

AUTHORITIES AND EXPECTATIONS FOR INSPECTORS GENERAL

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Thank you for the opportunity to appear before this joint hearing on the controversies surrounding the National Space and Aeronautics Administration's Inspector General (IG), Robert Cobb. I am not an expert on his case, but have studied the IG concept for twenty years, and hope to provide a brief overview of the authorities and expectations embedded in the 1978 Inspector General Act.

The current controversy surrounding Robert Cobb stems from authorities and expectations embedded in that act. Passed against nearly uniform executive branch opposition, the bill created Offices of Inspector General (OIGs) in 12 departments and agencies, adding to the two statutory OIGs that already existed—one in Health, Education, and Welfare (about to be divided into the departments of Health and Human Services and Education) and the other in Energy. By 1988, the concept had been expanded to include the rest of the federal government, including 33 small-entities. Subsequent expansions have created either OIGs in 57 federal establishments, some headed by Senate-confirmed IGs and others led by presidentially-appointed IGs.

The basic thrust of the IG Act, under which Mr. Cobb serves as a Senate-confirmed appointee, was remarkably simple. On one level, it consolidated what were then dozens of separate, often scattered audit and investigation units into single operations headed by a presidential appointee. On another level, it created new expectations for economy and efficiency in government through the appointment of IGs with impeccable integrity and thoughtful leadership. Being an IG was always to be an exceedingly difficult post, placing the occupant in the sometimes precarious position of speaking truth to power at both ends of Pennsylvania Avenue. But given enough resources and integrity, the OIGs were to help rebuild trust in government through their aggressive pursuit of accountability in all corners of their establishment.

Authorities

Compared to most of the bills that passed in 1978, the Inspector General Act was almost invisible. Reorganizing the varied audit and investigation units into single-headed Offices of Inspector General was hardly the stuff of which major controversies are made. Nor was the IG statute particularly complex—it lays out the responsibilities and authorities of each OIG with clarity.

Yet, whatever its legislative history or complexity, there is no question Congress gave the IGs unmistakably broad authorities. Under statute, the IGs to provide direction for conducting audits and investigations both including and relating to the programs and operations of their establishments, they had a long list of ancillary duties: review existing and proposed legislation and regulations for impacts on economy and efficiency, coordinate relationships between the department or agency and other federal agencies, state and local governments, and non-governmental entities, and, most importantly, promote the general economy, efficiency, and effectiveness of their establishments.

Broad as this invitation is, what made the IG concept much more significant was the decision to protect those new units through at least three devices.

First, even though each IG was to be a presidential appointee and removable without cause, each was to be selected “without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.” Further, each IG, not the President nor the head of the establishment, was to appoint an Assistant IG for Audit and an Assistant IG for Investigations, and each IG was given full authority

to undertake whatever audits and investigations he or she each deemed necessary to improve economy and efficiency. There was to be no interference from Congress or the president on the OIG's workplan or agenda.

Second, every IG was to have access to all "information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence" needed for an audit or investigation, the right to request assistance from within the agency and information from across government, the authority to subpoena documents (but not witnesses or testimony), the right to hire and fire staff, and "direct and prompt" access to the secretary or administrator whenever necessary for any purpose. Moreover, neither the head of the establishment nor the second in command was to prevent or prohibit the IG from "initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."

Third, every IG was bound by a two-fold, dual-channel reporting requirement. One was a relatively simple semi-annual report to the head of the department or agency. Automatically forwarded unchanged to Congress within 30 days, each report was to include a description of every significant problem, abuse, and deficiency the IG encountered in the previous six months, as well as lists of recommendations and results. The other was a so-called "7 day letter" report to the head of the department or agency to be used only in the event of "particularly serious or flagrant problems, abuses, or deficiencies." This much shorter report was also to be transmitted unchanged to Congress, but within 7 days.

Expectations

As one might expect, Congress did not give these substantial authorities without a strong sense that the IGs would be above reproach in using them. Members of Congress spoke frequently about the need for the highest commitment to faithful execution of the IG mandate, and the hope that presidents would take that faithful execution seriously in the appointment of each IG, whether subject to Senate confirmation or presidential appointment without confirmation.

Reading through the record accompanying the act and its twenty-five years of implementation, one can discern at least five qualities that Congress expected the IGs to meet:

1. Expertise: Congress clearly expected each IG to have substantial knowledge of auditing and investigations, and made that expectation clear in the demand for significant experience in these areas. Although the list of qualifications allows for the appointment of individuals who clearly share the president's philosophical agenda, the focus was to be on expertise in actually executing the duties of the office. Simply put, Congress expected the IGs to be experts in their field. For the most part, it is an expectation well met over the years, in part due to consultation with leading IGs on potential replacements. Under no circumstances was the IG post to be a destination for the hard-to-place or under-qualified. Although Congress did not expect the IGs to be rocket scientists, whether literally or figuratively, it did expect the IGs to be above reproach in their ability to direct the high-impact work of their offices.

2. Leadership: Despite the substantial authorities for audit and investigation, Congress understood that the OIGs would not be the largest units in their establishments. Therefore, Congress expected that the IG would provide the kind of managerial leadership to generate the highest productivity and esprit de corps from what would, and have been, relatively small units. Under no circumstances would Congress have embraced the appointment of an IG who would undermine the productivity of his or her unit through employee abuse or practices that in any way created a hostile work environment. Members wanted the IGs to strengthen their offices, create healthy working conditions, and build units stronger than the sum of their parts. If the IGs encountered employees who were under-performing, Congress expected the IGs to take direct action to remove them from their posts. But above all, the IGs were to leave their units stronger when they moved on to other assignments. A hostile work environment was not just anathema to effectiveness in the search for improved performance, it would set an example for other units in the establishment. The IG simply cannot create a situation in which his or her employees lost faith in their leadership due to managerial practices that undermine productivity.
3. Assertiveness: Congress clearly wanted the IGs to have substantial freedom to follow their instincts in developing an independent audit and investigation agenda. Toward that end, they expected the OIGs to pursue any and every lead they wish, allocate personnel where they felt the greatest returns would be harvested, and be aggressive in tackling problems from the top to the bottom of the establishment. Hence, they gave the IG substantial authority to launch any audit or investigation deemed responsible, and expected the IG to use his or her judgment, and his or her judgment alone, to determine the OIGs agenda.

These authorities were to be used to build an agenda that would improve the economy and efficiency of the establishment. Although the IGs must make tough choices about how to deploy their OIG resources, they were to create the broadest impact possible, including programmatic evaluations if necessary. They were not to be mere fraud busters, though attacking fraud, waste, and abuse was to be part of their agenda. They were also to ask tough questions that others could or would not. Under all circumstances, the OIGs were to be a safe harbor for speaking truth to power on the broadest possible agenda. They were not to be lapdogs, but watchdogs.

4. Independence: The IGs are not just any presidential appointees. Although they do serve at the pleasure of the president, they are given substantial independence in their work. Congress expected this independence to be guarded aggressively. Under no circumstances was the IG to compromise his or her independence by giving others in the establishment, Congress, or the White House a determining voice in setting the audit and

investigation agenda. Thus, Congress expected the IGs and their offices to be astutely independent. Although the OIGs would clearly need the cooperation of the senior leadership of their establishments to implement their recommendations for improvement, they were not to create the appearance or reality that the head of their establishment was somehow altering or setting the course of the OIGs workplan.

Although this expectation clearly has costs to the IGs, not the least of which is a degree of isolation from the senior leadership team, most IGs have been able to handle the expectation with ease. This has meant that the IGs must maintain a sense of distance from any hint that the head of the establishment has a direct say in the OIGs workplan—no golf games, intimate lunches, even team-building retreats. And, in the same spirit of independence, the senior leadership team must maintain its distance from the OIG—no all-staff meetings to scold the office, no memoranda outlining what the head of the establishment wants in or out of the workplan, no sense that the OIG is somehow beholden to the head of the establishment or that it will be punished through staff and budget cuts if it adopts a particular audit or investigation strategy.

In a very real sense, IGs must isolate themselves from the senior leadership team even as they try to cultivate a working relationship that will allow them access when needed to assure that the senior leadership team follows their recommendations for action. After all, the vast majority of IG recommendations involve administrative, not legislative action. Hence, the job has been described as like straddling a barbed wire fence. But this access cannot be distorted in such a way as to create the appearance that the head of the establishment is somehow “the boss” of the OIG, especially, but not exclusively, in setting the OIGs agenda. That responsibility belongs to the IG, whose ultimate boss is the taxpayer.

Presidents can remove IGs without cause, of course, implying that Congress expected them to always remove IGs with cause, including instances when the IG cedes his or her independence to another actor. IGs are free to listen to all opinions regarding their agenda perhaps, but not to create the impression or reality that they are taking direction. To do so would create an impossible dependence and cooptation that would undermine their presence as an independent source of recommendations to Congress and the president. It would also severely compromise the IG’s ability to investigate upward into the executive suite of the establishment.

5. Integrity: Congress expected the IGs to be men and women of impeccable integrity and honesty. Along with the exhortation to maintain full independence, Congress hoped that the president would make every effort to find individuals for appointment who could be trusted with the authorities and mandate embedded in statute. Although Congress did not

create a special appointment mechanism (such as the one used for the appointment of the Comptroller General) or term of office (such as the fifteen year term also governing the Comptroller General), it merely assumed that presidents would understand that the IGs had to bring both the reputation and substance of integrity to their posts. After all, they would be under constant watch by the establishments they would audit and investigation, and could not tolerate even the hint that they played favorites or curried favor in their work. They had to be more than just experts in auditing and investigation, they had to be exemplars in their behavior. Under no circumstances did Congress expect that the IGs could be effective under a cloud of suspicion regarding their integrity.

6. **Courage:** Finally, Congress expected the IGs and their offices to be courageous in their work. The IGs and OIGs were never going to be the most popular employees in their establishment—Congress knew that many in their establishments would oppose them, fear them, and work to undermine them. They also knew that many in their establishments would fashion arguments against OIG findings using every tool at their disposal, sometimes stonewalling the OIG, other times using gossip to undermine the IG as somehow less than effective or independence.

Thus, the IGs had to show the courage of their convictions in stating their intention to use their authorities to take any course in meeting their mandate, even if that course led upward to the highest levels of the agencies. Toward this end, the IGs and their offices had to draw a bright line between informing the head of the establishment of their workplan and letting the head of the establishment determine their workplan. Under no circumstances was the IG to create even the slightest appearance that he or she had somehow delegated their authorities upward for any reason.

As with so much that occurs in organizations, appearance is often just as important as reality in affecting these kinds of expectations. It may be that an IG can be best friends with the head of the establishment, and still maintain independence, but the appearance is created that the head of the establishment has a special voice in setting the workplan. It may also be that the head of the establishment can have a brass-tacks meeting with the OIG staff to explain what he or she wants in or out of the workplan, and not intimate the office into a cowering compliance, but the appearance is created that the head of the establishment again has a special voice in determining the workplan.

In this regard, Congress clearly understood that the IG's effectiveness would be determined in part by the head of the establishment who could bully, intimate, cajole, and otherwise attempt to influence the IG into following some leads and not others. Congress also understood that some IGs might be tempted by the opportunity to socialize with the head of the establishment as part of the normal give and take of life in a highly stressful environment. But by NOT insulating the appointments process with a special appointment mechanism or term of office, Congress seemed to be saying that such

behavior would never occur if the basic qualifications for IG appointment were meant. After all, what kind of auditor or investigator would curry favor or socialize with those who might be committing fraud, waste, and abuse? Not one who would be given the enormous authorities and independence embedded in a statute such as the 1978 Inspector General Act.

Later Congresses also understood that the IG's effectiveness would also depend on the protection of the Deputy Director for Management at the Office of Management and Budget. This individual would act as a buffer during moments of intense conflict between the IG and his or her establishment, assure that appointments were the highest quality, coordinate the IG community, protect budgets and employment, and serve as a "court of last resort" in particularly difficult cases involving questions regarding the competence and behavior of individual IGs. As long as the Deputy Director for Management took these assignments seriously, Congress saw no need for a government-wide inspector general or new appointment mechanism. But, to the extent that the Deputy Director of Management might be conflicted in this role—for example, by playing a significant role in the selection of an IG in a previous post—or ignore the role altogether, Congress may yet have to revisit its earlier decisions.

Ultimately, however, the quality of an IG's work depends on his or her own willingness to stand independent and courageous in the face of inevitable opposition. Each IG must be willing to accept responsibility for her or her behavior, and acknowledge when their independence has been compromised, fairly or unfairly, and exit office gracefully, even if the President of the United States has expressed support. It is up to the IG to be a wise steward of the mandate and office he or she oversees, and a wise steward of the tremendous authority he or she wields. Absent a sense of personal integrity that might eventually lead to his or her resignation, an IG cannot provide the leadership needed to make the IG concept a success. Integrity simply cannot be legislated or demanded through executive order. It must come from the individual IG in those quiet moments of self reflection about duty. That is the ultimate protection of the independence that is so essential for the faithful execution of the 1978 act.