

The Journal of **Public**
A Publication of the Inspectors General of the United States **Inquiry**

GAO and the IGs
Partnering for Progress

David M. Walker

**The Foundation and Strategies for an
Effective Civil Service**

Dan G. Blair

**The New Statutory Law Enforcement Authority for
OIG Criminal Investigators**

Glenn A. Fine

**The Department of Homeland Security and the
Office of Inspector General**

Clark Kent Ervin

**Criminal and Civil Parallel Proceedings in the
District of Columbia**

The Approach of the U.S. Attorney's Office

Mark E. Nagle

**The PCIE's New Practical Guide for Reviewing
Government Purchase Card Programs**

Susan R. Carnohan and Catherine A. Gromek

Northern Exposure

*The Inspector General Criminal Investigator Academy
in Arlington, Virginia*

Terry M. Freedy



Spring/Summer 2003



EDITORIAL BOARD

Karla W. Corcoran, Inspector General, U.S. Postal Service
Johnnie Frazier, Inspector General, Department of Commerce
Gregory H. Friedman, Inspector General, Department of Energy
Gaston L. Gianni, Jr., Inspector General, Federal Deposit Insurance Corporation
Daniel R. Levinson, Inspector General, General Services Administration
Patrick E. McFarland, Inspector General, Office of Personnel Management
Kenneth M. Mead, Inspector General, Department of Transportation
Barry R. Snyder, Inspector General, Federal Reserve Board
Nikki Tinsley, Inspector General, Environmental Protection Agency

STAFF

Editor-in-Chief

Daniel R. Levinson, Inspector General, General Services Administration

Editorial Services

Marta Viera, Morrey Gardner, Suzanne Melnick, Joanne Szafran, General Services Administration OIG

Printing

Department of Defense OIG
Treasury Inspector General for Tax Administration

Design and Layout

Gaston L. Gianni, Jr. and Sharon C. Tushin, Federal Deposit Insurance Corporation OIG

INVITATION TO CONTRIBUTE ARTICLES

The Journal of Public Inquiry is a publication of the Inspectors General of the United States. We are soliciting articles from participating professionals and scholars on topics important to the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. Articles should be approximately three to five pages, single-spaced, and should be submitted to **Joanne Szafran**, General Services Administration, Office of Inspector General (JPFP), Room 5303, Washington, DC 20405.

To review past editions, visit www.ignet.gov/randp/jpi.html

Please note that the Journal reserves the right to edit submissions. The Journal is a publication of the United States Government. As such, *The Journal of Public Inquiry* is not copyrighted and may be reprinted without permission.

NOTICE

The opinions expressed in *The Journal of Public Inquiry* are the authors' alone. They do not necessarily represent the opinions or policies of the United States or any Department or Agency of the United States Government.

The Journal of **Public**
A Publication of the Inspectors General of the United States **Inquiry**

Spring/Summer 2003

CONTENTS

In this Issue **1**

GAO and the IGs
Partnering for Progress **3**
David M. Walker

The Foundation and Strategies for an
Effective Civil Service **9**
Dan G. Blair

The New Statutory Law Enforcement Authority for
OIG Criminal Investigators **15**
Glenn A. Fine

The Department of Homeland Security and the
Office of Inspector General **23**
Clark Kent Ervin

Criminal and Civil Parallel Proceedings in the
District of Columbia
The Approach of the U.S. Attorney's Office **29**
Mark E. Nagle

The PCIE's New Practical Guide for Reviewing
Government Purchase Card Programs **35**
Susan R. Carnohan and Catherine A. Gromek

Northern Exposure
The Inspector General Criminal Investigator Academy
in Arlington, Virginia **39**
Terry M. Freedy

In this Issue

Welcome to the Spring/Summer 2003 edition of the *Journal of Public Inquiry*. This is the first of two issues scheduled for this 25th anniversary year of the enactment of the Inspector General Act of 1978. Recognizing the importance of this milestone, the *Journal* will endeavor to present articles covering a broad spectrum of issues that arise under the Act. Other foundation statutes relating to Federal Government operations and personnel also attain silver anniversary status this year, including the Civil Service Reform Act, the Ethics in Government Act, and the Contract Disputes Act. We will offer commentary concerning these laws as well, especially as they impact the IG community across departments and agencies.

This issue brings together a notable collection of authors who address a diverse assortment of topics. The Comptroller General of the United States, David Walker, analyzes the important and complementary relationship between the General Accounting Office and the Inspector General offices. Although many in the IG community would disagree with the Comptroller General's views on consolidating certain IG offices, his article is a welcome contribution to continued dialogue between the legislative and executive branches on a range of subjects that address the financial accountability of our Federal Government.

We also are pleased to welcome Office of Personnel Management Deputy Director (and PCIE Member) Dan Blair to these pages. His article furnishes a valuable and comprehensive review of the Federal civil service and human resource landscape.

Among subjects of utmost timeliness are the development of new guidelines to accompany the recently enacted grant of statutory law enforcement authority to PCIE Inspectors General offices, and the establishment of the Inspector General office in the newly created Department of Homeland Security. Inspector General Glenn Fine of the Department of Justice, and Acting Inspector General Clark Kent Ervin of the Department of Homeland Security, respectively, provide articles on these two important matters.

In keeping with the *Journal's* longstanding efforts to furnish timely updates on professional practice matters, we have three important offerings. Mark Nagle, Chief of the Civil Division for the U.S. Attorney for the District of Columbia, offers a primer on criminal and civil parallel proceedings in

government fraud-related cases. Susan Carnohan and Catherine Gromek of the Department of Education, furnish an overview of the PCIE's new guide for reviewing government purchase card programs. And, last but not least, Terry M. Freedy, the Executive Director of the Inspector General Criminal Investigator Academy, provides a brief but important update on the Academy's new Washington area location in Arlington, Virginia.

We wish to extend sincere thanks to all our authors.

DAVID M. WALKER

Comptroller General of the United States

GAO and the IGs

Partnering for Progress

When he signed the Office of Inspector General (IG) Act into law in 1978, President Jimmy Carter said, “I think the harmony and partnership being established between the executive and legislative branches of government to root out fraud and corruption and mismanagement is a very constructive step.”

The 25th anniversary of this landmark legislation, which established independent IGs at the major Federal agencies, is an opportune time to consider ways to improve cooperation and coordination within the government performance and accountability community—particularly GAO and the IGs. What has worked? What can be improved? What changes are needed to forge stronger working relationships among these key players? Now more than ever, achieving positive and lasting results depends on a willingness to reach across institutional lines and form new alliances to address complex problems in a rapidly changing world.

Clearly, the IGs have made a significant difference in Federal performance and accountability during the last quarter century. They have earned a solid reputation for preventing and detecting waste, fraud, and abuse; promoting improvements in government operations; and providing helpful analyses on a host of governmentwide initiatives. It is safe to say that the Federal Government is a lot better off today because of their efforts.

Despite this progress, we face continuing challenges in how our government does business. We are now fighting a war against international terrorism, but much of the critical government infrastructure that we are trying to protect dates back to the 1950s. The Postal Service operates under an

outdated statutory framework and is guided by a business model that does not adequately acknowledge the impact of new technology and increased competition. The events in Iraq made clear that our military is the best in the world at fighting and winning armed conflicts. At the same time, 9 of the 25 areas on GAO's current high-risk list are at the Department of Defense (DoD), where shortcomings in basic business practices waste billions of dollars that could be used to boost readiness and improve the quality of life for our troops.

Such persistent, inefficient practices are a major obstacle to fully effective and accountable government. At the same time, the public is increasingly demanding responsive government that delivers results. With costs for national preparedness, health care, and other programs soaring and Federal revenues lagging, agencies must make the best use of available resources. Unfortunately, many agencies still need to take great strides in this area.

GAO's latest high-risk report, released in January, brings attention to troubled areas across government. Many of them involve essential government services, such as Medicare and mail delivery, that directly affect the well-being of the American people. Although some agencies have made strong efforts to address the deficiencies cited in the high-risk reports, only half of the programs included in GAO's 1990 high-risk list have improved enough to warrant removal. Greater coordination and consultation between GAO and the IGs on these issues is not only desirable, it is essential if we are to hasten the removal of government programs and functions from the high-risk list.

At the request of Congress, the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency annually identify the 10 most significant management and performance challenges facing government. In Fiscal Year 2002, the IGs ranked governmentwide information technology and financial and human capital management among the most important challenges confronting their agencies; other priorities included performance management,

homeland security, and grant management. Each of these areas closely corresponds to areas on GAO's high-risk list and provides an opportunity for GAO and the IGs to collaborate to promote governmentwide efficiency and effectiveness.

Now is the time to ask what government should do in the 21st century, how should government do business, and who should do that work in the years ahead. GAO's latest strategic planning framework is built on a range of themes that will shape our society and define America's role in the years ahead: changing security threats, powerful demographic trends, rapidly evolving science and technology, quality-of-life concerns, and long-term fiscal imbalances. This last issue is particularly sobering because the fiscal imbalances are so large that we stand little chance of simply growing our way out of the problem. These themes transcend both geographic boundaries and institutional sectors—both domestically and internationally.

Progress will depend on greater partnering among a broad spectrum of government agencies and entities. Top management will need to think beyond traditional but increasingly irrelevant organizational lines. Agencies will need to become less hierarchical, process-oriented, and self-absorbed and more collegial, results-oriented, and externally aware. They will need to work at home and abroad with Federal, state, and local officials and take advantage of the wealth of knowledge and experience at different levels of government and at our nation's colleges and universities, businesses, and nonprofit enterprises.

Transformation at GAO

GAO seeks to lead by example, so it began its own cultural transformation nearly 4 years ago. The agency has changed how it measures success, how it serves its congressional clients, and how it interacts with executive branch agencies. GAO has also strengthened its partnerships with a range of performance and accountability organizations and "good government" groups.

Internally, GAO has adopted a more collaborative, integrated approach to doing its work. GAO regularly uses matrix management to bring together experts from across the agency to add value to and minimize risk on a range of complex assignments. Externally, GAO conducts a number of outreach efforts to its fellow auditors at home and abroad. GAO has long participated in the national intergovernmental audit forum and its regional counterparts, which seek to improve communication and teamwork among government auditors at the Federal, state, and local levels. GAO, IGs, and CPAs engaged in government audits have been meeting since the 1970s to discuss government auditing standards and related issues.

Another important step in building closer ties among the government accountability community has been the domestic working group, which brings together selected GAO employees, IG staff, and state and local officials to explore issues of mutual interest and concern. The annual roundtable discussions and interim activities help to focus attention on key issues and shared challenges facing the government audit community and allow participants to compare notes on methods, tools, benchmarking results, and best practices.

The first product of the domestic working group was a joint review issued last year by GAO, the Department of Education, and several state auditors on Federal assistance to local school districts. That review received an award of excellence from the Federal Inspector General community. Other joint assignments have examined surface transportation security at the state level and Federal and state efforts to better protect food-processing plants since September 11, 2001. The domestic working group has also been working to share knowledge over the Internet on emerging issues, internal management improvements, and other topics.

To coordinate more closely with its peers at the Federal level, GAO has launched a searchable database of reports and testimony by the IGs, the military audit agencies, and GAO on government contracting challenges. The database focuses on

contracting weaknesses at the 10 agencies that account for nearly 95 percent of the more than \$230 billion that the government spends on contracts with the private sector each year. As a result, employees in accountability offices across government can now do online literature searches of documents dating back to 1997 to pinpoint contracting problems and gaps in oversight.

Consolidated Financial Statements

GAO and the IGs are already partners in one of the most far-reaching financial management initiatives in government—the yearly audits of the U.S. Government’s consolidated financial statements. Under the Chief Financial Officers (CFO) Act of 1990 as expanded by the Government Management Reform Act of 1994, the IGs at the 24 agencies named in the act are responsible for the audits of their agency’s financial statements. GAO is responsible for the audit of the U.S. Government’s consolidated financial statement, which uses the results of the IG’s agency-wide audits. Since 1997, GAO has issued a disclaimer of opinion of the consolidated financial statements in large part because of continuing problems at several agencies resulting in disclaimer opinions by some IGs on their agency financial audits—especially for DoD.

In recent years, we have seen progress on the CFO Act agency financial statements. More and more IGs have moved from issuing a disclaimer of opinion to an unqualified opinion on their agency financial statements. In fact, 21 of the 24 CFO Act agencies received an unqualified opinion on their latest agency-wide financial statements. (See table.)

Ultimately, however, we should not settle for anything less than a “clean” opinion both on the financial statements and on the overall system of internal controls and compliance with applicable laws and regulations. To reach this goal, GAO and the IGs will need to work together to determine the proper division of responsibilities in auditing the consolidated financial statements as well as the distribution of costs to reflect any increased role

**CFO Act Agencies: Fiscal Year 2002 Audit Results,
Principal Auditors, and Number of Other Audit Contractors**

CFO Act Agencies	Audit Results	Principal Auditor	Other Auditors
Agency for International Development	Qualified ^a	Inspector General	1
Department of Agriculture	Unqualified	Inspector General	2
Department of Commerce	Unqualified	KPMG LLP	1
Department of Defense	Disclaimer	Inspector General	1
Department of Education	Unqualified	Ernst and Young LLP	0
Department of Energy	Unqualified	KPMG LLP	4
Environmental Protection Agency	Unqualified	Inspector General	0
Federal Emergency Management Agency	Unqualified	KPMG LLP	0
General Services Administration	Unqualified	PricewaterhouseCoopers LLP	0
Department of Health and Human Services	Unqualified	Inspector General	4
Department of Housing and Urban Development	Unqualified	Inspector General	1
Department of the Interior	Unqualified	KPMG LLP	0
Department of Justice	Unqualified	PricewaterhouseCoopers LLP	2
Department of Labor	Unqualified	Inspector General	5
National Aeronautics and Space Administration	Unqualified	KPMG LLP	1
National Science Foundation	Unqualified	KPMG LLP	0
Nuclear Regulatory Commission	Unqualified	R. Navarro & Associates, Inc.	0
Office of Personnel Management	Unqualified	KPMG LLP	0
Small Business Administration	Disclaimer	Cotton & Company LLP	0
Social Security Administration	Unqualified	PricewaterhouseCoopers LLP	0
Department of State	Unqualified	Leonard G. Birnbaum & Company, LLP	0
Department of Transportation	Unqualified	Inspector General	2
Department of the Treasury	Unqualified	Inspector General	6 ^b
Department of Veterans Affairs	Unqualified	Deloitte & Touche LLP	0

^a Qualified for the Statement of Net Cost; unqualified for all other statements.

^b In addition, GAO audited the Internal Revenue Service's financial statements and the Schedules of Federal Debt Managed by the Bureau of the Public Debt.

for GAO as we move closer to a “qualified” opinion on the way to a “clean” opinion.

The CFO Act agencies have the primary responsibility for preparing, and their IGs for auditing, their agency-wide financial statements. To meet reporting deadlines and Office of Management and Budget requirements, many IGs have contracted with independent public accountants (IPA) to do this work either entirely or in part. The varying quality of that work has been of concern to GAO, which uses the agency-wide financial statements to express an opinion on the government’s consolidated financial statements—an opinion for which, in the final analysis, GAO is responsible and accountable. Post-audit reviews by GAO of the work done by the IGs and IPAs on agency-wide financial statement audits during the last 2 years found opportunities for improvement in statistical sampling, audit documentation, audit testing, analytical procedures, and auditing liabilities.

Early involvement by GAO would help to strengthen the IG and IPA audit process and bolster GAO’s ability to render an opinion on the consolidated financial statements. At a minimum, GAO will need to (1) get involved up front in the planning phase of each agency-wide audit; (2) have unrestricted access to IG and IPA work papers during the audit process; (3) receive assurances that the Financial Audit Manual approved by GAO and the President’s Council on Integrity and Efficiency is being used to plan, perform, and report each agency-wide audit; and (4) be notified in advance of any planned deviation from the manual’s guidelines that could affect a line item in the government’s consolidated statements.

These changes are especially important given the planned acceleration of reporting deadlines both for agency audits and the governmentwide audit. Starting next year, agencies will have to issue their financial statements 45 days after the end of the fiscal year, and the consolidated financial audit 75 days after the end of the fiscal year. The “heroic efforts” of past years, in which agencies spent considerable sums on extensive ad hoc procedures and

made adjustments of billions of dollars to produce financial statements months after the fiscal year had ended, will no longer be an option.

Beyond audits of the government’s consolidated financial statements, many opportunities exist for closer collaboration between GAO and the IGs. We are, in many respects, natural partners. We both report our findings, conclusions, and recommendations directly to Congress. We share common professional standards through the so-called “yellow book,” and I am proud to say that many current IGs and their staff are GAO alumnae.

At the same time, GAO and the IGs bring different but ultimately complementary capabilities to their work. These capabilities speak to the relative competitive strengths and core competencies of both groups. GAO’s efforts tend to be more horizontal and governmentwide in scope and often take a longer-range perspective. A significant share of GAO’s expertise is devoted to program evaluations and policy analyses. The IGs, by contrast, are on the front lines in protecting the integrity of programs at their respective agencies and take a more vertical approach to oversight. Their work concentrates on issues of immediate concern, and more of their resources go into uncovering inappropriate activities and expenditures.

Certainly, GAO and the IGs will have a continuing role to play in ferreting out waste, fraud, and abuse. The mismanagement of scarce taxpayer dollars, whether it is Federal employees who abuse their office purchase cards or contractors who try to bill the government for alcohol and junkets, cannot be tolerated. Such behavior is unacceptable under any circumstances. Realistically, however, government waste, fraud, and abuse will never be zero, and there is a limit to how much money we can recoup in this area. In the coming years, as we enter a period of escalating deficits and increasingly limited resources, I believe that the greatest single source of savings will come from bold, decisive efforts to transform what government does and how it does business and to hold it accountable for results.

President's Management Agenda

The administration has signaled its commitment to government transformation by issuing the President's Management Agenda, which targets 14 of the most glaring problem areas in government for immediate action. Five areas—strategic human capital, budget and performance integration, improved financial performance, expanded electronic government, and competitive sourcing—are governmentwide in scope; nine are agency specific. Each issue has the potential for dramatic improvement and concrete results. They also reflect many of the concerns raised by GAO's performance and accountability series and high-risk report and the IGs' management challenge lists.

So far, however, progress on the President's Management Agenda has been uneven. As a result sustained attention is needed by Congress, the administration, and agencies. I believe that GAO and the IGs may be able to make an important contribution by leveraging our combined experience to help monitor the implementation of this initiative.

Key policymakers increasingly need to think beyond quick fixes and carefully consider what the proper role of the Federal Government should be in the 21st century. As I mentioned earlier, they must answer basic questions about what government should do, how it should do it, and who should do it—government workers, contractors, or some combination of the two.

Members of Congress and agency heads can start by undertaking a top-to-bottom review of Federal programs and policies to determine which remain priorities, which should be overhauled, and which have outlived their usefulness. Everything must be on the table, including tax, spending, and regulatory policies that form the government's base. Policymakers will need to distinguish among "wants," which are optional, and "needs," which are real and often urgent. They will need to make hard choices that take into account what the American people will support and what the Federal Government can afford and sustain over time.

To make informed decisions, Congress and agency heads will require facts and analyses that are professional, timely, accurate, non-partisan, fair, and balanced. GAO and the IGs will be important sources of such objective information.

Future Issues

To carry out this work as effectively as possible, it may be time to revisit a range of structural issues, such as the overall number of IGs in the Federal Government, their missions and reporting lines, their scope of authority, and areas of emphasis. Some IG offices with fewer resources should probably be consolidated with larger IG offices to enhance the overall independence, economy, and effectiveness of the IG community. If done properly, such mergers would provide economies of scale that would allow smaller IG offices to draw on the human and financial resources of larger IG offices—an important consideration given rapidly evolving technology and the growing need for highly skilled staff. Any proposals for consolidating IG offices will require continuing dialogue among the IGs, affected agencies, and Congress.

At the same time, closer collaboration between GAO and the IGs will maximize the impact of our work, not only by avoiding duplication of effort, but by providing Congress and the American people with a much fuller picture of how the different parts of our government work—individually and collectively—and what that says about our ability to meet future challenges.

With our respective expertise on long-term challenges and agency-specific issues, GAO and the IGs can provide useful insights and constructive recommendations on programs that may warrant additional resources, consolidation, or even elimination. We can also bring attention to government success stories with valuable lessons for other agencies. In my view, the opportunities for partnering will only increase given the shared challenges that we face. I look forward to working together during the remaining ten years of my term as Comptroller General of the United States. 🏠

DAN G. BLAIR

Deputy Director, United States Office of Personnel Management

The Foundation and Strategies for an Effective Civil Service

History of the American Civil Service

It took the assassination of an American President to focus an Administration, Congress, and the American people on legal efforts to establish a Federal civil service selected on the basis of merit and not political patronage. On July 2, 1881, President James Garfield was shot by a mentally-disturbed Federal office seeker named Charles J. Guiteau. Upon the President's death 2 months later, Vice President Chester Arthur, himself a product of political patronage in New York State, assumed office. A little over 1 year later, on January 16, 1883, President Arthur signed into law the Civil Service Act, setting in place the foundation of today's modern American civil service.¹

The issue of patronage appointments versus a merit-based civil service was not an issue addressed by either the Founding Fathers of the United States, or the administrations of the first several American Presidents. The Federal Government of the United States is one of limited powers which are all enumerated in the Constitution.² Originally these powers were very limited and focused mainly on international affairs, defense, monetary policy, and the postal system. The Constitution envisioned a small cabinet of

¹Interestingly, in 1879, only 2 years before becoming president, Arthur himself had been forced to resign his patronage position as collector for the Port of New York in an earlier but failed civil service reform effort by President Rutherford B. Hayes.

²The tenth amendment to the Constitution, part of the Bill of Rights, states that "[t]he powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

senior officials serving the president and supported by such “inferior officers” as necessary. Except for ambassadors, judges, and public ministers (cabinet secretaries) who required confirmation by the Senate, the President alone was to appoint the officials necessary to manage Federal affairs.³ What the Constitution did not envision was the establishment of political parties, which by the Presidential election of 1800 had loosely formed around the concepts of a strong Federal Government (John Adams) versus a system more reliant on the States (Thomas Jefferson). As successive presidents were elected, they thought it important that members of their administration share their philosophical and political views of the issues of the day.

Filling administration positions was consuming an ever increasing amount of a new president’s time, and many expressed extreme frustration at the process and the quality of office seekers.⁴ Civil Service reform efforts began slowly in the mid-19th century. In 1851, Congress passed a resolution requiring cabinet secretaries to devise a plan for classifying government clerks and setting their compensation accordingly. In 1853, pass examinations were established to set and assess minimum qualifications for government clerk candidates. During the Civil War, President Lincoln refused to dismiss en masse his first Administration, as was customary to make room for new appointees, on the basis that members had acquired skills and knowledge he would need in his second Administration. In addition, the Lincoln Administration also commissioned a study of the French customs service, which was filled by competitive examinations. Ulysses S. Grant was elected president in 1868 on a platform that

promised civil service reform. In 1871, he appointed the first Advisory Board of the Civil Service, later called the Civil Service Commission. This commission recommended the classification of all positions into groups according to the duties to be performed, and into grades for purposes of promotion; competitive examinations for these positions; and a 6-month probationary period following appointment to a position. In April of 1872, competitive examinations were held for the first time for appointments to civil service positions in New York City and Washington, DC. Unfortunately, this experiment was abandoned in 1875, when Congress refused to appropriate adequate funding. But President Garfield’s assassination 6 years later brought the issue back into public debate.

The basic principles of the Civil Service Act of 1883 have not changed in 120 years. A three member commission, confirmed by the Senate, was created, only two members of which could belong to the same political party. Candidate recommendations from Members of Congress generally could not be considered. Preference in hiring was given to qualified military veterans and examinations for categories of Federal jobs were created, administered, and scored. While only about ten percent of the then 133,000 Federal positions were covered by these provisions, it was an important first step. By 1938 fully two-thirds of the civil service was hired competitively. In 1952 that percentage had risen to 86 percent.⁵

The Civil Service Commission remained in existence until January 1979, when the Civil Service Reform Act of 1978 divided up its

³U.S. Constitution, Article II, Section 2, paragraph 2.

⁴Referring to political supporters waiting to see him for political appointment, President Lincoln commented to one associate that “[t]here you see something which will in the course of time become a greater danger to the Republic than the Rebellion itself.” President Grant stated “[t]he present system does not secure the best men, and often not even fit men, for public place.”

⁵Today the U.S. Federal civilian workforce totals approximately 1.8 million, not including another 850,000 in the U.S. Postal Service. With the exception of approximately 3,000 positions which are appointed by the president to policy positions on the basis of political and philosophical positions, all are covered by the merit principles originally contained in the 1883 legislation. The present system of political appointment to the Federal positions in an administration was created by President Eisenhower in 1953.

responsibilities with most going to the new U.S. Office of Personnel Management.⁶

Principles of Merit

The heart of the Civil Service Act of 1883 was the concept that Federal civil servants would be hired, promoted and, if necessary, discharged from service, based solely on the concept of merit, that is, an individual's ability to do his or her job. A candidate hired for Federal employment must be the most qualified person applying for that position. For advancement, a civil servant must be performing his or her duties competently. To be involuntarily separated from the civil service, an employee must not be performing those duties acceptably and will have had fair notice so that corrective efforts can be undertaken if possible. The politics of a Federal civil servant is never an issue.

Over the years, these merit principles have been expanded and now include the following provisions:⁷

1. Recruit, select, and advance on merit after fair and open competition.
2. Treat employees and applicants fairly and equitably.
3. Provide equal pay for equal work and reward excellent performance.

⁶The Civil Service Reform Act actually divided the old Civil Service Commission into what are now five Federal agencies: the U.S. Office of Personnel Management (to manage the Civil Service); the Office of Special Counsel (to investigate and prosecute violations of the merit principles for hiring); the Merit Systems Protection Board (to adjudicate claims of merit violation); the Office of Government Ethics (to monitor and prosecute ethics violations of Federal civil servants); and the Federal Labor Relations Authority (to resolve Federal labor-management disagreements). See United States Manual, Office of the Federal Register, National Archives and Records Administration, ed. 2001-2002.

⁷The merit principles are found at 5 United States Code, section 2301. Related prohibited personnel practices are found at section 2302.

4. Maintain high standards of integrity, conduct, and concern for the public interest.
5. Manage employees efficiently and effectively.
6. Retain or separate employees on the basis of their performance.
7. Educate and train employees if it will result in better organizational or individual performance.
8. Protect employees from improper political influence.
9. Protect employees from reprisals for the lawful disclosure of information related to the waste, fraud, or abuse of public money, property, or trust.

The Office of Personnel Management (OPM), working with the Office of Special Counsel, enforces these principles and takes all questionable actions to the Merit Systems Protection Board (MSPB) for resolution, if necessary. Appeals from the MSPB go to the U.S. Federal court system.

Compensation and Benefits for a Professional Civil Service

As important as the concept of merit is in hiring Federal civil servants, the importance of providing professional compensation and employment benefits to attract qualified candidates and retain skilled employees is equally recognized. The 1853 legislation, which set a salary scale for government clerks, covered positions earning between \$900 and \$1,800 annually, a substantial income back then. It was the first recognition that government clerks, who usually remained from administration to administration, needed to be well compensated for their services.

The current predominant pay scheme of the Federal civil service is known as the General Schedule. This framework for the forward progress of an employee through the civil service ranks was implemented nationwide in 1949. It is a numeric ladder which tracks the levels of performance and

promotion of all civil service workers. At the time, this guide to skills and placement was hailed as a dynamic application of scientific management.

Today this once innovative concept has been overtaken by compensation flexibilities available in the private sector and not available to managers of the Federal civil service. Under the leadership of the present OPM Director Kay Coles James, efforts to identify existing problems with and develop potential alternatives to the General Schedule are being examined for future discussion.

There have been dramatic improvements in our personnel system over the last century. A retirement system was created in 1920, which accelerated the trend toward a career in the government with life-long employees being guaranteed a secure future. The system was amended in the 1980s to add more up-to-date features. The government's Thrift Savings Plan is an important component of the current retirement system. It offers Federal employees the same type of savings and tax benefits that many private corporations offer their employees under "401(k)" plans. Under this plan, the government makes matching contributions of up to 5 percent of an employee's basic pay. This is in addition to the contributions the employee makes towards his or her retirement.

Since 1959, members of the Federal civil service have been offered employee health benefits through private sector health insurance companies and medical facilities. Premiums for this benefit are subsidized by the government. Life insurance for Federal workers was introduced in 1954.

Introduced last year, the Long-Term Care Insurance Program, according to preliminary results, is the largest employer-sponsored long-term care insurance program in America. Long-term care insurance is available to civilian and uniformed-service employees, retirees, and their families. It includes coverage for care needed for major medical problems such as Alzheimer's disease.

The Federal civil service now also has a variety of programs designed to help employees meet the sometimes-conflicting demands of work and

home. These include Flexible Work Schedules, Telecommuting, On-site Day Care, Family Friendly Leave Policies, Employee Assistance Programs, Part-Time and Job Sharing Positions, Child and Elder Care Resources, Adoption Information and Incentives, and Child Support Services.

Members of the American civil service also have a variety of opportunities to continue educational efforts and learning opportunities throughout their entire career.

Management Agenda of the Bush Administration

With the concept of merit firmly enshrined in the management of the Federal civil service, the Bush Administration has turned its attention to making the civil service more efficient, more productive, and more responsive to the needs of the American people it serves. President George W. Bush has called for a Federal Government which is citizen-centered, results-oriented, and market-driven. His goal is a Federal Government that produces results for the American people, is held accountable for progress, not process, and welcomes competition, innovation, and choice. Continuing an effort that began in the Eisenhower Administration, more Federal services are delivered not solely by civil servants, but also by teams, with an increased emphasis on partnership and consultation. In many instances, civil servants enter into joint partnerships with private companies to produce services and share best practices and management techniques. The Administration is reviewing the competitive sourcing of commercial Federal activities and services. This initiative requires agencies to strategically review the work they perform to determine what source can most efficiently perform the function—the Federal Government or the private sector.

President Bush places the strategic management of human capital (the Federal civil service) at the top of his Management Agenda. He has challenged Federal executives to recruit talented and

imaginative people to public service and to better manage the existing civil service. To be more efficient, the President has stressed the importance of reducing the number of managers, organizational layers, and time necessary to make decisions. In reducing these variables, the President's goal is to ultimately increase the number of civil servants who actually provide services to the American people.

Another Bush Administration civil service modernization effort is the concept of electronic government. The goal is to make as many services as possible available through the Internet and other modern technologies—not only to the Federal civil service but also to the American people. This has been entitled the *e-Government* initiative.

The President has instructed the Office of Personnel Management to lead Administration efforts in the following *e-Government* initiatives:

- **Recruitment One-Stop:** recruiting and hiring new, talented people into the Federal civil service.
- **e-Clearance:** a time saving and efficient manner to conduct security and background checks.
- **Enterprise Human Resources Integration:** eliminating the paper personnel record; in its place will be a system of electronic personnel information that can be exchanged easily across government.
- **e-Training:** allowing Internet education and professional development of the civil service.
- **e-Payroll:** consolidating the payroll process of numerous Federal agencies into just a few efficient operations.

The Federal Government also continues in its efforts to modernize and automate the retirement systems it maintains for over 1.8 million retired former Federal civil servants and another 800,000 individuals receiving survivor's benefits.

In its role as overall manager of the Federal civil service, the Office of Personnel Management has developed a model for workforce planning, analysis,

and forecasting. Federal departments and agencies use this model to enhance their workforce quality with selections from a diverse pool of well-qualified applicants. It also helps them conduct effective, succession planning. By using workforce planning, agencies can remain competitive amid the changing workforce demographics of this new century.

The Bush Administration is also stressing the fact that management flexibility is essential to creating and maintaining the Federal workforce necessary to meet modern American needs. Flexibility is essential to allow agencies, managers, and employees to most effectively accomplish their goals. It allows us to focus on achieving results.

Flexibility means:

- First, aligning pay and performance systems to support accomplishment of agency core missions, and
- Second, providing the staffing and development tools that lead to a high-quality, diverse workforce that can adapt to changing organizational needs.

Nowhere is the need for flexibility greater than in our new Department of Homeland Security. The genesis of this new agency was the events of September 11, 2001. The legislation authorizing this new agency supports the values of our core civil service principles. And it enables public servants who are charged with safeguarding the nation to do their difficult jobs efficiently and effectively.

That legislation also authorized agencies governmentwide to employ new, contemporary ways of hiring through the use of category ranking, replacing the antiquated "rule of three," and limited direct hire authority to help agencies bolster operations facing major staffing shortages. This tool will allow agencies to hire qualified individuals quickly when emergencies, environmental disasters, or other unanticipated events create a critical hiring need. This authority can also be used when a severe shortage of candidates exists for positions needed to meet mission requirements.

Other agencies are also seeking new legislative authorities to manage their respective workforces. In spring 2003, the Department of Defense (DoD) came forward with its proposal, patterned after the Homeland Security legislation, to design a human resources system better tailored to its mission and goals. The legislation would allow the Department and the Office of Personnel Management to work collaboratively with employee organization in rewriting the rules that govern DoD's civilian workforce.

Changing and modernizing long-outdated personnel rules and laws governing the management of the Federal workforce, while preserving the core principles of merit, have been a priority of this Administration. Indeed, President Bush has asked all Federal civil servants to never take the honor of public service for granted. In the

President's words, "[w]e are not here to mark time, but to make progress, to achieve results, and to leave a record of excellence."

Conclusion

The Founding Fathers of the United States would not recognize the modern Federal Government. But they would certainly recognize the professionalism and dedication of the Federal civil service. While it is much larger than they would have imagined, it remains at its core a workforce, premised on the concept of merit, and dedicated to advancing the priorities of the American people. It is a system that has evolved since the passage of the Civil Service Act in 1883, and it remains a permanent and indispensable element of the modern Federal Government. ■

Acknowledgements

I would like to give special recognition to Office of Personnel Management General Counsel Mark A. Robbins and Special Assistant to the Deputy Director Judith A. McCoy for their contributions and assistance in the development of this article.

GLENN A. FINE

Inspector General, Department of Justice

The New Statutory Law Enforcement Authority for OIG Criminal Investigators

For many years, Offices of Inspector General (OIG) sought without success to obtain statutory law enforcement authority for their criminal investigators. In the absence of such authority, OIG investigators had to be deputized as special Deputy United States Marshals to exercise the law enforcement powers necessary to handle their criminal cases. These powers included the authority to carry a firearm, make arrests, and seek and execute search warrants.

In November 2002, the Homeland Security Act, which created the Department of Homeland Security, included provisions that provided statutory law enforcement authority for most Presidentially-appointed Inspectors General (IG).¹ The legislation marked a significant change in the authorities underlying the exercise of law enforcement powers by IGs. It was also a

¹See P.L. 107-296 § 812. This legislation provided statutory law enforcement authority to 25 Presidentially-appointed IGs who are members of the President's Council on Integrity and Efficiency (PCIE). Three other IGs had been previously granted law enforcement authority in separate statutes: the Agriculture Department in 1981 (P.L. 97-98); the Department of Defense in 1997 (P.L. 105-85); and the Treasury Inspector General for Tax Administration (TIGTA) in 1998 (P.L. 105-206). See "Inspectors General Comparison of Ways Law Enforcement Authority is Granted" GAO-02-437 (May 2002). Two IGs—at the Central Intelligence Agency and the Corporation for National and Community Service—did not seek statutory law enforcement authority and were not included in the legislation. The United States Postal Service IG, who is appointed by the agency head and is therefore not a member of the PCIE, was granted statutory law enforcement authority in March 1997 by the Board of Governors of the Postal Service, as authorized by 18 U.S.C. § 3061.

long-overdue recognition of the critical role played by OIG criminal investigators in Federal law enforcement efforts.

This article discusses the background to this important legislation and the reasons for its passage. The article also describes the specifics of the legislation as well as the creation of Attorney General Guidelines that govern the exercise of statutory law enforcement authority by OIGs. Finally, it notes several outstanding issues that should be clarified in the future.

Previous Attempts to Obtain Statutory Law Enforcement Authority

The Inspector General Act of 1978, as amended, requires Presidentially-appointed (PCIE) IGs to “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 [of the agency].”²⁵ These include investigations of criminal wrongdoing as well as administrative misconduct.

However, the Inspector General Act did not provide OIG agents with law enforcement authority to make arrests, carry firearms, and execute search warrants. Initially, OIGs were required to obtain this law enforcement authority for individual agents on a case-by-case basis. OIG agents were appointed as Deputy United States Marshals for a specific case and could exercise law enforcement powers only for that case.

The need for case-by-case deputations remained so consistent, and the number of requests so large, that the process became unduly burdensome. Beginning in 1995, the United States Marshals Service (USMS) gave most PCIE IGs “blanket” (office-wide) deputations for their criminal investigators. The blanket deputations lasted for 1 year and were renewed annually by the USMS. In January 2001, the USMS extended the blanket deputations for a 3-year period.

²⁵ U.S.C. App. § 3 (d)(2).

To obtain the blanket deputations, each IG signed a Memorandum of Understanding (MOU) with representatives from the Criminal Division of the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) to govern the exercise of law enforcement authority by OIG agents.³

Yet, IGs considered deputation an unsatisfactory mechanism for providing law enforcement authority for the approximately 2,800 OIG criminal investigators. The IGs therefore sought legislation to provide statutory law enforcement authority to their criminal investigators. Such legislation was justified for several reasons. First, OIG criminal investigators regularly conducted complex investigations that required the ongoing use of law enforcement authorities. Statutory law enforcement authority would ensure continuity in these investigations and prevent potential disruption when the blanket deputations expired.

Second, statutory law enforcement authority would reduce the administrative and paperwork burden on the USMS, which had to deputize each OIG agent. Statutory authority also would prevent delays in providing new agents the necessary law enforcement authority when they were hired.

Third, OIG investigators had handled their duties professionally for many years and had developed an impressive record of success in criminal investigations. Moreover, OIG investigators are fully trained in the exercise of law enforcement powers. New OIG agents receive an extensive course of training at the Federal Law Enforcement Training Center (FLETC); experienced agents receive periodic refresher training; and OIG agents have to qualify quarterly with their firearms.

Finally, the proposed legislation provided for enhanced oversight of the OIGs’ exercise of law enforcement authority. The USMS had no authority over OIGs and had done little to oversee the

³Because of its role in overseeing the USMS and DOJ, the DOJ OIG did not enter into an MOU, but instead received its blanket deputation based on an order to the USMS from the Attorney General.

exercise of law enforcement authority by the deputized investigators, beyond providing the initial deputation and renewing the deputation periodically. Nor did the DOJ provide significant oversight. The legislation, by contrast, proposed that the Attorney General would oversee the exercise of statutory law enforcement authority and would implement Guidelines to govern OIG law enforcement powers. The legislation also proposed that external peer reviews of OIG criminal investigators, similar to the peer review process applying to OIG auditors, would be implemented to ensure that each OIG Investigations Division has proper internal safeguards and management controls in place.

Deputy Attorney General Eric Holder agreed that statutory law enforcement authority for OIGs was justified, and in February 2000 the DOJ submitted to Congress proposed legislation to provide such authority. On July 19, 2000, the Senate Committee on Governmental Affairs held a hearing on the proposed legislation. Testifying in support of it were DOJ Associate Deputy Attorney General Nicholas Gess, Executive Associate Director and Comptroller for the Office of Management and Budget Joshua Gotbaum, and three IGs (Gaston Gianni, the FDIC IG and Vice Chair of the PCIE; Patrick McFarland, the Office of Personnel Management IG and the chair of the PCIE Investigations Committee; and Kenneth Mead, the Transportation IG and the chair of the PCIE Legislation Committee).

Shortly after the hearing, Senator Fred Thompson, the Chair of the Senate Committee on Governmental Affairs, introduced legislation, S. 3144, based on the DOJ proposal. However, some FBI representatives expressed their opposition to the legislation to Members of Congress, and the bill stalled. When the 106th Congress adjourned at the end of 2000, the legislation died.

Passage of the Legislation

In the 107th Congress, on May 16, 2002, Senator Thompson and Senator Joseph Lieberman

reintroduced legislation to provide statutory law enforcement authority to OIG investigators.⁴ Unlike in the previous Congress, the bill passed the Senate quickly and without opposition. While the bill was awaiting action in the House of Representatives, its provisions were added to the Homeland Security Act, which was on a fast track for passage. No Member of Congress expressed opposition to the provisions providing statutory law enforcement authority, and the provisions survived intact when the Homeland Security Act was enacted in November 2002.

Passage of this statutory law enforcement legislation was attributable to several factors. First, it was supported by the entire PCIE community and was aided greatly by the groundwork that had been laid over several years by the hard work of many IGs, past and present, and their staffs. For example, OIG staff conducted scores of briefings for Congressional Members and staff about the need for the legislation. In addition, the PCIE Legislation Committee and the Investigations Committee actively and energetically championed the legislation. Several OIGs also avoided the temptation to seek law enforcement authority for themselves alone in separate legislation, and instead supported the bill for the entire OIG community.

Second, the legislation was aggressively promoted by several key Congressional supporters, particularly Senators Thompson and Lieberman. One staff member in particular, William Outhier from the Senate Governmental Affairs Committee, worked tirelessly in support of the legislation.

Third, the DOJ was persuaded of the need for the legislation and made its support for it clear. In particular, Deputy Attorney General Larry Thompson was instrumental in this effort. As a result of his support, the DOJ Criminal Division

⁴This legislation was virtually identical to the bill that stalled in the previous Congress. The bill included coverage for the Tennessee Valley IG because that IG had been converted to a Presidential appointment. Also added was the IG for the Department of Homeland Security.

re-thought its long-standing opposition to statutory law enforcement for OIG investigators.

Fourth, to its credit the FBI also revisited its historic opposition to the legislation. After the terrorist attacks of September 11, 2001, the FBI refocused its priorities and resources to counter-terrorism, and it recognized that other state and Federal law enforcement agencies—including OIGs—had a critical role in handling many matters that the FBI previously investigated. After a series of meetings with several IGs, the Assistant Director in charge of the FBI's Criminal Investigative Division and ultimately FBI Director Robert Mueller agreed to support the legislation. The FBI then followed through with its commitment. On October 4, 2002, Director Mueller wrote a letter to Senator Thompson announcing the FBI's support for the bill. This letter was instrumental in convincing key Members of Congress to support the legislation.

Finally, the bill made sense and was amply justified. The legislation did not expand the jurisdiction or authorities of OIG investigators. Rather, it recognized that OIG investigators had exercised law enforcement authority responsibly and professionally for many years and that they deserved permanent law enforcement authority. Moreover, as described in the next section, the bill provided reasonable mechanisms for improved operation and oversight of OIG law enforcement authority.

Provisions of the Legislation

The enacted legislation allows each covered PCIE IG, each Assistant Inspector General for Investigations (AIGI), and any agent supervised by the AIGI to:

1. Carry a firearm while engaged in official duties;
2. Make an arrest without a warrant while engaged in official duties; and
3. Seek and execute arrest warrants and search warrants.

See Section 812(a). These powers are provided to 25 Presidentially-appointed IGs specifically listed in the Act. In addition, the Attorney General can extend these statutory authorities to other IGs who are able to demonstrate the need for such authority. *Id.*

The legislation also directs the Attorney General to oversee the exercise of these authorities. The Attorney General is required to issue, and revise as appropriate, Guidelines governing the exercise of these powers. According to the legislation, these Guidelines have to include, at a minimum, the operational and training requirements that were contained in the existing MOUs between the IGs and DOJ. See Section 812(b).

The Attorney General can rescind or suspend the law enforcement powers granted by the legislation to any OIG, or to any individual investigator, if that OIG or investigator has not complied with the Guidelines or if there is no longer a need for the particular OIG to exercise the statutory authorities. See Section 812(a).

Finally, the OIGs granted law enforcement authority by the legislation must enter into an MOU among themselves to establish an external peer review process. According to the legislation, the exercise of law enforcement powers by each OIG has to be reviewed by another OIG or by a committee of IGs, and the results of each peer review must be communicated in writing to the applicable IG and to the Attorney General. See Section 812(a).

Attorney General Guidelines

The Attorney General Guidelines required by the legislation were developed in consultation with the OIG community. Consistent with the legislative requirement that the Guidelines be based on the existing MOUs, the Guidelines are developed by converting the MOUs into Guideline form, and then soliciting suggested changes from OIGs, the FBI, and the DOJ Criminal Division. During the drafting process, OIGs provided several suggested

changes, many of which are being incorporated in the Guidelines.

The following briefly discusses the highlights of the Attorney General Guidelines, as they are emerging this year, particularly focusing on changes to the requirements of the existing MOUs:

- 1. Training.** Like the MOUs, the Guidelines require that OIG investigators who exercise law enforcement powers must complete a course of training at FLETC or a comparable course. Additionally, OIGs must provide periodic refresher training to their agents.
- 2. Mutual Notification.** The Guidelines clarify the current requirement in the MOUs that OIGs and the FBI notify each other when they initiate any criminal investigation in any matter in which they have concurrent jurisdiction. The Guidelines state that the mutual notice must be in writing, to the appropriate local office, and shall include, at a minimum and where available, the subject's name, date of birth, social security number, and any other case-identifying information, such as the allegation on which the case was predicated and the date the case was opened or the allegation received.
- 3. Joint Investigations.** The MOUs stated that in cases involving especially sensitive targets any OIG investigation had to be conducted jointly with the FBI.⁵ The Guidelines changed this requirement. According to the Guidelines, notice must be given to the FBI of allegations involving sensitive targets, and the FBI can join the

⁵These included cases involving Members of Congress, Federal judges, or high-level Executive branch officials; a significant investigation of a public official for bribery, conflict of interest, or extortion; a significant investigation of a law enforcement official; and an investigation of a member of the diplomatic corps of a foreign country.

case. However, the requirement that the case must be conducted jointly with the FBI was eliminated.

- 4. Sensitive Undercover Operations.** In cases involving an undercover operation involving "sensitive circumstances,"⁶ the MOUs required the cases to be conducted jointly with the FBI. The Guidelines were changed to allow the FBI to join a case involving a sensitive undercover operation but do not require that the case be conducted jointly with the FBI. The Guidelines also establish a separate OIG Criminal Undercover Operations Review Committee, similar to the review committee used for sensitive FBI undercover operations, to review OIG undercover operations involving "sensitive circumstances" when the FBI is not involved in the case.
- 5. Adherence to DOJ Policies on Criminal Investigations.** The Guidelines restate the requirement in the MOUs that OIG criminal investigations must adhere to DOJ policies applicable to criminal investigative practices. These include the Attorney General Guidelines on General Crimes, Racketeering Enterprise, and Terrorism Investigations; the Attorney General Guidelines Regarding the Use of Confidential Informants; and the Attorney General's Memorandum on Procedures for Lawful, Warrantless Monitoring of Verbal Communications. As in the MOUs, the Guidelines require that OIGs abide by the deadly force policy established by the DOJ.
- 6. Consultation with a Prosecutor.** As in the MOUs, the Guidelines require OIGs to consult with a prosecutor at an early stage in a criminal investigation to ensure that

⁶These sensitive circumstances include undercover operations involving authorized criminal activity, the operation of a proprietary business, a substantial risk of harm to any individual, or the targeting of a high-level public official.

the allegations, if proven, would be prosecuted. The Guidelines, like the MOUs, also require specific prosecutor concurrence for certain investigative techniques involving the use of informants and cooperating witnesses.

7. **Annual Written Reports.** In the MOUs, the OIGs were required to make an annual written report to the DOJ Criminal Division that included details about the number of times that law enforcement authorities were used by the OIGs and the names of the Federal prosecutors assigned to the investigations. The Guidelines streamline this requirement, requiring only that each OIG's annual report contain data on the number of investigations, undercover operations, and electronic surveillances that were used, as well as any significant and credible allegations of abuse of law enforcement powers by an OIG agent. The annual report, due on November 1, is sent to the Attorney General.
8. **Agency-Specific Addenda.** The Guidelines permit the Attorney General and an individual OIG to enter into agency-specific agreements to cover individual circumstances of that OIG.
9. **Peer Reviews.** Consistent with the legislation, the Guidelines state that the OIGs provided statutory law enforcement authority by the legislation must implement a collective MOU establishing a peer review process. The purpose of these peer reviews is to ascertain whether internal safeguards and management procedures exist to ensure that law enforcement powers are exercised properly. Through the PCIE Investigations Committee, the affected IGs established a detailed peer review guide to comply with the legislation and the Attorney General Guidelines. Each covered IG agreed in a collective MOU to follow the peer review process.

The peer review guide was developed by criminal investigators and supervisors from several OIGs. The guide is designed to ensure that OIGs follow the procedures established by the Attorney General Guidelines, as well as by the "Quality Standards for Investigations" adopted by the PCIE and Executive Council on Integrity and Efficiency (ECIE).

As a result, each OIG will both undergo a peer review by another OIG and will also conduct a peer review of a different OIG. Generally, OIGs will review another OIG of a similar size. The peer reviews are to occur once every 3 years, beginning in November 2004.

Outstanding Issues

Several issues remain unresolved in connection with OIG statutory law enforcement authority. One issue is whether the mutual notification requirements in the Attorney General Guidelines will prove workable. When the Guidelines were being developed, the FBI argued that the mutual notification should be in writing rather than oral. It also insisted that it would comply with the written notification procedures and provide timely notice to the OIGs about FBI investigations that are within the OIG's and FBI's concurrent jurisdiction. In the past, according to many OIGs, the notification often was one-way—from the OIGs to the FBI—despite the MOU requirement that the notification be mutual. Many OIGs stated that they often learned of FBI investigations in their agencies belatedly, sometimes only after an arrest was made. While FBI officials now insist they will adhere to the written notification requirements in the Attorney General Guidelines, many OIGs believe this issue may continue to be problematic.

Another important issue is whether OIG criminal investigators may carry their firearms at all times, like many other Federal law enforcement agents. The legislation and the Attorney General Guidelines allow covered individuals to "carry a

firearm while engaged in official duties as authorized under this Act or other statute, *or as expressly authorized by the Attorney General.*” [Emphasis added.] Many IGs believe, for several reasons, that their covered agents should be able to carry their firearms at all times. Other law enforcement agents—such as FBI agents, Secret Service agents, and Department of Homeland Security immigration agents—are permitted to carry their weapons at all times. Like them, OIG agents are required to respond at all hours to incidents that need to be investigated and should be able to have their firearms with them to be able to respond quickly. Also, OIG agents may be confronted at any time by subjects of their investigations, some of whom are career criminals and who may be armed. This presents a safety issue to OIG agents. In addition, OIG agents should be prepared to respond to criminal or terrorist activities in their presence even when they are off duty. This rationale is particularly important in light of the heightened terrorist alerts after the September 11 attacks.

However, the DOJ Criminal Division has indicated that it opposes granting OIG agents authorization to carry weapons at all times. It also makes a legal argument that the statute does not give the Attorney General the authority to allow OIG agents to carry their weapons while not on official duty.⁷ In the Criminal Division’s view, carrying weapons off duty in most cases is beyond the authority established by the Inspector General Act, and an amendment to the Act or special deputations would be required to permit most OIG agents to carry weapons while not on official duty. However, many OIGs believe that the language of the statute and the Attorney General’s supervisory authority over the Department of Justice,

⁷In the Criminal Division’s view, the phrase “as expressly authorized by the Attorney General,” allows the Attorney General to expand the type of official duties during which an OIG agent can carry a weapon, but it does not allow the Attorney General to authorize OIG agents to carry weapons while off duty.

including the USMS, allow the Attorney General to permit OIG agents to carry weapons at all times, and that the Attorney General should do so.

This issue may be resolved by pending legislation, the Law Enforcement Officers Safety Act,⁸ which allows law enforcement officials to carry concealed weapons, notwithstanding any contrary state law. The legislation was designed to allow law enforcement officials to carry weapons off duty and when traveling across state lines. The legislation is sponsored by Senator Ben Campbell, Senator Orrin Hatch, and 31 other Senators from both parties. The Administration and the DOJ have not taken a position on this legislation.

In describing the need for this legislation, Senator Campbell stated that it would allow law enforcement agents to respond to terrorist incidents and also to protect themselves from the subjects of their investigations. Senator Leahy, in announcing his support for the bill, stated that it would “allow thousands of equipped, trained and certified law enforcement officers, whether on or off duty or retired, to carry concealed weapons in most situations, thus enabling them to respond immediately to a crime.” The Senate Judiciary report accompanying the bill aptly stated:

Law enforcement officers are never “off duty.” They are dedicated public servants trained to uphold the law and keep the peace. When there is a threat to the peace or to our public safety, law enforcement officers are sworn to answer that call. The Law Enforcement Officers Safety Act of 2003 enables law enforcement officers nationwide to be armed and prepared when they answer that call, no matter where, when, or in what form it comes.⁹

⁸This bill, S. 253, is currently pending in the Senate. A companion bill, H.R. 218, is pending in the House of Representatives.

⁹Senate Report 108-29 (The Law Enforcement Officers Safety Act of 2003).

Conclusion

The passage of statutory law enforcement legislation marked a watershed event in the history of OIGs. It recognized that OIG criminal investigators, who have a long record of responsibly

handling their law enforcement duties, are permanent and valued members of the Federal law enforcement community. With statutory law enforcement authority, OIG investigators are now in a better position to continue their impressive record of accomplishments. 🏠

CLARK KENT ERVIN

Acting Inspector General, Department of Homeland Security

The Department of Homeland Security and the Office of Inspector General

On January 24, 2003, the Department of Homeland Security (DHS) began operations. The creation of the department, representing the largest reorganization in Federal history since the creation of the Department of Defense in 1947, brings together 22 different Federal agencies and approximately 180,000 employees. The mission of the department (preventing terrorist attacks within the United States, reducing the vulnerability of the United States to terrorism, minimizing the death and destruction resulting from terrorist attacks, and assisting with the recovery from any such attack) is of paramount national importance.

Overview of DHS

DHS is organized into five divisions or “directorates.”

- The largest of the directorates, Border and Transportation Security, is responsible for maintaining the security of our nation’s borders and transportation systems. It brings together the functions of the U.S. Customs Service, the Transportation Security Administration (TSA), and the border security functions of the Immigration and Naturalization Service (INS).
- The Emergency Preparedness and Response directorate works to ensure that our nation is prepared for and able to recover from terrorist attacks and natural disasters. It assumes the work and role of the Federal Emergency Management Agency (FEMA), and it absorbs

the functions of the Office of Domestic Preparedness in the Department of Justice (Justice).

- The Science and Technology directorate houses the department's research and development activities, which are designed to find ways and means to thwart terrorist attacks and to minimize their effects.
- The Information Analysis and Infrastructure Protection directorate is responsible for identifying and assessing terrorist threats against the homeland, issuing timely warnings based on its assessments, and working with other Federal agencies, states, and localities, and the private sector to protect the nation's critical infrastructure against terrorist attack.
- The management directorate is responsible for budget, management, and personnel issues in DHS.

In addition to the five directorates, other homeland security related agencies have been incorporated into DHS, namely the Coast Guard and the Secret Service. The immigration services functions of INS were transferred to a "Bureau of Citizenship and Immigration Services."

Overview of the OIG at DHS

The Office of Inspector General (OIG) was, to use Dean Acheson's apt phrase, "present at the creation" of DHS. Thanks to a provision in the Homeland Security Act of 2002, I, too, began operating as the Acting Inspector General of DHS on January 24, 2003. I have assembled a stellar senior leadership team to assist me in managing DHS OIG.

On March 1, 2003, DHS OIG acquired personnel and assets from OIGs that had exercised oversight authority over agencies or parts thereof that were merged into DHS. All 200 FEMA OIG full-time equivalent employees (FTEs), 195 Treasury Department OIG FTEs, 45 Transportation Department OIG FTEs, 15 Justice OIG FTEs,

and 2 FTEs each from the General Services Administration and Agriculture Departments OIGs were transferred to DHS. Of the total number of 459, 186 are located in Washington, D.C., and 273 are located in 21 field offices throughout the country. DHS OIG's appropriated budget for the balance of Fiscal Year 2003 was \$45 million; we are requesting a budget of \$80 million for Fiscal Year 2004. A copy of the DHS OIG organization chart with additional detail is attached.

The department faces a host of challenges. Accordingly, DHS OIG will have its hands full with a wide range of areas to inspect, audit, and investigate, all with the aim of helping to make the department as effective, efficient, and economical as possible.

Agency Challenges

The General Accounting Office has done a good job of identifying the department's three most basic challenges. First, making any new department functional, especially one as large and as complex as DHS, is a challenge in and of itself. Further, each of the agencies merged into DHS, wholly or partially, brought with it its own pre-existing challenges. Third, making the disparate component parts function as a coherent whole is, certainly, the biggest challenge of all. And, after all, the whole point of creating the department is to concentrate in one place the full panoply of the Federal Government's counterterrorism resources, and, thereby, to create a whole that is greater and more effective than the sum of its parts.

In its reviews, analyses, and evaluations of department programs and operations, DHS OIG will look for efficiencies that can be achieved and savings that can be realized. To cite one large example, the department should consolidate and centralize administrative services like contracting, budgeting, legal, human resources, and internal affairs as soon as possible. To cite a smaller example, we have urged the department likewise to consolidate training programs and facilities and

also space requirements for offices, break rooms, and detention cells at border crossings, airports, and other ports of entry.

The new department is one of the Federal Government's largest contracting organizations. At the end of last calendar year, TSA's contracts alone totaled \$8.5 billion. While praising TSA for accomplishing a great deal in terms of air passenger safety in a short period of time, the Transportation Department OIG has criticized TSA for letting contracts with little oversight and few controls. A recent review by TSA itself of one subcontractor found that, out of \$18 million in expenses, between \$6 million and \$9 million appeared to be attributed to wasteful and abusive spending practices. TSA let a \$1 billion information technology infrastructure project to a contractor based only on a "statement of objective," without detailed specifications or "requirements." This could well result in higher contract costs than necessary.

Some agencies that are now a part of DHS had large, complex, high-cost procurement programs under way that need to be closely managed by the new department to: (1) determine whether any changes are needed in light of the department's overall mission, (2) control costs, and (3) ensure that program objectives are met. Examples include the Customs Service's \$5 billion Automated Commercial Environment (ACE) project and the Coast Guard's \$17 billion Deepwater Capability Replacement Project.

The department is also one of the Federal Government's largest grant making institutions. States and localities have been clamoring for Federal help to pay for mounting emergency preparedness costs, and billions of dollars are now beginning to flow to them. In the rush to meet these governments' legitimate needs, the department will need to ensure that adequate controls are in place to see to it that the money is spent for its intended purpose and that emergency preparedness measurably increases as a result. Research and development grants to counter terrorism and protect critical infrastructure will likewise need to be

closely managed to ensure fiscal and performance accountability.

Information technology issues pose another immense challenge for the department. The Chief Information Officer (CIO) will need to establish a department-wide infrastructure that will permit the department's 180,000 or so employees to communicate with each other. In addition, the CIO will need to identify the department's hundreds of information technology system assets, determine which ones are needed to meet mission requirements, and eliminate the rest. Finally, as required by the Federal Information Security Management Act, the CIO will have to develop and implement an agency-wide information security management program that addresses the risks and vulnerabilities in the department's various systems.

The department must quickly integrate and establish effective controls over the financial systems and operations of its various components. Some components have received unqualified audit opinions on their financial statements; however, they expend significant manual efforts and costs to prepare for their financial statements, and weaknesses exist in financial preparation and control.

Securing our borders and transportation systems is a gargantuan challenge. DHS OIG will be closely monitoring various INS initiatives that have been plagued by problems to date, including the National Security Entry-Exit Registration System (now superseded by a program called U.S. VISIT), the Student & Exchange Visitor Information System, and the joint INS-FBI fingerprinting initiative. We will also monitor INS' efforts to improve its record of removing aliens who have overstayed their visas or otherwise violated the terms of their admission. A recent Justice OIG study concluded that, on average, INS is deporting only about 13 percent of all non-detained aliens under final orders of removal. The study also sampled "high risk" categories and found that INS had removed only 6 percent of aliens with final removal orders who came from countries listed as sponsors of terrorism. Only 35 percent of aliens

with criminal records and final removal orders were removed.

While there is a robust DHS presence along our border with Mexico, our border with Canada is only lightly defended today. DHS OIG will take up where Treasury OIG left off in evaluating initiatives like Customs' Remote Video Inspection System, designed to use technology to enhance security at remote border crossings.

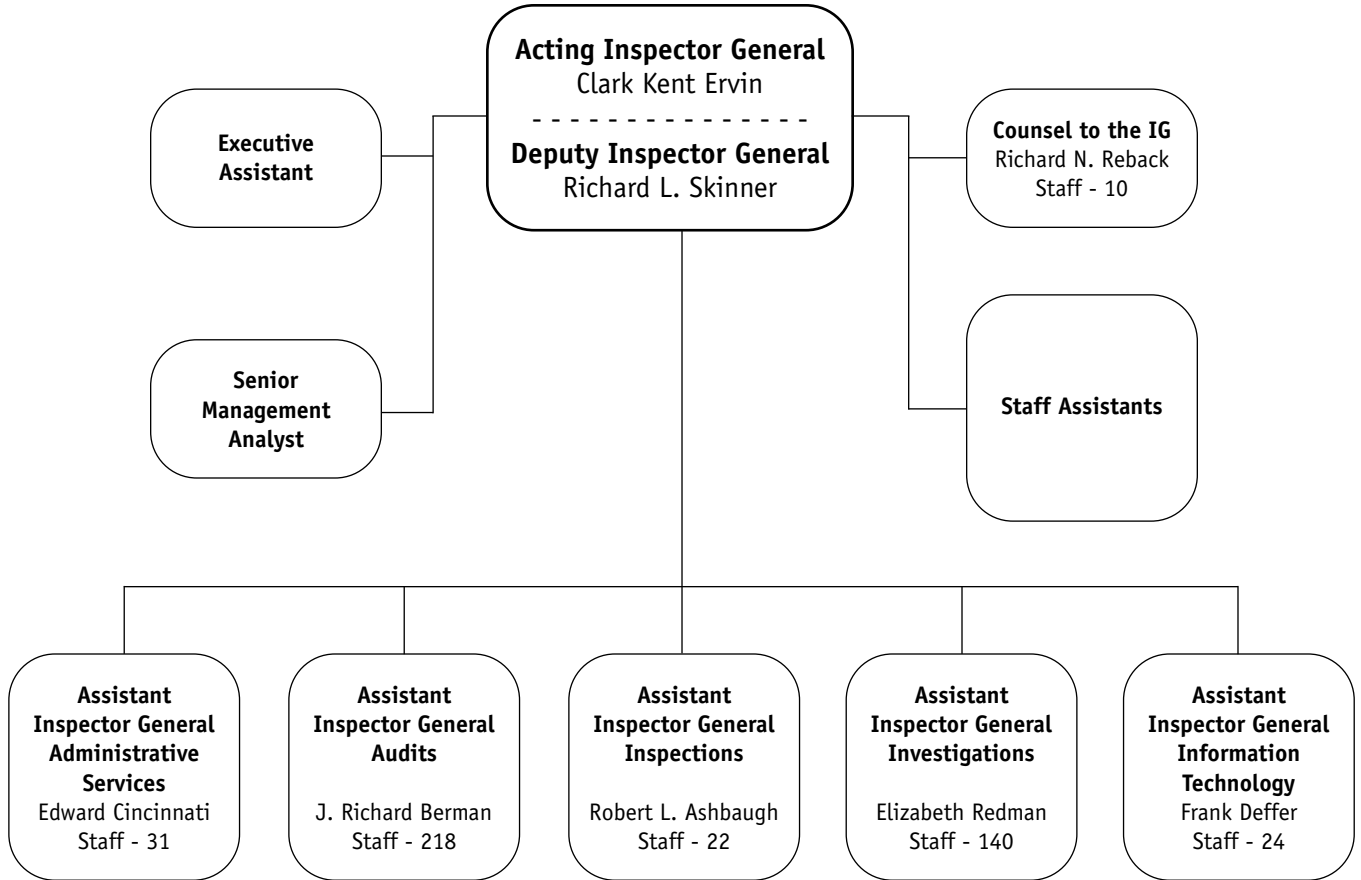
While TSA has made noteworthy strides toward improving airport security since September 11, 2001, significant vulnerabilities remain at our ports and in mass transit, rail, and intermodal container systems. DHS OIG will evaluate the degree to which remaining vulnerabilities in air travel, as well as vulnerabilities in other transportation modes, are addressed.

Finally, DHS OIG will monitor the degree to which those parts of the department that have non-homeland security related missions (the Coast Guard, the Emergency Preparedness and Response directorate, the Secret Service, and the Bureau of Citizenship and Immigration Services) fulfill those important obligations.

My colleagues in DHS OIG management join me in thanking the Inspector General community in general and a number of Inspectors General in particular for your extraordinary support for us and our work as we begin operations. We look forward to working closely with the community in ensuring not only that DHS OIG fulfills its mission, but also that, in so doing, we serve as a model for the community and the Federal Government as a whole. 🏠

Department of Homeland Security Office of Inspector General

MANAGEMENT TEAM



FIELD OFFICE LOCATIONS

Atlanta, GA	El Centro, CA
San Juan, PR	El Paso, TX
St. Thomas, VI	McAllen, TX
St. Croix, VI	Denton, TX
New York, NY	Houston, TX
Philadelphia–Marlton, NJ	Tucson, AZ
Boston, MA	Chicago, IL
Oakland, CA	Indianapolis, IN
San Francisco, CA	Miami, FL
LA–El Segundo, CA	Kansas City, MO
San Diego, CA	

MARK E. NAGLE

Chief, Civil Division, United States Attorney's Office for the District of Columbia

Criminal and Civil Parallel Proceedings in the District of Columbia

The Approach of the U.S. Attorney's Office

Improper practices by government employees or contractors that constitute fraud, waste or other abusive conduct can quite often be addressed through both criminal and civil sanctions. In fact, given the sophisticated nature of some fraud schemes that have come to light in recent years, it is no exaggeration to say that success today in combating such improper practices is critically dependent upon effective coordination of criminal and civil enforcement tools. In the United States Attorney's Office for the District of Columbia, this coordination—commonly known as the use of parallel proceedings—has been a defining characteristic of our work for more than a decade.

Our current approach to parallel proceedings has its origins in a memorandum issued by then Attorney General Meese in March 1986 to all United States Attorneys and Justice Department components. In that memorandum, Mr. Meese stressed the importance of coordination between criminal and civil prosecutors at the earliest possible stages of an investigation, so that all enforcement options potentially available to the government under the law were given careful consideration. Investigative tools such as Inspector General subpoenas were identified as a means of preserving maximum access to the fruits of investigative efforts given that Rule 6(e) of the Federal Rules of Criminal Procedure forbids disclosure of matters occurring before a grand jury except in very limited circumstances.

Soon after the issuance of the Meese memorandum, then U.S. Attorney Joseph E. diGenova directed the criminal and civil Assistant United

States Attorneys (AUSAs) of this Office to exchange information about matters referred for possible prosecution, and to coordinate the use of criminal and civil proceedings on a case-by-case basis to assure the maximum prospects for a successful outcome. That memorandum has been revised and updated by a succession of United States Attorneys, to take into account not only developments in the law but also practical lessons learned through years of close cooperation within the Office and with the Inspector General organizations from which many of our cases are referred. This is an overview of the present state of our practice.

Legal Framework

A brief review of the pertinent law is a useful starting point. Substantial civil remedies are available to the United States under the common law and under a number of statutory provisions. Prominent among the latter is the Civil False Claims Act, 31 U.S.C. § 3729 *et seq.*, which authorizes recovery of treble damages, penalties of up to \$11,000 per false claim, and the costs of the investigation. Other civil remedies include: 18 U.S.C. § 216 (civil penalties for violations of the provisions of 18 U.S.C. §§ 203, 205, 207, 208 and 209);¹ 12 U.S.C. § 1833a (civil penalties of up to \$1 million for violations of financial institution fraud

¹These provisions of Title 18 generally apply as follows: 18 U.S.C. 203 prohibits Federal and District of Columbia employees from acting as attorneys or agents for private parties with respect to matters in which the U.S. or the District, respectively, has an interest, and prohibits private parties from paying or offering to pay for such services. 18 U.S.C. 205 prohibits Federal and D.C. employees from acting as attorneys or agents in the prosecution of claims against their respective governments. 18 U.S.C. 207 proscribes certain lobbying activities by Federal and D.C. employees for specified time periods following their departure from office. 18 U.S.C. 208 prohibits Federal and D.C. employees from taking official actions that affect their personal financial interests. 18 U.S.C. 209 prohibits the payment or acceptance of compensation to Federal and D.C. employees for performance of official services by any outside source. Each of these provisions is subject to certain exceptions and limitations on its scope.

statutes (FIRREA)); 41 U.S.C. § 55 (civil penalties for violations of the Anti-Kickback Act); and common-law remedies available to the government as to any injured party, such as breach of contract, unjust enrichment, and conversion.

Civil Division Referrals to the Criminal Division

Civil AUSAs are required to consider the possibility of criminal referrals in their civil cases. In cases involving economic harm, the lines between criminal and civil conduct are not always clear-cut, and the possibility of a criminal case are always considered where the conduct at issue is characterized by outright dishonesty. For example, potential criminal conduct justifying a referral may be found in cases involving government contract litigation or where the government is considering an affirmative suit in matters involving contractor dishonesty (false claims, false statements, or other fraudulent conduct). Criminal referrals are also appropriate where there is perjury or falsification of documents in the course of litigation. In addition, even if the underlying civil dispute does not by its terms present dishonest or fraudulent conduct, in the course of civil litigation and discovery the Civil AUSA may become aware of leads to other criminal conduct (such as tax evasion, false statements, other program fraud, or fraud on third parties), at which time the Criminal Division is contacted. In particular, the Criminal Division is informed prior to the settlement of any matter in which there appears to be criminal conduct.

Such notification may also avoid excessive fines or other problems where subsequent prosecution could be barred.

Criminal Division Referrals to the Civil Division

All criminal matters involving fraud against the government, theft of government property, or conflict of interest of a Federal or District of

Columbia official are referred to the Civil Division for possible civil action. The Civil Fraud Coordinator is responsible for overall coordination of civil remedies with the criminal matter in the cases referred for possible civil action. We strive to ensure that referrals are made at the earliest time possible, with the goal of permitting full coordination of criminal and civil remedies prior to the commencement of grand jury proceedings.

A Criminal AUSA may have occasion to become aware of or involved in a case which may be of interest to the Civil Division but which is not formally “opened” as a criminal case. Any matter of possible fraud against or theft from the government involving a loss to the government in excess of \$25,000, or involving alleged wrongdoing by a person occupying a position of special trust and responsibility, is brought to the attention of the Civil Fraud Coordinator, even if the matter is still in a preliminary investigative stage. In addition, any matter being investigated pursuant to 18 U.S.C. §§ 203, 204, 205, 207, 208 or 209, regardless of the monetary amount involved, is likewise brought promptly to the attention of the Civil Fraud Coordinator.²

Following the referral of a criminal case, the Civil Division opens a civil file, assigns a Civil Assistant, and notifies the prosecutor in charge of the criminal case that it has been referred for possible civil action. After notification to the Civil Division and the assignment of a Civil AUSA, it is the responsibility of both the Criminal AUSA and the Civil AUSA to remain in contact on the case. The Criminal AUSA considers requests by the Civil AUSA on matters relating to the handling of the investigation, plea negotiations, or other matters, and attempts to accommodate these

²In some rare circumstances, the need to preserve the secrecy of a criminal investigation (*e.g.*, an undercover operation) or other factors (*e.g.*, a possible obstruction of justice in the criminal case) may warrant delay of compliance with these procedures. In such cases, the Criminal Assistant notifies the Civil Fraud Coordinator that such a delay is necessary.

requests to the extent they do not interfere with or unduly delay the criminal investigation.

If criminal prosecution has been declined, the prosecutor forwards the criminal case file to the Civil Division. If the criminal case is still pending, the prosecutor makes the contents of the file available for copying by the Civil Division as appropriate. In all cases, however, matters occurring before the grand jury are first removed from the file and handled as described below.

Even when the Criminal and Civil Divisions are not collaborating on joint or parallel investigations, in any case in which the Civil Division has expressed an interest, the Civil AUSA periodically contacts the prosecutor to be informed on the progress of the criminal case. At the same time, subject to the limitations of Rule 6(e), the Criminal AUSA apprises the Civil AUSA of any significant events that may occur. Examples of such events include discovery of substantial assets of the subject; identification of new items of proof that materially enhance or reduce the prospects for securing a conviction; a decision to seek an indictment, and decisions to initiate or respond to plea negotiations. Upon request of the Civil AUSA, a draft indictment or information is provided to the Civil AUSA. The Criminal AUSA considers suggestions from the Civil AUSA as to the structuring of charges or disposition of the case in order to ensure that justice is achieved.

Matters Occurring Before the Grand Jury

Matters occurring before the grand jury may not be disclosed by the prosecutor unless disclosure has been previously authorized by court order pursuant to Rule 6(e)(3)(C)(i) of the Federal Rules of Criminal Procedure. However, certain procedures are followed where feasible in order to minimize Rule 6(e) problems.

- a. In cases involving possible civil remedies, prosecutors consider obtaining documents by methods other than grand jury

subpoenas, and pursue such alternative methods when it would not otherwise adversely impact on the investigation. Alternative methods include Inspector General subpoenas, “access to records” clauses in contracts and regulations (*e.g.*, Federal Acquisition Regulation 52.215-2), subpoenas issued pursuant to the Health Insurance Portability & Accountability Act of 1996, 18 U.S.C. § 3486, and search warrants. Where problems arise, the Civil Division is consulted for assistance on use of such alternative methods. If the records are audited, it should be done at the direction of agency personnel with both criminal and civil authority, such as the Inspector General, and should be done for both purposes. Records from Federal agencies are not normally requested pursuant to grand jury subpoenas unless other avenues of access have been exhausted.

- b. Before the case is presented to the grand jury, the Criminal AUSA advises the Civil AUSA that such presentation is about to occur. The Civil AUSA may then ask that investigators summarize and/or segregate, to the extent practical, the investigation as of that time, including witness interviews. The Criminal and Civil AUSAs coordinate to permit the Civil AUSA to be included in pre-Grand Jury interviews as may be appropriate to the nature of the case.
- c. The Criminal and Civil AUSA collaborate to develop a record of materials and information available prior to or outside of the grand jury, as well as communications between civil and criminal attorneys, whenever the development of such a record would not unduly interfere with the ability to proceed expeditiously or otherwise unduly hamper the investigation.
- d. Consideration is given in appropriate cases presented to a grand jury to obtaining a Rule 6(e) order permitting access by the

Civil Division Assistant to grand jury information, or even to including the Civil Division Assistant on the Rule 6(e) list where appropriate.

Pre-indictment Investigations

Although the grand jury may not be used to build a civil case for the government, evidence gathered by law enforcement agencies in the course of a pre-indictment investigation may properly be used in a subsequent civil action. Pre-indictment investigations may therefore be used to gather and preserve evidence pertinent to a civil action and to obtain the information required to determine whether a defendant would be able to pay a civil judgment. Prosecutors can brief the Civil AUSA, or arrange a meeting which includes investigators, prior to the receipt of information by Grand Jury process, unless such a briefing or meeting cannot be arranged because of the need to act on an emergency basis to obtain documents in danger of being destroyed or other, similar reasons.

Active coordination between Criminal and Civil Assistants is the best way to ensure that all necessary investigative activities are conducted before evidence is lost or destroyed, witnesses disappear, assets are dissipated, or other events occur that could impair or eliminate the government’s ability to pursue all the remedies—criminal and civil—available under the law.

Guilty Pleas

The formulation of guilty pleas and the manner in which pleas are entered may also materially assist in the prosecution of a civil action. As a general matter, in cases involving possible civil remedies, the criminal prosecutor keeps the Civil AUSA informed of plea negotiation to ensure the best possible result for the United States from both the criminal and civil perspective.

When negotiating a plea, the collateral estoppel effect for a civil action is kept in mind. For

example, in a procurement fraud case, a plea to false claims would have collateral estoppel effect, while a plea to conspiracy might not. In addition, accepting a plea to only one count of a multiple count indictment may hamper a subsequent civil action. The Criminal prosecutor considers requests of the Civil AUSA relating to such matters in structuring plea agreements. Likewise, the relationship among fines, forfeitures, and civil remedies is discussed and coordinated.

Care is taken to ensure that a plea agreement does not inadvertently compromise a civil case. For example, language in a plea agreement that the United States “will bring no further actions based on the conduct encompassed in the agreement,” or any similar promise, may effectively foreclose civil claims. Accordingly, plea agreements are crafted with this awareness in mind. An explicit representation that the agreement will not resolve potential civil remedies or that such remedies are reserved will ordinarily be sufficient. If the plea letter or plea agreement will not include such an explicit representation, the Criminal AUSA notifies the Civil AUSA in advance and affords the Civil AUSA an opportunity to review the letter or agreement. To the extent that a plea agreement does not address civil remedies, it is important that the defendant neither be misled nor be under any misunderstanding as to whether civil claims are, or are not, being resolved.

Since the information contained in a proffer is available for the civil case, the prosecutor considers requests of the Civil AUSA as to formulating the proffer in a Rule 11 plea. While a Rule 11 proceeding may not be used solely for the purpose of developing a civil case by making, for example, a disclosure of grand jury information which is not relevant to the proceeding, a complete factual predicate is made whenever practicable. A stipulation of facts of the fraud or theft involved, and its fiscal impact on the United States, is considered by the Criminal AUSA when requested by the Civil AUSA.

The Criminal Assistant considers requests or suggestions from the Civil Assistant as to the substance of any statements to be made in the course of the criminal proceedings related to the amount of damages or restitution, which could bind the government in any related civil case.

Dissipation of Assets

The Civil Division can provide much assistance in a criminal case when it appears the defendant is dissipating assets. The Criminal AUSA is aware that, in addition to the Criminal Division’s own Asset Forfeiture Section, the Civil Division may provide asset-freezing or asset-seizing options. In such circumstances, the Criminal AUSA notifies the Civil AUSA if it becomes apparent that a potential defendant’s assets are being dissipated. The Civil Division assists in every feasible manner to protect the government against such occurrences. A joint determination is made regarding whether efforts to prevent dissipation of assets will materially prejudice the criminal prosecution. For example, in a case in which the potential criminal target is aware of the investigation, the Civil Division may be called upon to file a civil action to enjoin the dissipation of assets by the target or others. Once an injunction is obtained, the civil action might then be stayed pending conclusion of the criminal proceedings. Early notification to the Civil Division can be particularly useful when the target is a Federal employee with a substantial retirement account; administrative action can be taken to prevent withdrawal of funds if the employee/target is discharged.

Health Care Fraud Matters

In health care fraud matters, the Fraud and Public Corruption Section and the Civil Division have agreed to a task force approach to investigations. The Fraud and Public Corruption Section is advised immediately of any health care fraud matter referred by any agency, and the Civil Division

is advised of any such matter referred to the Fraud and Public Corruption Section by any agency. Also, no civil health care fraud investigation is concluded by settlement, suit, or otherwise, without consultation with the Fraud and Public Corruption Section's Health Care Task Force Coordinator, as to whether the investigation has uncovered potential criminal charges. Likewise, no criminal case is concluded by plea, indictment, information, or otherwise without consultation with the Civil Health Care Fraud Coordinator as to whether the investigation has revealed potential civil claims. The Civil and Criminal AUSAs also coordinate to permit the Criminal AUSA to be included in any witness interviews. Further, upon request, reports or any draft pleadings are provided to the criminal AUSA during the course of the inquiry so that criminal potential may be assessed.

Coordination with the Agency Involved

Unless the prosecutor has a valid objection, the Civil Division will promptly notify the agency involved that it is considering a civil action pending completion of the criminal proceedings. This will ensure that the Civil Division and the agency coordinate their efforts to recover the loss incurred by the government. Whenever possible, these efforts should include withholding the payment of funds to a potential defendant (*e.g.*, a Federal employee's retirement refund or payments due a Federal contractor). In the event the Civil Division determines that a civil action should be instituted, the agency will be actively involved. Agency counsel will be informed that administrative settlements of civil liability may not be concluded without approval of the Department of Justice or

this Office. Settlement of civil claims prior to the completion of the criminal proceedings should be coordinated with the Criminal Division. The responsible agency should always be consulted on possible settlement of civil claims.

Conclusion

Effective coordination of criminal and civil remedies has greatly enhanced the government's ability to combat fraud, waste and abuse. The U.S. Attorney's Office in the District of Columbia will continue to follow the approach described above in matters referred to us by the Inspectors General, and we welcome your continued assistance and insights in making the process work even better. Those wishing further information on this topic, or who would like to discuss possible referrals with us, are invited to contact the persons named below:

Civil Division

Mark Nagle, Chief
(202) 514-7151

Keith Morgan,
Deputy Chief
(202) 514-7228

Doris Coles-Huff,
Deputy Chief
(202) 514-7170

Criminal Division

Daniel Seikaly, Chief
(202) 514-6988

Eileen Mayer,
Deputy Chief
(202) 514-7840

Stevan Bunnell, Chief
Fraud & Public Corruption
Section
(202) 514-6961

Mary Patrice Brown,
Deputy Chief
Fraud & Public Corruption
Section
(202) 514-6966

SUSAN R. CARNOHAN

Legislative and Public Affairs, Department of Education

CATHERINE A. GROMEK

Legislative and Public Affairs, Department of Education

The PCIE's New Practical Guide for Reviewing Government Purchase Card Programs

The Federal Government increasingly relies upon charge cards to facilitate the procurement of goods and services for its offices, travelers, and fleet vehicles. According to the General Accounting Office (GAO), government purchase card spending increased dramatically over a recent 6-year period, from \$5.3 billion in Fiscal Year (FY) 1997 to \$22.1 billion in FY 2002. Although purchase cards reduce government paperwork costs, they also are subject to fraud and abuse. In light of these problems, Inspector General offices across government have increasingly focused attention on detection and prevention of charge card misuse.

Under the auspices of the Inspections and Evaluations Committee of the President's Council on Integrity and Efficiency (PCIE), *A Practical Guide to Reviewing Government Purchase Card Programs* was recently published. The Department of Education Office of Inspector General (OIG) used its work and that of other OIGs and the GAO to create the basic guide. The *Guide* was then enhanced and made available on CD-ROM by the Department of Commerce OIG.

The *Guide* is an excellent example of how OIGs work collectively to promote efficiency and effectiveness throughout the government. It was recognized by the PCIE with an Award for Excellence in 2002, and is available via CD-ROM and on the Internet at www.ignet.gov. This article will highlight the key features of the purchase card program and explain how the *Guide* can assist OIG staff to pursue problem areas.

Overview

A Federal Government purchase card is an internationally accepted charge card issued by financial institutions and available to all Federal agencies under contracts awarded by the General Services Administration (GSA). The purpose of issuing such cards is to minimize the paperwork processing for purchases of up to \$100,000. GSA estimates the government saves \$1.2 billion in administrative costs by using these cards.

User agencies, of which there are more than 300, select one of five bank contractors (Bank of America, Citibank, U.S. Bank, Mellon Bank, or Banc One), GSA administers the Master Contracts, and participating agencies administer their task orders. Banks pay rebates directly to user agencies. Over 392,000 cards were issued, and there were 25 million purchase card transactions in FY 2002, with sales totaling over \$15 billion.

There are several key contract terms that apply to the purchase card program. Banks must provide assistance to any authorized investigative or audit unit, including providing reasonable access to all card program administrative, financial, and management data. The government is liable for Centrally Billed Accounts (purchase, fleet, and some travel), while individuals are primarily liable for the individually billed travel card account.

Banks must provide the following electronic reports: master file containing information on all accounts; transaction dispute, account activity report detailing all transactions for accounts; exceptions identifying lost, stolen, invalid, or canceled cards as well as unusual spending activity; and delinquency which includes delinquent accounts, accounts in pre-suspension/cancellation status, and suspended or cancelled accounts.

Purchase Card Vulnerabilities and Agency Controls

Although the use of purchase cards provides efficiency and savings to the government, there are vulnerabilities inherent in the program. For

example, unless proper controls are in place, the same person could order, pay for, and receive goods and services charged on the card. Effective purchase card programs depend on the users being properly trained to manage their card use. The *Treasury Financial Manual* requires each agency to have its own internal procedures for using purchase cards, so that cardholders must be made aware of applicable laws, regulations, and procedures developed by their agency. It is essential that management also understand the internal controls necessary to ensure accountability at all levels of purchase card use.

There are several agency controls that can minimize the potential for card misuse: establishing and enforcing clear policies; training cardholders and approving officials; setting reasonable spending limits; reviewing transactions on a regular basis; using reporting tools to manage the program; and performing program audits and investigations, when needed.

GSA also provides several tools to supplement agency control efforts: a Purchase Card Roundtable that provides a forum for key officials to share information, an annual training conference, the Purchase Card Oversight Manual, publications on cardholder "do's and don'ts," and a monthly report to Chief Financial Officers.

Common Purchase Card Problems and the Development of PCIE's Practical Guide for Purchase Card Review

As instances of purchase card abuse emerged at the Department of Education several years ago, the OIG at Education embarked on a department-wide review of such cards and, through information sharing with other OIGs, learned of common control problems that occur throughout government. These problems include:

- Inadequate review of purchases by approving officials;
- Unmanageable span of control;
- Excessive number of purchase cardholders;

- Exceeding authorized purchase limits;
- Lack of documentation or inadequate documentation;
- Inappropriate purchase method;
- Unrecorded accountable property;
- Lack of security over purchase card;
- Inadequate agency purchase card directives;
- Inadequate training of cardholders and approving officials;
- Inappropriate object class;
- Late payments; and
- Inadequate reconciliation.

The Education OIG partnered with the OIG at the Department of Commerce to develop guidelines on the identification of purchase card abuse that could be beneficial to any agency OIG addressing these and similar problems. This ultimately led to the PCIE's publication of *A Practical Guide for Reviewing Government Purchase Card Programs*.

The *Guide* presents a straightforward, step-by-step method for reviewing purchase card programs at any government agency. Among the topics it addresses are:

- **Review Objectives.** The primary objectives of a purchase card review are to assess compliance with laws and regulations, efficiency of operations, and adequacy of internal or management controls to help prevent fraud, waste, and abuse.
- **Guidance.** The *Guide* contains a list of applicable guidance that includes relevant provisions of the Federal Acquisition Regulation (FAR), Part 2, *Treasury Financial Manager*, and Title 5 of the Code of Federal Regulations (CFR).
- **Standards.** The *Guide* indicates that general standards that can be used as resources are the PCIE Quality Standards for Inspections, GAO Standards for Internal Control in the Federal Government, and the Yellow Book.
- **Roles.** As noted by the *Guide*, the purchase card program is usually administered by a

component of the agency's Office of the Chief Financial Officer or the procurement officer. Managers are generally responsible for program performance, productivity, and controlling costs. They also are responsible for the internal controls of the program and ensuring that programs are in compliance with applicable laws. Monthly review of the cardholder's statement by the approving official is essential. It is a fundamental element in a system of internal controls that are critical to protecting the program's integrity.

The Importance of Preparation in Purchase Card Reviews

The key to producing a quality review is thorough preparation. It is important for reviewers to focus on three areas: (1) compliance with laws and regulation; (2) efficiency of operation; and (3) adequacy of internal or management controls. Careful consideration should be given to the personnel selected to perform the review. Under the supervision of an experienced auditor, entry-level evaluators or auditors can conduct interviews with cardholders, approving officials, and others, and can review financial records.

Among those who should be interviewed are managers whose offices have a large number of cardholders, individual cardholders, approving officials, and administrative officers. The designated billing office staff where the official invoice is submitted also should be interviewed.

Financial records should be checked after interviews are conducted. Again, the *Guide* contains a comprehensive list of records necessary for review. These include individual cardholder records and records of the designated billing office. In selecting the sample size of transactions for review, the *Guide* recommends looking at financial records and supporting documentation from several separate time periods to disclose trends, if they exist.

Conducting the Interview

The *Guide* contains sections with interview questions for purchase cardholders, approving officials, administrative or executive officers, and senior officials. Each of these sections also includes a description of the purpose of the interview and background information. For example, the purpose of an interview with an individual cardholder is to obtain information on the processes that the principal office component uses to ensure compliance with laws and regulations since the cardholders primary functions are to purchase goods or services in accordance with these laws and regulations. Useful information might be obtained by asking questions in the following areas: experience and training, how the cardholder exercises job duties, the cardholder's work in relation to the office, ethics and ethics training, goals and risks of procurement activities, how a non-compliance or ethical situation is handled, and the cardholder's evaluation of the system.

The interview questions for approving officials and administrative officials fall into the same categories as those for individual cardholders. All other principal office interviews should be completed before the interview with senior officials so that the interview with the senior official is used not only to obtain additional information, but also to provide officials with a summary of preliminary findings.

The interview steps to follow with a senior official should include a summary of the evaluation criteria used in the review, completion of interview questions, and a summary of preliminary findings. The interviewers should explain that the evaluation used five internal control standards, established by GAO: control environment, risk assessment, control activities, information and communications, and monitoring.

Interviewers should keep in mind two related issues as they perform their work. The first is that control weaknesses (listed above, and detailed in the *Guide*) should be considered throughout the interview process. Second, the review should have a quantifiable component. In addition to conducting

interviews, documentation should be analyzed. Noncompliance can be found by reviewing financial accounting records. If findings are to be projected across an office, a statistical sample using stratified random probability should be conducted.

It is useful to have an interview template to record results. The Education Department OIG Record of Interview template is available online at www.ed.gov/offices/OIG/AIRports.htm.

Communicating Results and Follow-up

Our experience also suggests that individual reports on each principal office addressed to the senior officer were the most effective means to communicate the results of each office's review. We also met with the head of each office to deliver and discuss our report. A final report summarizing the results of all the reviews, and including a best practices section, is also helpful to department managers. Individual report samples are available online at the address noted above.

There are several useful ways to undertake follow-up action. The Agency's corrective plan could be reviewed, and then, at a later time, evaluation of its implementation plan could be considered. Additionally, or in the alternative, a smaller number of financial records could be reviewed after allowing time for problems to be remedied.

Conclusion

Purchase card abuse is a serious, governmentwide problem. Efforts to minimize this problem are significantly enhanced by adhering to effective program review procedures and by communicating and coordinating existing evaluative expertise throughout the IG community. *A Practical Guide to Purchase Card Review* is an excellent example of the IG community sharing its experiences to strengthen sound financial management and should prove useful to OIG staff in a wide variety of situations that raise purchase card program concerns. 📖

TERRY M. FREEDY

Executive Director, Inspector General Criminal Investigator Academy

Northern Exposure

The Inspector General Criminal Investigator Academy in Arlington, Virginia

One of the signs of professionalism in any vocation is a standardized body of knowledge transmitted to its practitioners. By this measure, the Federal Inspector General community has certainly increased its professionalism in the last 3 years with the expansion of the Inspector General Criminal Investigator Academy (Academy) and the Inspectors General Auditor Training Institute (IGATI). Both training organizations have not only broadened their course offerings but also moved to new, more accessible locations. As reported in the Fall/Winter 2002 edition of this journal, IGATI recently moved from Fort Belvoir, Virginia, to the Rosslyn Metro Center Building.

IGATI now has a new neighbor. In March 2003, the Academy opened the doors to new classroom and office space one block away from IGATI in Suite 100 of the International Place Building, 1735 North Lynn Street, Arlington, Virginia.

In 2000, the Academy and its Board of Directors, the Investigations Committee of the President's Council on Integrity and Efficiency, were looking for ways to make the Academy more responsive to the needs of its customers, the investigative staffs of the Offices of Inspector General (OIGs). One of the problems identified was the cost, in terms of both travel time and expense, of sending special agents to the Academy's main location in Glynco, Georgia. The Academy conducted a survey and determined that approximately 23 percent of the criminal investigators in the OIGs were located within commuting distance of Washington, DC. With such a concentration of potential students in one area, the Academy began looking for space to create a small training facility in the DC metropolitan area.

With the help of the United States Postal Service, Office of Inspector General (USPS-OIG), the Academy located available space on the ground floor of the USPS-OIG's headquarters building. The space is ideally located just one block from the Rosslyn Metro station, with many parking lots, hotels, and restaurants in the immediate neighborhood. After months of the design and approval process and construction, the "Academy North" began operations in March 2003.

The new Academy facilities include training and meeting rooms, small break-out rooms, and a lunchroom. The space also includes offices for the Academy's executive director and a staff instructor, plus offices for the use of guest instructors who assist in teaching many of the Academy's classes. Each classroom has Internet access and is equipped with white boards, flip charts, an overhead projector, a data display projector suitable for PowerPoint presentations, multiple screens, and a television with DVD and VCR capabilities. Each classroom has been designed for flexibility in seating arrangements; therefore, each can be set up for small group work, conference, or traditional classroom seating.

The Academy is planning to deliver at least one iteration of each of its training programs in Arlington, with the exception of those that require firearms or physical training facilities. The class calendar posted on the Academy's web site, www.tigta.gov/igacademy, lists the dates for all training programs and indicates whether they will be held in Arlington or Glynco. As always, the Academy schedules classes according to the needs projected by the OIGs; if additional training classes are needed, training officers are urged to contact the Academy's executive director or director to discuss additions to the training calendar.

While the Academy's scheduled training programs have priority, other OIGs are welcome to use the classrooms as available. To date, individual OIGs have used the facility for management meetings, in-service training sessions, working groups, and committee meetings. In many instances the OIGs have asked the Academy to facilitate their meeting or to provide a portion of the in-service training. The Academy staff is happy to do so and will work with individual OIGs to tailor training presentations specific to the needs and mission of each.

There is no charge for the use of the Academy's facilities; however, the classroom schedule is filling up rapidly! Training officers are encouraged to contact the Academy well in advance of their anticipated meeting or training to ensure availability.

The Academy staff is excited about this new opportunity to serve the Inspector General community. We invite you to visit us and discuss how we can work together to meet your investigative training needs. 📧



Executive Director Terry Freedy



Guest Instructor Catherine Ball, National Science Foundation, Office of Inspector General



Training Room



Meeting Room



Classroom



Instructor Elizabeth Nelson



Lunchroom

