior Officials,” May 20, 2004
- (f) IG Policy 2004-11 [Section 2], “Independence of the OIG and Its Staff Policy Guidance (Rev. 2),” March 22, 2004
- (g) IG Policy 2003-24 [Sections 3(a) and 6(a)], “Inspector General Reporting,” November 5, 2003
- (h) IG Policy 2003-22 [Section 3(d)], “Assignment of Auditing Responsibility in the Office of the Inspector General of the Department of Defense,” October 8, 2003
- (i) IG Policy 2003-11 [Section 3(d)], “Designation of Deputy Inspectors General for Auditing, Investigations, Inspections and Policy, and Intelligence,” May 2, 2003
- (j) IG Policy 2004-14 [Section 4(a)], “Duty of the Inspector General to keep the Secretary of Defense and Congress Fully and Currently Informed,” April 23, 2004
- (k) IG Policy 2004-07 [Sections 4(a) and 8(c)], “Assignment of Policy Oversight for Investigations and Audits Responsibility in the Office of the Inspector General of the Department of Defense,” February 18, 2004
- (l) IG Policy 2004-06 [Section 4(b)], “Use of Non-Federal Auditors,” February 18, 2004
- (m) IG Policy 2004-04 [Section 4(b)], “Auditor Compliance with Standards Established by the Comptroller General of the United States,” February 10, 2004
- (n) IG Policy 2003-35 [Section 4(c)], “Coordination and Cooperation with the Comptroller General,” October 30, 2003
- (o) IG Policy 2003-10 [Section 4(d)], “IG Act Duty to Report Violations of Federal Criminal Law,” May 1, 2003
- (p) IG Policy 2004-20 [Sections 5(a), 5(b) and 8(f)], “Semiannual Reports,” June 22, 2004
- (q) IG Policy 2003-25 [Section 5(d)], “Reporting Serious or Flagrant Problems, Abuses or Deficiencies,” November 5, 2003
- (r) IG Policy 2004-12 [Section 6(a)], “Administration and Utilization of Military Personnel,” April 5, 2004
- (s) IG Policy 2004-15 [Section 6(b)], “Responsibility for Reporting Denial of Access to Information, Personnel, or Facilities and Assistance Required for the Conduct of OIG Operations,” April 24, 2004
- (t) IG Policy 2004-16 [Section 6(d)], “Appointing Authority for Members of the Senior Executive Service or for Senior Executive Service Positions Within the Department of Defense Office of the Inspector General,” April 30, 2004.
- (u) IG Policy 2003-06 [Section 7(b)], “IG Act Duty of the Inspector General to Protect the Identity of Whistleblowers,” March 21, 2003

REFERENCES continued

- (v) IG Policy 2004-22, [Section 8(b)] “Statement to Committees of Congress concerning the exercise powers by the Secretary of Defense,” June 28, 2004
- (w) IG Policy 2004-08 [Section 8(c)], “Assignment of Responsibility for Developing Policy and Monitoring and Evaluating Performance of Actions Taken by DoD Components on Audits and Internal Review Reports,” February 24, 2004
- (x) IG Policy 2004-01 [Section 8(c)], “Investigations of Fraud, Waste, and Abuse Uncovered as a Result of Other Contract and Internal Audits,” January 7, 2004
- (y) IG Policy 2003-26 [Section 8(c)], “Principal Adviser to the Secretary of Defense for Matters Relating to Fraud, Waste, and Abuse,” November 5, 2003
- (z) IG Policy 2003-23 [Section 8(c)], “Requesting Assistance from DOD Components to Conduct Projects of the OIG,” October 9, 2003
- (aa) IG Policy 2003-08 [Section 8(c)], “Duty of the Inspector General to Maintain Effective Working Relationships with the Department of Justice in the Investigation of Crimes Involving the Programs, Operations, or Personnel of the Department of Defense,” April 18, 2003
- (bb) IG Policy 2003-07 [Section 8(c)], “Primary Jurisdiction,” April 17, 2003
- (cc) IG Policy 2004-23, [Section 8(d)] “Duty to Report Alleged or Suspected Violations of the Uniform Code of Military Justice to the Secretary of the Military Department Concerned or the Secretary of Defense,” July 27, 2004
- (dd) IG Policy 2004-09 [Section 8(h)], “Inspector General Implementation of the Intelligence Community Whistleblower Protection Act of 1988,” February 27, 2004
- (ee) Federal Managers' Financial Integrity Act of 1982
- (ff) Single Audit Act of 1984, as amended, codified at 31 U.S.C. §§7501, et seq
- (gg) Public Law 103-356, “Government Management Reform Act of 1994,” October 13, 1994
- (hh) FY 1998 Intelligence Authorization Act
- (ii) Quality Standards for Federal Offices of Inspector General (President's Council on Integrity and Efficiency 2003)
- (jj) Principles and Standards for Offices of Inspector General (Association of Inspectors General 2001)
- (kk) Office of Management and Budget (OMB) Circular A-50 (Revised), “Audit Followup,” September 29, 1982
- (ll) Office of Management and Budget Circular A-134, “Financial Accounting Principles and Standards,” May 20, 1993

REFERENCES continued

- (mm) Manual for Courts-Martial, United States (2002 Edition) Chapter 111, Rule 301
- (nn) DoD Directive 1401.3, "Reprisal Protection for Nonappropriated Fund Instrumentality Employees/Applicants," October 16, 2001
- (oo) DoD Directive 5010.38, "Management Control Program," August 26, 1996
- (pp) DoD Directive 5106.1, "Inspector General of the Department of Defense (IG, DoD)," January 4, 2001, (as amended by the Deputy Secretary of Defense's August 20, 2002, approval of Inspector General Action Memo of August 19, 2002)
- (qq) DoD Directive 5505.6, "Investigations of Allegations Against Senior Officials of the Department of Defense," July 12, 1991
- (rr) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
- (ss) DoD Directive 7050.1, "Defense Hotline Program," January 4, 1999
- (tt) DoD Directive 7600.2, "Audit Policies," February 2, 1991
- (uu) DoD Directive 7600.10, "Audits of State and Local Governments, Institutions of Higher Education, and Other Nonprofit Institutions," May 20, 1991
- (vv) DoD Directive 7640.2, "Policy for Followup on Contract Audit Reports," August 16, 1995
- (ww) DoD Directive 7650.1, "General Accounting Office (GAO) and Comptroller General Access to Records," September 11, 1997
- (xx) DoD Directive 7650.2, "General Accounting Office Reviews and Reports," July 13, 2000
- (yy) DoD Directive 7650.3, "Followup on General Accounting Office, DoD Inspector General and Other Internal Audit Reports," September 5, 1989 (Administratively Reissued through Change 3, February 14, 1992)
- (zz) DoD Instruction 5505.2 of February 6, 2003, "Criminal Investigations of Fraud Offenses"
- (aaa) DoD Instruction 5505.3, "Initiation of Investigations by Military Criminal Investigative Organizations," June 21, 2002
- (bbb) DoD Instruction 7050.3, "Access to Records and Information by the Inspector General, Department of Defense," April 24, 2000
- (ccc) DoD Instruction 7750.6, "Information Requirements for Semi-Annual Report to the Congress," April 27, 1990
- (ddd) DoD Instruction 7050.7, "Defense Hotline Procedures," December 14, 1998

TAB 1

ATTACHMENT 1

Policy Guidance. This Attachment incorporates and updates previously prescribed policy guidance relating to duties specified in the Inspector General Act of 1978, as amended.

IG Act Section 2. “Purpose and establishment of Offices of Inspector General; departments and agencies involved:

In order to create independent and objective units--

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action; there is established . . . in each of such establishments an office of Inspector General, . . .”

OIG Policy. Reference (qq) recognizes “the authority of the Heads of the DoD Components and commanders to initiate inquiries or investigations into matters pertaining to their Component or command, and to determine the nature and severity of disciplinary or administrative action in particular cases.” Reference (f) requires that “all officers and employees of this OIG . . . avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work.” In accordance with the letter and the spirit of the Inspector General's duties and responsibilities under IG Act section 2 and references (qq) and (f), it is the policy of the OIG that any internal investigation of any OIG senior official, that is, an officer in the Senior Executive Service (SES) (or equivalent), shall be directed and overseen by any one of the Deputy Inspectors General not in the subject's chain-of command, as appointed by the OIG Senior Leadership Council (SLC) comprising the Inspector General, the Deputy Inspectors General, and the Chief of Staff.

IG Act Section 3(a). IG Act section 3(a) requires that “each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment.” Section 6(a)(6) of the IG Act authorizes the Inspector General “to have direct and prompt access to the head of the establishment,” that is, to the Secretary of Defense.

OIG Policy. It is the policy of this OIG to carry out the letter and the spirit of the Inspector General's duties under section 3(a) and section 6(a)(6).

IG Act Section 3(d). IG Act section 3(d) states “Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

- (1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment” and
- (2) “appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.”

OIG Policy. Consistent with IG Act section 3(d)(1), it is the policy of the OIG that the Deputy Inspector General for Auditing shall have primary responsibility for initiating, conducting, and supervising the performance of audits or audit services relating to DoD programs and operations. The Deputy Inspector General for Intelligence shall have responsibility for initiating, conducting, and supervising auditing activities relating to programs and operations for Intelligence and Special Access Programs within the DoD. The Deputy Inspector General for Inspections and Policy shall provide policy direction for audits of DoD programs and operations and shall monitor and evaluate DoD auditors' adherence to internal audit, contract audit, and internal review principles, policies, and procedures. The Deputy Inspectors General shall coordinate audits consistent with section 4(a)(1) and section 8(c)(9) of the IG Act. Consistent with IG Act section 3(d)(2), it is the policy of the OIG that designates Deputy Inspectors General for Auditing, Investigations, Inspections and Policy, and Intelligence (see revised organization chart at Attachment 2). The most important qualification of each of these Deputies is that the incumbent may be called upon, as authorized by the Federal Vacancies Reform Act of 1998, to serve as the acting Inspector General in the event of unavailability of the Senate confirmed DoD Inspector General.

IG Act Section 4(a). IG Act section 4(a) states “It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

- (1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment”
- (2) “to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations”
- (3) “to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy

and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations”

- (4) “to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse”
- (5) “to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.”

OIG Policy. Consistent with IG Act section 4(a)(1), it is the policy of the OIG that the Inspector General delegate the above quoted statutory duty to the Deputy Inspector General for Inspections and Policy to the full extent permitted by law. OIG Regulation 5545.1, “Participation in Congressional Activities,” July 18, 1994, implements IG Act section 4(a)(2). Office of the Deputy Inspector General for Auditing Handbook, May 2004, “Section 2 - Planning and Coordination” and implements IG Act sections 4(a)(3), 4(a)(4), and 4(a)(5). The Defense Criminal Investigative Service Special Agents Manual Chapter 1 (Operations) also implements IG Act sections 4(a)(3). It is also the policy of this OIG to carry out the letter and the spirit of the Inspector General's duties under IG Act section 4(a)(5). Each Deputy Inspector General shall establish procedures to identify to the Inspector General “serious problems, abuses and deficiencies” that should be reported to the Secretary of Defense and to the Congress. Information to be communicated to the Congress shall be coordinated with the Office of Communications and Congressional Liaison. All OIG Components shall incorporate the standards contained in reference (ii), including Chapter VII, Communicating Results of OIG Activities as policy guidance.

IG Act Section 4(b). IG Act section 4(b)(1) states “In carrying out the responsibilities specified in subsection [4(a)(1)], each Inspector General shall—

- (A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions”
- (B) “establish guidelines for determining when it shall be appropriate to use non-Federal auditors”
- (C) “take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph [4(b)(1)].”

OIG Policy. Consistent with IG Act section 4(b)(1)(A), it is the policy of the OIG that the Deputy Inspectors General for Auditing and Intelligence establish internal guidance and procedures to ensure that auditors in the Offices of the Deputy Inspectors General for Auditing and Intelligence comply with the standards established by the Comptroller General of the United States for audits of DoD organizations, programs, activities, and functions. The internal guidance and procedures are promulgated in Office of the Deputy Inspector General for Auditing Handbook, May 2004. The Deputy Inspector General for Inspections and Policy has responsibility for monitoring and evaluating the adherence of Departmental auditors to audit principles, policies, and procedures. Therefore, the Deputy Inspectors General for Auditing, Intelligence, and Inspections and Policy will coordinate internal guidance and procedures that implement this policy memorandum.

Consistent with IG Act sections 4(b)(1)(B) and 4(b)(1)(C), it is the policy of the OIG that the Deputy Inspector General for Inspections and Policy establish guidelines for determining when it is appropriate to use non-Federal auditors and to ensure that the audits conducted by non-Federal auditors comply with the standards established by the Comptroller General of the United States. The Deputy Inspector General for Inspections and Policy, through the Assistant Inspector General for Audit Policy and Oversight, will work and coordinate with the Deputy Inspector General for Auditing to develop guidelines and audit procedures to ensure compliance with Comptroller General Standards. The Assistant Inspector General for Audit Policy and Oversight will also conduct quality control reviews of the audits conducted in accordance with reference (ff) by non-Federal auditors.

IG Act Section 4(c). IG Act section 4(c) states “In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.”

OIG Policy. It is the policy of the OIG that the Deputy Inspector General for Auditing shall monitor and distribute information regarding Government Accountability Office activities and engage in coordinated and cooperative efforts to avoid unnecessary overlap and duplication with the Government Accountability Office. The Deputy Inspector General for Auditing shall be the principal point of contact between the OIG and the Comptroller General and shall serve as the OIG central liaison with the Comptroller General on all matters concerning Comptroller General surveys, reviews, reports, and activities.

IG Act Section 4(d). IG Act section 4(d) states “In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.”

OIG Policy. It is the policy of the OIG to carry out the letter and the spirit of the Inspector General's explicit duty under section 4(d). This statutory duty is satisfied once an official of the OIG formally notifies either the cognizant Assistant United States Attorney or the Assistant Attorney General (Criminal Division) of the "reasonable grounds." Consistent with the OIG policy to maintain effective working relationships with the Department of Justice, this notification can be in writing, by e-mail, or orally, which has to be followed up by a written memorandum to the file. If this type of working-level notification is impractical, the Inspector General will send a letter directly to the Attorney General in a form similar to Attachment 3.

IG Act Section 5(a). IG Act section 5(a) states "Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30," while IG Act section 5(b) states "Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year." In addition, IG Act section 8(f)(1) states, "Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period."

OIG Policy. The responsibility for preparing semiannual reports required by section 5(a) is assigned to the Assistant Inspector General (AIG), Communications and Congressional Liaison (OCCL). Each Deputy Inspector General and the Chief of Staff shall provide information summarizing the activities of the OIG to OCCL. The Deputy Inspector General for Inspections and Policy will review and coordinate on information provided by the Defense Contract Audit Agency on the number and types of contract audits as required by IG Act section 8(f)(1). The AIG, OCCL, shall ensure that the semiannual report is prepared and transmitted to the Office of the Secretary of Defense or Deputy Secretary of Defense by April 30 and October 31 of each year, along with a proposed transmittal vehicle for satisfying the duties of the Secretary under section 5(b).

IG Act Section 5(d). IG Act section 5(d) states "Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment."

OIG Policy. It is the policy of this OIG to carry out the letter and the spirit of the Inspector General's duties under section 5(d). All allegations of "particularly serious or flagrant problems, abuses, or deficiencies" shall be forwarded expeditiously to the Inspector General, through the Deputy Inspector General with primary jurisdiction over the issue in question for immediate reporting to the Secretary of Defense. Allegations shall be presumed to be "particularly serious or flagrant" if they: (a) have already been or are about to be reported in the press; (b) have already been or are about to be briefed at or above the 4-star uniform or civilian equivalent level; or (c) are the subject of

congressional hearings or correspondence from either the chair or ranking member of any congressional committee.

IG Act Section 6(a) and 6(b). IG Act 6(b)(2) states that “Whenever information or assistance requested under subsection [6(a)(1)] or [6(a)(3)] is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.”

OIG Policy. The Deputy Inspectors General are responsible for prescribing practices within their respective offices to ensure that prompt action is taken to resolve issues related to access to information, personnel or facilities, or requests for assistance at the lowest possible level. When access or assistance issues cannot be resolved at lower levels, the Deputy Inspectors General shall provide to the Inspector General a memorandum for the Secretary of Defense detailing the access or assistance that is being denied, who is responsible for the denial, and the impact of the denial on the work of the OIG.

IG Act Section 6(d). IG Act section 6(d) states that “For purposes of the provisions of title 5, United States Code, governing the Senior Executive Service, any reference in such provisions to the 'appointing authority' for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an Inspector General, be deemed to be a reference to such Inspector General.”

OIG Policy. It is the policy of the Office of the Inspector General to carry out the letter and the spirit of the Inspector General's duties and responsibilities under section 6(d). Accordingly, the Inspector General is the appointing authority for all Senior Executive Service members or for all Senior Executive Service positions that are or would be “within the Office of [the] Inspector General.”

IG Act Section 7(b). IG Act section 7(b) states that “The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.”

OIG Policy. It is the policy of the OIG to carry out the letter and the spirit of the Inspector General's explicit duty under IG Act section 7(b), “after receipt of a complaint or information from an employee,” not to “disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.” DoD employees, including members of the Armed Forces, who provide information to the Inspector General of the DoD, or to any representative of the Inspector General, should understand that the IG Act envisions circumstances wherein the Inspector General may determine that disclosure of their

identity is unavoidable. Specifically, the IG Act requires the Inspector General either to “report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law” (section 4(d)), or to “expeditiously report suspected or alleged violations of chapter 47 of Title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense” (section 8(d)). Pending completion of an ongoing, more deliberate review of all current guidance on whistleblower protection and statutory reporting duties within the OIG, it is the general policy of the Inspector General to delegate the reporting duties in IG Act sections 4(d) and 8(d) only in a form that includes guidance consistent with the letter and spirit of IG Act section 7, and any and all other applicable whistleblower protection laws.

IG Act Section 8(b). IG Act section 8(b)(1) states “Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning--(A) sensitive operational plans; (B) intelligence matters; (C) counterintelligence matters; (D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or (E) other matters the disclosure of which would constitute a serious threat to national security.” In addition, IG Act section 8(b)(3) states “If the Secretary of Defense exercises any power under paragraph [8(b)(1)] or [8(b)(2)], the Inspector General shall submit a statement concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committee on Armed Services and the Committee on Government Reform and Oversight of the House of Representatives and to other appropriate committees or subcommittees of the Congress.”

OIG Policy. It is the policy of the OIG that the Deputy Inspector Generals for Auditing, Investigations, Intelligence, and I&P shall establish procedures for notifying the Inspector General and the AIG, OCCL within 7 days when the Secretary of Defense appears to have invoked his prerogative under IG Act sections 8(b)(1) and 8(b)(2), which allow direct coordination by the Secretary of Defense in certain Inspector General activities. Within 7 days upon notification by a Deputy IG, the AIG, OCCL, shall prepare letters for the signature of the Inspector General to the Committees on Armed Services and Governmental Affairs of the Senate, to the Committees on Armed Services and Government Reform of the House of Representatives and to other appropriate committees or subcommittees of Congress according to the subject matter of the audit, investigation, or inspection involved. Concurrently, and for the purpose of avoiding any surprises or misunderstanding of the Secretary’s intent, the AIG, OCCL, will prepare an Information Memorandum (Info Memo) to the SECDEF reminding the Secretary of both; (a) the Inspector General’s duty to notify Congress under IG Act section 8(b)(3), providing copies of letters to be sent to committees or subcommittees of Congress; and (b) the Secretary’s duty to “transmit a statement of the reasons for the exercise of power” under IG Act section 8(b)(4).

IG Act Section 8(c). IG Act section 8(c) states “In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department, (2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate, (3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness, (4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate, (5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs, (6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures, (7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States, (8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments) and (9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.”

OIG Policy. It is the policy of this OIG to carry out the letter and the spirit of the Inspector General's duties under IG Act sections 8(c)(1), 8(c)(2), and 8(c)(3) as well as section 5.1 of reference (rr). The Inspector General fulfills the “principal adviser” role primarily through quarterly and impromptu one-on-one meetings with the Secretary, as well as by attending weekly senior staff meetings and forwarding periodic information/action memoranda, as required. It is also the policy of this Office to “maintain effective working relationships with the Department of Justice in the investigation and prosecution of crimes involving the programs, operations, or personnel of the Department of Defense” (section 3 of reference (rr)). Within the OIG: (a) the Deputy Inspector General for Investigations shall recommend to the Inspector General “procedures to implement the investigative policies set forth in [Reference (rr)]”; and (b) the Deputy Inspector General for Inspections and Policy shall “[m]onitor compliance by DoD criminal investigative organizations to the terms of [Reference (rr)].” In accordance with the Inspector General’s aforementioned responsibility to “[p]rovide specific guidance regarding investigative matters, as appropriate,” the “teach & train” article at Attachment 4 further explains the distinction between “IG investigations” and “prosecution,” consistently with the structure and text of Section 5 of Reference (rr). It is the policy of the OIG that the Inspector General delegate the above quoted IG Act sections 8(c)(3), (5), and (6) duties to the Deputy Inspector General for Inspections and Policy to the full extent permitted by law.

It is the policy of the OIG to carry out the letter and the spirit of the Inspector General's duties under IG Act section 8(c)(4) and section 5.1 of reference (zz) by vesting in the

Deputy Inspector General for Investigations primary responsibility for: (a) conducting all fraud investigations involving the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, and the Defense agencies; (b) investigating all allegations relating to contracts awarded and/or administered by the Defense Logistics Agency, the North Atlantic Treaty Organization, the U.S. Army Corps of Engineers, and the Naval Facilities Engineering Command; and (c) conducting any other fraud investigation the Deputy Inspector General for Investigations deems appropriate. Additionally, the Deputy Inspector General for Investigations will represent the Office of the Inspector General in receiving all statutorily required notifications from contractors of suspected violations of the Anti-Kickback Enforcement Act of 1986.

It is the policy of the OIG that the Deputy Inspector General for Inspections and Policy has primary responsibility for the IG Act statutory duty at section 8(c)(7) related to the followup actions in response to contract audits. The Deputy Inspector General for Auditing has primary responsibility for the above statutory duty related to the followup actions in response to internal audits, internal review reports, and audits conducted by the Comptroller General of the United States.

Both to avoid duplication and to ensure “effective coordination and cooperation” within the OIG, before a Deputy Inspector General undertakes an activity that involves the “primary jurisdiction” of one or more fellow Deputy Inspectors General, the undertaking Deputy Inspector General shall first consult with any other Deputy Inspector General with primary jurisdiction in order to establish the following: (1) appropriateness of undertaking the action; and (2) roles and responsibilities for each affected Deputy Inspector General. The Inspector General consistent with IG Act section 8(c)(9) requirements, will resolve any dispute as to whether or when a Deputy Inspector General should be so consulted. Each Deputy Inspector General is responsible for maintaining the currency of promulgations for which he or she has primary jurisdiction and for infusing the above policy guidance into his or her own performance standards.

In order to conduct activities of the OIG efficiently and effectively, it is the policy of the Office of the Inspector General that before any Deputy Inspector General requests assistance from any Component of the DoD, the requesting Deputy Inspector General shall first coordinate with the Deputy Inspector General who has primary jurisdiction for the Component to which the request will be made. The Deputy Inspector General for Audits has primary jurisdiction for the audit units of the DoD; the Deputy Inspector General for Inspections and Policy for inspection and evaluation units; the Deputy Inspector General for Intelligence for intelligence organizations; and the Deputy Inspector General for Investigations for investigative units. When OIG is augmented by a member of one the services or another Department of Defense agency, the Inspector General may deputize such augmentee(s), designate an appropriate title commensurate with grade and level of responsibility, issue credentials, administer oaths, and take other actions as appropriate, in accordance with IG Act sections 6(a)(5 and 7) and 8(c).

IG Act Section 8(d). IG Act section 8(d) states “Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code [10 USCS §§ 801 et seq.] (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.”

OIG Policy. It is the policy of the OIG to carry out the letter and spirit of the Inspector General's duty under IG Act section 8(d) to report suspected or alleged violations of the Uniform Code of Military Justice “to the Secretary of the military department concerned or the Secretary of Defense.” This statutory duty is considered satisfied once an official of the Office of the Inspector General formally notifies the cognizant military department Inspector General or other Secretarial designee of the suspected or alleged Uniform Code of Military Justice violation(s). Consistent with the requirements in reference (mm), this notification can be in writing, by e-mail, or orally, which has to be followed up by a written memorandum to the file. If this type of working-level notification is impractical, the Inspector General will send a letter directly to the Secretary of the military department concerned or to the Secretary of Defense in a form similar to Attachment 5.

IG Act Section 8(h). The Intelligence Community Whistleblower Protection Act (ICWPA), part of the Intelligence Authorization Act for Fiscal Year 1998 and amended by the Intelligence Authorization Act for FY 2002, amended the Inspector General Act of 1978 section 8(h) to provide a means by which employees (civilian and military) or contract employees of the four DoD intelligence agencies (the Defense Intelligence Agency, the National Imagery and Mapping Agency [now the National Geospatial-Intelligence Agency], the National Reconnaissance Office, and the National Security Agency) may report to the Congress classified information about alleged wrongdoing of “urgent concern.” The provisions of the ICWPA do not apply to employees of, or employees of contractors to, the intelligence and counterintelligence activities of the Military Services, the Combatant Commands, or the Office of the Secretary of Defense. IG Act section 8(h)(b) states, “Not later than the end of the 14-calendar day period beginning on the date of receipt of an employee complaint or information under subsection [8(h)(a)], the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the head of the establishment notice of that determination, together with the complaint or information.” IG Act section 8(h)(e) states, “The Inspector General shall notify an employee who reports a complaint or information under this section of each action taken under this section with respect to the complaint or information. Such notice shall be provided not later than 3 days after any such action is taken.”

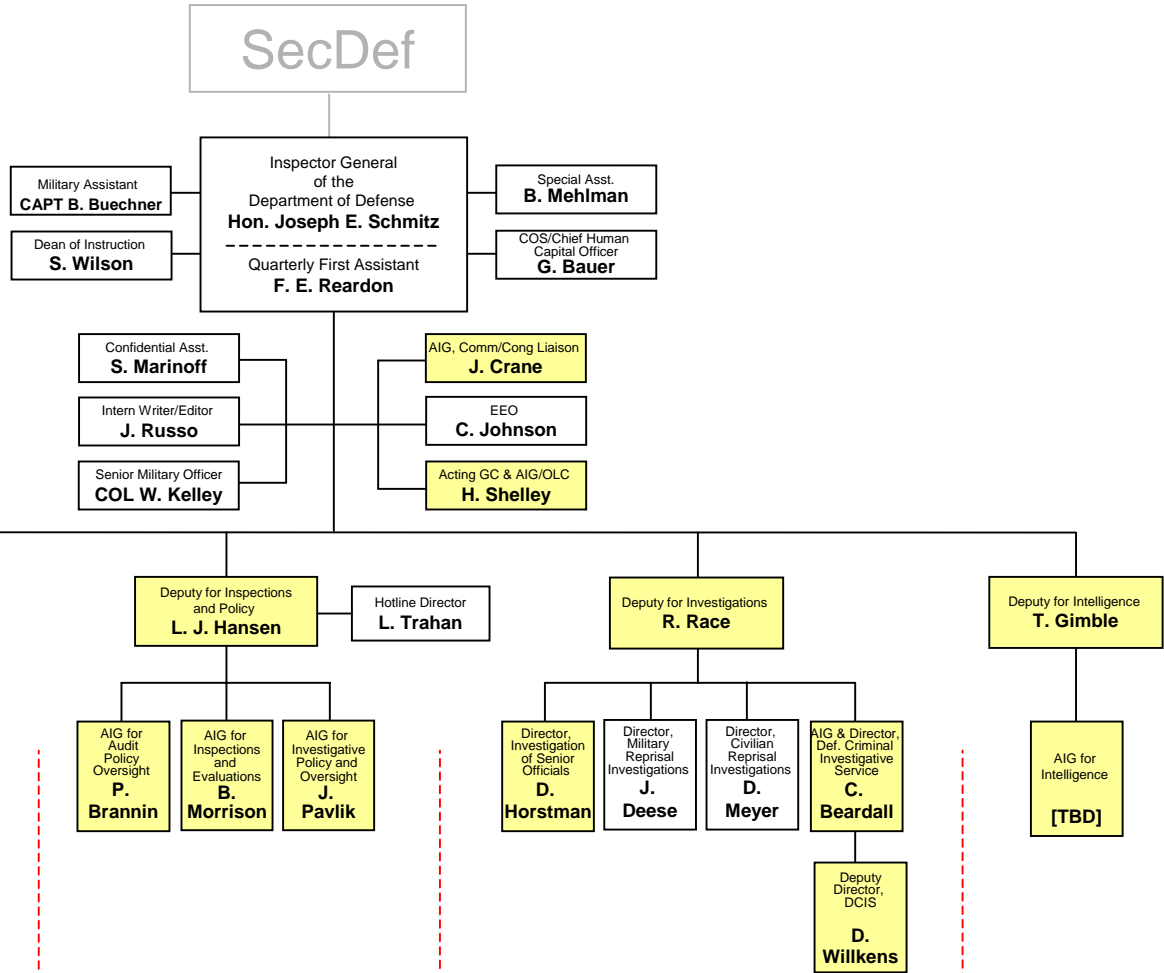
OIG Policy. It is the policy of the OIG that the Deputy Inspector General for Intelligence has primary responsibility for all matters related to complaints or information submitted under the ICWPA. The Deputy Inspector General for Intelligence will chair the ICWPA Working Group that is responsible for recommending to the Inspector General of the Department of Defense whether the complaint or information is of “urgent concern” and is credible. The Defense Hotline will serve as the entry point for all

ICWPA complaints or information. The Deputy Inspectors General for Auditing, Inspections and Policy, and Investigations, the Office of General Counsel, and the Office of Communications and Congressional Liaison will provide representatives to the ICWPA Working Group.

TAB 2

Department of Defense Office of Inspector General Organization (1QFY05)

SES/Flag
Officer
Positions



Army Audit Agency Naval Audit Service Air Force Audit Agency	Army & Air Force IGs Naval & USMC IGs National Guard & JCS IGs	CID (Army) NCIS (Navy) OSI (Air Force)	NRO NSA	DIA NGA
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Defense Council on Integrity and Efficiency

TAB 3

SAMPLE

The Honorable John Ashcroft
Attorney General
Washington DC 20530

Dear Mr. Attorney General:

In accordance with my responsibility under Section 4(d) of the Inspector General Act of 1978, as amended (Title 5, U.S.C., Appendix 3), to report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law," the following information is provided:

[Insert statement of facts]

Preliminary inquiry by the Defense criminal Investigative service (DCIS) has revealed that there are reasonable grounds to believe that there has been a violation of Federal law, _____. See _____ U.S.C.

In addition to DCIS, _____ are involved in investigating this matter. _____ have also been informed. Please contact me or the Assistant Inspector General (General Counsel) at (703) 604-8350 if you have any questions or concerns about efforts to ensure prompt, coordinated attention to this important matter.

Sincerely,

Joseph E. Schmitz

cc:
General Counsel of the Department
of Defense

TAB 4

INSPECTOR GENERAL INVESTIGATIONS: *“Dogged Pursuit of the Truth”*

by

Charles B. Johnson, Ph.D.
Office of Inspector General
of the Department of Defense

“What is truth?”

Pontius Pilate

The Inspector General Act of 1978 created a system of Inspector Generals (IGs) within the major agencies of the Federal Government, including (as amended in 1982), an Inspector General for the Department of Defense. All of these IGs are tasked by law to do, among other things, investigations within their respective Agency or Department.²

During recent Senate confirmation hearings, one of the distinguished members of the Senate Armed Services Committee asked the nominee for Inspector General of the Department of Defense to discuss his “commitment to objectivity” in the context of “an IG investigation into alleged impropriety, . . . especially in the cases that involved conflicting testimonies between victims and those that are accused of specific abuses.”³ Fortunately, United States Army instructors of “The Inspector General University” (TIG-U) had already pounded into the nominee the most basic foundational doctrine of any Inspector General investigation: “dogged pursuit of the truth.”⁴

Whether a prosecutor would ultimately “take a case” cannot influence an Inspector General’s focus on the “dogged pursuit of the truth,” especially as the Inspector General serves as “an extension of the eyes, ears, and conscience of the Commander.”⁵ Though a prosecutor may decline to prosecute, the more relevant and objective facts the military Commanders know, the better those Commanders can make informed decisions

¹ John 18:38.

² Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 2 states the IG of the Department is charged to: 1) conduct and supervise audits and investigations within the Department; 2) provide leadership in recommending policies designed to promote efficiency and effectiveness and; 3) provide the independent mechanism of keeping Congress and the Secretary of Defense fully informed of any deficiencies within DoD and corrective actions recommended.

³ Testimony of Joseph E. Schmitz, nominee for Inspector General of the Department of Defense, to U.S. Senate Committee on Armed Services, dated October 23, 2001.

⁴ Department of Army, *The Inspections Guide*, p. 4-3-20. See also; Defense Criminal Investigation Service, *Special Agents Manual*, Chapter 3 (“Investigation is a detailed objective inquiry to ascertain the truth about an event, situation or individual.”).

⁵ Army Regulation 20-1, *Inspector General Activities and Procedures 5* (Department of the Army, 2002).

that often affect the health, morale, and welfare -- and sometimes the lives -- of service members placed under their command.

Potentially Criminal IG Investigations

The potential consequences of allowing prosecutorial opportunities to affect investigative decisions might be gleaned from the following recent example, which is not intended to cast any negative aspersion on the military investigative component at issue: the U.S. Army's Criminal Investigation Command (USCIDC-often referred to as CID). The Army's CID, incidentally, is not part of the Army Inspector General Agency.

A Defense contractor employee approached the Army's Criminal Investigation Command alleging that fellow employees (assigned to support the Armed Forces on foreign soil) were engaged in racketeering, slavery and the sexual exploitation of children. An investigation found evidence of wrongdoing, but also concluded that the participants would not be subject to U.S. prosecution because their acts were perpetrated overseas. The results of the investigation were then referred to local national authorities. (Note that such a decision is in concert with the CID's mission of "Criminal Investigation.") When the situation became public, members of Congress wished to know why the DoD continued putting millions of dollars into this company's pockets.

The apparent anomaly that ensued from this recent example appears to have resulted from a decision dictated by a focus on the "criminal" aspects of the case and therefore prosecutorial potential. Such limitations to full field investigations are not imposed on the Inspector General Offices,⁶ whose charter focuses not on "prosecution," but on "dogged pursuit of the truth."

That IG investigations are often perceived as a search for criminal culpability rather than for the truth suggests that IG Offices may be inadvertently creating such perceptions, perhaps by their investigative conduct, the language they use, or even by the performance metrics employed. If so, we should identify and rectify those aspects creating such misconceptions. When an IG arrives on any scene, the only ones who should complain are those who do "wicked things"⁷ or tolerate wrongdoing under their authority.

⁶ Inspector General Act of 1978, as amended – 5 U.S.C. App. 3; DoD Directive 5106.1; DoD Instruction 5505.2.

⁷ John 3:20-21 ("For everyone who does wicked things hates the light and does not come toward the light, so that his works might not be exposed. But whoever lives the truth comes to the light, so that his works may be clearly seen as done in God.").

Non-Criminal IG Investigations

Within the Office of Inspector General of the Department of Defense there is an active investigative unit where prosecution is rare. The Office of Departmental Inquiries (DI) is responsible for either conducting or overseeing DoD administrative (non-criminal) investigations into alleged misconduct by senior officials. These investigations, even when allegations are substantiated,⁸ rarely lead to criminal prosecution. Rather, substantiated allegations typically lead to administrative sanctions for those held responsible for the prohibited activity (written reprimands, relief of duty, pay forfeitures, forced separation...etc.) because the substantiated allegations are seldom criminal in nature. As a result, “prosecutive merit” is not a central factor weighed against whether or how thoroughly investigations should be conducted.

Concomitantly, these administrative investigations serve a critical role in promoting integrity and efficiency in the Department of Defense. For example, it is understandable that senior civilian and military officials are strictly held to the very highest standards of ethical conduct. Alleged violations of regulations committed by a senior official must be investigated vigorously, competently, and thoroughly. Because DoD places its trust in the investigative credibility of its independent and objective IG’s, a message is sent that high ethical standards will be enforced. In short, these IG investigative capabilities help put “teeth” in the DoD ethics program.

Between 400 and 500 investigations into alleged senior official misconduct are completed throughout the Department of Defense every year – of which, some 15% substantiate some sort of misconduct.⁹ The statutory duty of the Inspector General to “be the principle adviser to the Secretary of Defense for matters relating to prevention and detection of fraud, waste, and abuse”¹⁰ lends a critical measure of independence and credibility to such investigations, which by their very nature are subject to the closest scrutiny. In the end, these objective and independent investigative processes are essential to promoting confidence in the professional tenet that DoD can police its own.

Systemic Benefits of IG Investigations

Noncriminal -- and in some cases criminal – IG investigations within the Department of Defense ought to assist DoD leadership in assessing and improving standards and policies governing conduct and decision-making. “Due process of law”¹¹ requires that rules be both “prescribed” (clear guidance from proper authority) and promulgated “in the most public and perspicuous manner.”¹² If an IG investigation

⁸ Substantiate is “support and verify with proof or evidence.” An allegation that is “substantiated” is one where the preponderance of credible evidence uncovered by systematic investigation indicates the allegation is valid and true. The substantiation standard (“preponderance of credible evidence”) of proof is not as strict the criminal standard (“beyond a reasonable doubt”) of proof.

⁹ Inspector General of the Department of Defense *Semiannual Report to the Congress*, September 30, 2002

¹⁰ Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, Section 8(C)(1).

¹¹ United States Constitution, Amendment V (“No person shall be . . . deprived of life, liberty, or property, without due process of law.”)

¹² 1 Blackstone’s Commentaries 46 (1765)

determines that a standard is ambiguous, unknown, or otherwise subject to misinterpretation, systemic corrective actions are recommended. For example, recent noncriminal investigations have improved DoD policy concerning the use of government aircraft by senior officials. Justification for such travel will now be more clearly articulated, more widely published, and the approval channels defined and clarified.

Yet, the investigative benefits described above, as well as those from investigations that lead to prosecutions, are derived not from systems, regulations, and “figures,” but rather from the quality, integrity, and accountability of the people conducting them. In the IG community, senior and junior employees routinely access extraordinarily sensitive information on government personnel, national security, equipment and processes. The American public permits such access because they are confident in our trustworthiness. Perhaps we should consider that special trust and confidence as the good soil to grow better metrics for measuring the success of IG investigative units.

Instead of feeding the common misconception that the only successful investigation is one that leads to prosecution, perhaps our metrics should focus on the most critical factor for organizational success: our human capital. Consider the following non-prosecution based two alternative metrics for success of IG investigative units. The first metric might measure our relative success in attracting, hiring, and retaining the very best investigators over time. The “best” is difficult to define, let alone measure directly. However, reasonable inferences of improved staff quality, recruitment, and retention are certainly quantifiable if given the priority they deserve. A second metric might measure “accountability” within our IG organizations. In other words, an “accountability index,” consistently applied, administered, and evaluated. Such an index needs internal assessments (how organic staff and management view agreed-upon criteria of the organization’s accountability), as well as systemic measures of how IG clients view the organization’s accountability.

Conclusion

Although there are obvious linkages, an Inspector General investigation DOES NOT depend on prosecutorial merit. Furthermore, it is an IG responsibility and duty to teach the distinctions between investigation and prosecution.¹³ Truth has value in and of itself, and that certainly includes times when the truth is that no wrongdoing existed. It is no small matter to be subject to the rule of law, to be under oath, and to be accountable for ensuring “due process.” The Inspector General Act requires independent and objective investigations and a “dogged pursuit of the truth” regardless of prosecutorial merit.

¹³ Based on the Inspector General Act of 1978, as amended in, DoD Directive 5525.7, dated 22 January 1985, specifically implements a Memorandum of Understanding between the Department of Justice and Department of Defense relating to investigation and prosecution. The Directive assigns the Inspector General for Department of Defense the responsibility to “establish procedures to implement the investigative policies . . . ” and to the General Counsel for Department of Defense the responsibility to “establish procedures to implement the prosecutive policies”

TAB 5

SAMPLE

The Honorable XXXXXX XXXXXX
Secretary of XXXXXX XXXXXX
Washington DC 2XXXX

Dear Secretary XXXXXXX:

In accordance with my responsibility under Section 8(d) of the Inspector General Act of 1978, as amended (Title 5, U.S.C., Appendix 3), to “report suspected or alleged violations of chapter 47 of Title 10, United States Code (Uniform Code of Military Justice), to the secretary of the Military department concerned or the Secretary of Defense,” the following information is provided:

[Insert concise summary of allegations, including applicable Uniform Code of Military Justice standards(s)]

Our preliminary inquiry indicates that these allegations are credible and therefore warrant further inquiry and or investigation.

In addition to this Office of Inspector General, _____ is/are involved in investigating this matter. _____ have also been informed. Please contact me or the Assistant Inspector General (General Counsel) at (703) 604-8350 if you have any questions or concerns about efforts to ensure prompt, coordinated attention to this important matter.

Sincerely,

Joseph E. Schmitz

cc:
General Counsel of the Department
of Defense