

Statement of
R. Kirt West, Inspector General
Before the
U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Commercial and Administrative Law
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Introduction

Chairman Cannon, Ranking Member Watt, and Members of the Subcommittee: my name is Kirt West. Thank you for giving me the opportunity to comment on H.R. 6101, which will improve the ability of the LSC Inspector General (IG) to function like any other Inspector General. By way of personal background, I have been the Inspector General of the Legal Services Corporation (LSC) since September 1, 2004. Before becoming Inspector General, I served for nearly twenty years as a career Federal employee in various legal and executive capacities for Inspectors General: at the Department of Labor, the Central Intelligence Agency, and the United States Postal Service. At the United States Postal Service which is a quasi-federal agency like LSC, I worked with a Presidentially-appointed part-time Board, comprised almost exclusively of outside directors who did not have any Inspector General experience. I also worked for Inspector General David Williams while at the Postal Service.

Since the passage of the 1988 Inspector General Act amendments, LSC has had an Inspector General. Throughout those years my predecessors and I have reported to and been under the general supervision of a part-time 11-member LSC Board of Directors, unlike most Inspectors General who report to a full-time agency head. The LSC Board has been and is now comprised of honorable and dedicated individuals who have brought with them a high degree of understanding of the delivery of legal services to the poor, which is an asset to the position. Past and current LSC Boards, however, have not brought with them the same degree of understanding or experience concerning the role of the Inspector General. Historical and institutional misunderstanding between past and current Boards and their Inspectors General has threatened the independence and effectiveness of the LSC Inspector General.

Efforts by LSC Boards and LSC management to stifle Inspector General independence through intimidation and retaliation appear to have existed throughout the history of the LSC Office of Inspector General. These problems are neither new to LSC nor unique to the current Board and Inspector General. The longest-serving LSC Inspector General, Edouard R. Quatrevaux, has lent his support to your bill and has stated that the problems I am facing are the same problems he faced with a different Board and with different LSC management, leading him to conclude that LSC has an institutional problem in recognizing the proper role of an Inspector General. Inspector General Quatrevaux was criticized for issuing reports that the former Board did not like and for

communicating with Congress. He reported to Congress that the Board's criticism posed a potential impairment on his independence. As a result, GAO was called in to intervene but the disagreement between the Board and the Inspector General about the Board's proper role in evaluating the Inspector General still remains unresolved.

As a preliminary matter, I would like to note that I am not completely comfortable commenting on H.R. 6101, a legislative proposal that would have an impact on the Inspector General office that I currently hold. As someone who has worked in the federal Inspector General community for so long, it has become second-nature for me to try to ensure that whatever I say or do is legal and ethical and impartial. Ordinarily I would not volunteer to comment either one way or the other on a matter such as H.R. 6101, which could affect me personally.

However, at your request I am prepared to offer my views concerning the proposed legislation. H.R. 6101 is similar to a provision enacted for the Inspector General of the United States Postal Service. The bill would, if enacted, require nine of the eleven LSC Board members to agree to remove me or a future incumbent from the position of Inspector General. It would require three more Board members than the current majority requirement of six to remove me or my successors.

When I agreed to become the Inspector General for LSC in 2004 I was aware that there had been an Inspector General at LSC since the late 1980's. I was

relatively confident that the LSC Board had gone through the same familiarization process as other agency heads in dealing with the Inspector General concept. I lived through those processes at the Department of Labor, the CIA, and the Postal Service, where those agency heads eventually came to terms with having an Inspector General who was independent, who had access to information, and who reported openly and regularly to Congress. Over the past two years, however, I have become aware that LSC Boards have not developed the same understanding of the role of their Inspector General.

My initial experience of the lack of appreciation of the IG concept and the role of the Inspector General occurred when I issued my first report to Congress concerning the LSC headquarters lease. As I testified before this Subcommittee last June, the report made several observations, including that LSC was paying too much rent and paying higher rent than other tenants. The then 10-member LSC Board (6 of whom remain on the current Board) unanimously “rejected” the lease report. The report, however, had undergone a quality review that ensured it contained accurate information. The report was predicated on the work of two independent real estate appraisal experts as well as very senior and experienced career IG auditors and lawyers. The fact that the Board “rejected” this report was an early indication that the Board did not fully comprehend the role of an Inspector General.

I have taken affirmative steps to help familiarize the Board with what an independent, effective Inspector General is supposed to do. I arranged for David Williams, a highly-respected Inspector General with many years of experience, to address the LSC Board, which he did. Mr. Williams, who served not only as Inspector General at the Nuclear Regulatory Commission, the Treasury Department, the Internal Revenue Service, and at the United States Postal Service, but also as the first chief investigator at the then Government Accounting Office, spoke to the Board at length about the role of an Inspector General. In addition, I arranged for a meeting with the LSC Chairman and Senate appropriations staff to share a Congressional perspective about the role of an Inspector General and how an agency should interact with its Inspector General. I offered to arrange more such meetings. I also suggested to the LSC Chairman that we meet with the Deputy Director for Management at the Office of Management and Budget, who serves as the Chairman of the Inspector General councils. Finally, I reported my concerns to the Vice-Chairman of the Executive Council on Integrity and Efficiency in an attempt to find other, informal ways of improving the LSC Board's relationship with the Inspector General.

The Board's failure to recognize the Inspector General's role has led some members to react negatively to my reports, calling them prosecutorial and inflammatory. However, Mr. Chairman, I can tell you and members of the Subcommittee that based on my 20+ years of experience in the IG community my reports are no different in character than those issued by other IGs. The

Board's reaction to them, however, is different than what my experience prepared me for. What may seem appropriate to the Board based on the members' non-federal backgrounds and limited experience with IGs are from my perspective attempts to retaliate against me for issuing critical report and for asserting IG independence. The Board's misunderstanding of the role of its Inspector General may not be so surprising given the background and experience of most members in the non-Federal sector, which is generally unfamiliar with the Inspector General concept, a concept that was also difficult in the early years of the IG Act for some agencies.

For example, as recently as this past weekend, an Associated Press article quoted the proceedings of a closed Board meeting which the article described the Board's discussion about firing me. There had been previous concerns that some Board members would like to fire me. As a result, Mr. Chairman, you wrote the LSC Board in July of last year to express your concerns. In addition, Senators Enzi and Grassley wrote to the LSC Board in April 2006 informing the Board that any attempt to remove the Inspector General would be construed as retaliation and obstruction of an investigation that they, along with you, Mr. Chairman, had asked me to conduct on a number of issues involving the LSC Board and the LSC President. I feel that if Congress had not intervened on my behalf, it would have been impossible for me to carry out my statutory duties under the IG Act.

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My difficulties, unfortunately, have continued. On August 25, the Board provided “informal feedback” on my performance. Among other things, I was told that I take a prosecutorial stance towards management, I issue inflammatory reports and I am not a positive help to LSC. These and other criticisms by the Board are examples of a misunderstanding about the role of an Inspector General, which includes being independent and objective, obtaining necessary information, and reporting findings that could be critical of management.

The decision of the Board to provide “informal feedback” was highly questionable given that the Board knew I was investigating allegations regarding expenses and other matters involving the Board. While I respect the role of the Board, which is statutorily responsible for the “general supervision” of the Inspector General, and while the Board may have felt its actions were appropriate from the private-sector perspective, I found the “informal feedback” not only threatening and retaliatory but also having the potential of causing others, including Congress, to question whether the feedback could have influenced my report.

These events notwithstanding, I am pleased to report that my staff of highly experienced IG auditors, investigators and attorneys and I have not been deterred from carrying out the IG mission. Recently, I submitted a report to the Subcommittee in which the OIG found substantial evidence that an LSC grantee, California Rural Legal Assistance, Inc., violated federal law by soliciting clients, working a fee generating case, requesting attorney fees, and associating CRLA

with political activities. Yesterday, I issued a report on the investigation that you requested regarding LSC spending practices and will be reporting to you later on your concerns about other LSC management practices and potential conflicts of interest.

I would like now to provide some comments to H.R. 6101, which proposes to amend the Legal Service Corporation Act to provide appropriate removal procedures for the Inspector General. In addition to the Board's current authority to appoint and remove the Inspector General, the proposed legislation states that "The Inspector General may at any time be removed upon the written concurrence of at least 9 members of the Board." As background, there are two categories of Inspectors General: those appointed by the President, and those appointed by their agency head. Presidentially-appointed Inspectors General cannot be fired by their agency head; only the President can do that. On the other hand, Inspectors General appointed by their agency head can also be fired by their agency head, which is the current situation at LSC. However, because virtually every other Inspector General appointed by their agency head is also a Federal employee, they could not be fired without cause. The Inspector General at LSC, however, is an at-will employee and can be fired without cause. Thus, the LSC Inspector General stands out as the Inspector General who has the least amount of job security and therefore potentially the most easily subject to undue or improper pressure.

I support H.R. 6101 because it enhances Inspector General independence. The bill could go further by requiring removal for cause. At this time I would not recommend making the office a Presidential appointment. However, that is an option worth keeping available in the event it is needed. There is already precedent for Congress converting an agency-head appointed Inspector General into a Presidential appointee: this was done at the Federal Deposit Insurance Corporation and the Tennessee Valley Authority. The TVA Inspector General became a Presidential appointment as a result of the TVA Board trying to interfere with the independence of the Inspector General, resulting in a GAO investigation requested by then Senator Fred Thompson. The situation faced by the TVA Inspector General is not unlike the situation I am facing today. In my opinion, H.R. 6101 is an appropriate, balanced, and thoughtful proposal to enhance Inspector General independence that will make LSC more transparent and accountable to Congress and the public.

There is also precedent for requiring a super-majority to remove an Inspector General. In 1996, Congress created an Inspector General at the United States Postal Service who would no longer report to the Postmaster General but instead report to the nine Presidentially-appointed Governors who, along with the Postmaster General and the Deputy Postmaster General, comprise the Board of Governors. The Postal Service opposed the creation of an independent Inspector General who was not appointed by the Postmaster General. Congress, clearly concerned about having an Inspector General removed by a

simple majority of a part-time Board, enacted 39 U.S.C. §202(e)(3) stating that removal of the Inspector General required written concurrence of at least 7 of the 9 Governors. By requiring a super-majority, Congress implicitly recognized that, like at LSC, the Board could be unduly influenced by management and thereby helped balance that influence. This was the compromise struck between Congress and the Postal Service in lieu of establishing a Presidentially-appointed Inspector General.

Finally there are some additional reasons why H.R. 6101 is needed at LSC more so than at other agencies. At LSC it is not unusual for Board members and LSC senior managers to have close ties from working together outside LSC in the private legal services sector. These kinds of close relationships among LSC Board members and LSC managers and employees and LSC grantees and related organizations are part of the LSC culture and could be one of the reasons why the Inspector General role is not as well understood as it should be and why it is important to have an independent Inspector General.

Conclusion

Mr. Chairman, thank you for this opportunity to testify before the Subcommittee. I remain proud of the work being done by my staff which has been operating under difficult circumstances. I appreciate the support you and your staff have shown both for the work we have done and for the need to ensure that LSC's

Inspector General can operate as Congress intended so that you, the Board and the public can be informed by our reports and ultimately LSC can be improved for the benefit of LSC, its client community and the taxpayer public. I also would be remiss in not extending my appreciation to those new members of the Board who have been supportive of my office. As someone who respects and values the work of lawyers who serve the poor, and as someone who spent his first working years in the Cabrini Green public housing project and other inner-city slums, I can tell you that I have only the best interests of the poor at heart every day when I go to work. I look forward to ensuring that the poor will have our support by continuing to conduct independent and objective reviews so the LSC Board, Congress, and the public can be assured that LSC is being operated lawfully, efficiently, economically, and with integrity.