



Eleanor J. Hill

Eleanor Hill returned to King & Spalding as a partner in October 2003 following her service as the Staff Director of the Joint Congressional Inquiry on the terrorist attacks of September 11, 2001. As a member of the firm's Special Matters/Government Investigations Group, her practice focuses on corporate internal investigations, Congressional and other government investigations, legislative and policy issues, compliance matters, and issues pertaining to homeland security and intelligence.

Ms. Hill has extensive investigative experience, in both the private sector and the executive and legislative branches of government. As Staff Director for the Joint Congressional Inquiry, she led the historic, bipartisan and bicameral investigative effort of the House and Senate Intelligence Committees to determine what our Intelligence Community knew, or should have known, regarding the terrorist threat to the United States prior to the September 11th attacks. The extensive investigation and the hearings that followed culminated in the release of an 800-page report that identified numerous shortcomings in Intelligence Community counterterrorist efforts and nineteen recommendations for reform. Ms. Hill spent nearly seven months leading the team that negotiated the declassification of that report with the Intelligence Community.

Prior to her work with the Joint Inquiry, Ms. Hill was a partner at King & Spalding, representing corporate clients in various House and Senate investigations and in matters pertaining to compliance, corporate ethics and legislative matters. Her clients included companies in the defense, pharmaceutical, energy and health care industries. From 1995 through 1999 she served as Inspector General to the Department of Defense, having been appointed to that position by President Clinton. As the Inspector General, she directed a wide range of audits and criminal and administrative investigations and established investigative policy throughout the Department, including the Military Departments. Recognized as a leader in the federal inspector general community, she served as Chair of the President's Council on Integrity and Efficiency, as the co-chair of the Intelligence Community Inspectors General Forum, and as a Member of the

Attorney General's Council on White Collar Crime. She was awarded the Department of Defense Distinguished Service Medal by Secretary William Perry and the Bronze Palm to the Distinguished Public Service Medal by Secretary William Cohen.

From 1980 through February 1995, Ms. Hill was associated with the United States Senate's Permanent Subcommittee on Investigations, where she led numerous domestic and international Congressional investigations on such topics as organized crime and labor racketeering, drug enforcement, national security, export controls, fraud and abuse in federal programs and fraud and abuse in the insurance industry. As the Subcommittee's Chief Counsel and Staff Director, she led numerous efforts to draft and negotiate legislative proposals in a variety of areas. In 1987, she also served as Liaison Counsel for Senator Sam Nunn on the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition.

Ms. Hill is also an experienced federal prosecutor and trial lawyer, having served both as an Assistant United States Attorney in Tampa, Florida and as a Special Attorney with the Organized Crime Section of the U.S. Department of Justice. She has substantial grand jury, trial, and appellate experience in such areas as racketeering; organized crime; Medicare, immigration, and insurance fraud; public corruption; and white collar crime. Her trial experience includes the prosecution of a state cabinet official on federal corruption charges as well as what was, at the time, the largest federal RICO prosecution in the country.

Ms. Hill is widely recognized for her expertise both in the public and private sector. She has testified on numerous occasions before various Congressional Committees in both the House and the Senate and has served as a featured speaker on congressional investigations in Congressional Research Service training for Congressional Members and staff. Her experience includes numerous public speaking engagements and both national and international media interviews on issues related to investigations, homeland security, intelligence policy and counterterrorism. Among other things, she is a member of the Advisory Board for the Long-Term Legal Strategy Project for Preserving Security and Democratic Norms in the War on Terrorism, which is being conducted by the John F. Kennedy School of Government and Harvard Law School.

Ms. Hill graduated, *magna cum laude*, from Florida State University and with high honors from the Florida State University College of Law. At Florida State, she was a member of Phi Beta Kappa, Phi Kappa Phi and the *Law Review*.

Statement

by

Ms. Eleanor Hill

Before the

Subcommittee on Government Management, Organization, and Procurement

Committee on Oversight and Government Reform

U.S. House of Representatives

on

“Inspectors General: Independence and Accountability”

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Mr. Chairman, Ranking Member Bilbray, and Members of the Subcommittee:

Good afternoon and thank you for this opportunity to discuss with you the critically important role that the Inspectors General play in promoting “good government”, and all that that concept entails, throughout the Executive Branch. While I am now engaged in the private practice of law, I was indeed privileged to spend the great bulk of my career in public service, which included my tenure as the Inspector General of the Department of Defense from 1995 through 1999 and as the Vice Chair of the President’s Council on Integrity and Efficiency (PCIE) from 1998 through 1999. I am especially pleased and honored to join on this panel two of my friends and former IG colleagues from those years, Ken Mead and Nikki Tinsley, both respected leaders within the IG community. I know they share my strong support for the kind of independent, objective, and professional oversight that IGs can and should bring to government.

Mr. Chairman, your focus here today on “independence and accountability” is absolutely on point, in terms of maintaining the credibility and the effectiveness of the Inspector General community. You asked that, based on my own experience, I address those issues as well as the relevant provisions of H.R. 928, the “Improving Government Accountability Act.”

Although the “inspector general” concept actually originated in 17th century Europe, the idea of truly “independent” inspectors general, as we know them today, is a relatively modern phenomenon. Congress gets credit for the idea, including statutorily-protected independence as a hallmark of the Inspector General Act of 1978. The Act created something very different than the traditional military “inspector general”, as had been described in the Codes of Military and Martial Laws in 1629:

The Inspector General must have a horse allowed him and some soldiers to attend him and all the rest commanded to obey and assist, or else the service will suffer; for he is but one man and must correct many, and therefore he cannot be beloved. And he must ride from one garrison to another to see the soldiers do not outrage or scathe the country.

Obviously, a lot has changed since 1629. Nevertheless, in recent years, some have suggested that the military IG system, which still exists today, is a model for federal IGs. Although there are some similarities, I think it is a mistake to equate these two very different types of inspectors general. Congress, in its wisdom, went far beyond the traditional military concept in creating Inspectors General within federal agencies and departments.

Military IGs were originally created to lead inspection efforts, something they still do today. By contrast, inspections are a relatively small part of what civilian IGs do. Today's military IGs also conduct investigations, but that is coupled with a substantial focus on providing assistance to members of the military. Audits, a huge part of the civilian IG workload, are handled separately, by the military auditors general or, depending on the nature of the case, by the Defense Department IG or DCAA. The biggest and most critical difference, however, is that military IGs clearly work within their military chain of command -- they do not have the statutory independence and the dual reporting requirements that, in my view, set the federal civilian IGs completely apart from other military and civilian internal department oversight mechanisms.

As Defense IG, I worked closely with the military IGs and oversaw many of their investigations. My work with them - and with many other administrative Defense Agency IGs - only served to reinforce my belief that independence is absolutely essential for federal statutory IGs. On many occasions, military IGs requested that our office conduct top-level, particularly sensitive investigations since they did not believe they had the level of independence needed to conduct an investigation that would both be and appear to be objective. I had similar conversations with some administrative Defense Agency IGs, who are appointed and serve, without the benefit of statutorily-protected independence, at the pleasure of the Directors of their agencies. All of those IGs recognized that in investigations of very senior officials or in audits of programs dear to the agency head, the statutorily protected independence of the Departmental IG was critical to both the integrity of the inquiry and to the credibility of the findings in the Department, on Capitol Hill, and with the American public. I could not help but recall those conversations when I read reports last year that oversight of what has been referred to as NSA's "terrorist surveillance program" had been handled by the NSA IG, who has limited resources and no statutory independence, and not by the Department of Defense IG. In my view, that is exactly the kind of program where the oversight should have been conducted, from the very beginning, by the independent Defense Department IG.

Independence

All of this underscores the absolutely critical importance of independence in the IG world - and the need to protect it. More than anything else, independence goes to the very heart of the IG mission. It is what makes IGs a critical -- and absolutely unique -- link in insuring effective oversight by both the executive and legislative branches of our government. I have often cited the IG Act, and its method of protecting IG independence, as a stroke of Congressional

brilliance. The seven day letter requirement; the ban on Secretarial interference with IG investigations and subpoenas; the dual reporting requirements - to the Secretary, but also to Congress; and the required reporting of IG terminations to Congress -- those provisions, taken together, clearly make the IG the most independent - and unfiltered - voice below the Secretary in any federal department. As an IG, I never felt forced to sacrifice or compromise my independence.

While these are excellent statutory protections, they are not foolproof. Operating under the same statutory scheme, some IGs have been extremely independent, while others have been less so. Clearly, there are other factors which can and do impact independence. In my own case, I was fortunate in several respects: I worked under two Secretaries of Defense who understood, appreciated, and accepted the role and mission of the IG -- Bill Perry and Bill Cohen. I also had the benefit of becoming IG only after being schooled for years in jobs where independent, fact-driven investigation was the accepted norm - as a federal prosecutor and as a congressional investigative counsel on inquiries that were unusually bipartisan in nature. While statutory protections are very important, it goes without saying that IGs also have to be comfortable with their independence, fully understand its importance, be willing to exercise it, and be prepared to defend it, if necessary. IGs can and should work constructively within their departments to be “agents of positive change”, but they must insist on doing so in an environment where their independence is clearly understood and respected.

I was also fortunate in that I worked with Congressional Committees that were very interested in, and attentive to, what our IG office was doing in terms of oversight. The IG Act

relies heavily on the tension that usually exists between Congress and the Executive Branch to reinforce and protect IG independence. The success of the statutory mechanisms, like the dual reporting requirements, depends on Congress remaining attentive to IG findings and remaining engaged in exercising its own oversight authority. For the concept to work, Congress has to be an active player. Congress has to be willing to insist on thorough and objective oversight from the IG, separate and apart from the views of any Department or any Administration. When that happens, the IG must walk a fine line between what may be the very different views of Congress and of the Department: the overwhelming incentive in those situations is for IGs to resist attempts at politicization from either side. The best way for IGs to succeed, when answering to these two “masters”, is to conduct independent, professional, and clearly fact-based inquiries.

H.R. 928 would add several important provisions to the arsenal of statutory protections for IG independence. First it would require that an IG can only be removed on substantial grounds, as specified in the statute. Currently, the President must notify the Congress of the dismissal, but there is little Congress can do to question or revoke the actual dismissal, absent any set statutory criteria for termination. H.R. 928 would also give IGs the kind of guaranteed tenure (a statutory term of seven years) that would clearly bolster their ability to withstand efforts to compromise their independence and/or the integrity of their audit and investigative findings. Finally, H.R. 928 would confirm the authority of IGs to submit appropriation and budget requests for their offices directly to the Director of OMB as well as to the appropriate Congressional Committees and Subcommittees. In doing so, the bill would help insulate IGs from the agency’s power to retaliate via IG personnel and resource cuts. In my own experience in the late 90s, Presidentially-appointed IGs at the larger Departments often viewed their

reporting responsibility to Congress as including IG authority to report agency cuts in their budget requests directly to Congress. However, smaller IG offices, which were sometimes less familiar with the Congressional process, were often reluctant to raise budget concerns outside the formal OMB/agency process. The clear language in HR 928 would insure that all IGs have some way to bring retaliatory budget cuts to the attention of the Congressional appropriators. Because I believe that independence is so critical to the success of the IG mission, I support all of these statutory changes.

Accountability

Independence gives IGs the ability to exercise a great deal of power, for which IGs, like other public servants, must be held accountable. While we hope that all IGs take the high road, and use their investigative and audit powers wisely and responsibly, the system has to be capable of addressing allegations of abuse of power or other misconduct within the IG community. If the system is to have any credibility, the public must be assured that those who enforce high ethical standards on others are themselves held to those same standards. There must be a clear and convincing answer to the question “who’s watching the watchdog?”

The IG community has wrestled for years with the question of how to insure accountability but, at the same time, maintain IG independence. This was an issue of great discussion in PCIE meetings in the mid to late 1990s. There had been a number of initiatives clearly designed to insure quality, professionalism, and accountability among IGs, including training programs, a peer review process, and the development of quality standards for audits and investigations. Those efforts were, however, focused on preventing problems: the IGs clearly also needed a formalized way to address allegations of problems that had already occurred. In

early 1995, just prior to my arrival as Defense IG, the PCIE replaced less formal mechanisms with an Integrity Committee to review and refer for investigation allegations of misconduct by IGs and Deputy IGs. While well intended, the Integrity Committee initiative lacked clear legal or investigative authority, was limited by insufficient personnel resources, and encountered record-keeping problems. As but one example, I recall that, in the absence of clear authority, it was often difficult for the Committee to persuade an uninvolved IG, and his or her staff, to undertake a needed investigation.

Those kinds of problems prompted a concerted effort by the IGs, working with OMB, to procure an Executive Order that formally authorized the PCIE, through its Integrity Committee, to receive, review, and refer for investigation allegations of misconduct by IGs and certain IG staff members. Executive Order 12993, issued on March 21, 1996, confirmed the authority of the Integrity Committee, chaired by an FBI official, in the accountability process; designated the Chief of the Justice Department's Public Integrity Section as an advisor to the Integrity Committee; gave the FBI authority to conduct all investigations requested by the PCIE; and authorized the Integrity Committee to request assistance from another IG office in an investigation. The Executive Order, and the formalized process it established, was clearly, in my view, a step in the right direction. At least in the early years, however, there were still issues in implementation: I recall at least one instance where, despite my formal request that the Integrity Committee investigate allegations I had received concerning some senior IG staff members, the Committee initially declined to do so, returning the matter to our office for investigation. I was firmly convinced that it would be impossible for a team from our office to conduct an inquiry that would not only be objective, but also have the appearance of being objective and credible to

the complainant and others in the Department. I recall having to again personally raise and debate the issue with the Committee leadership, who eventually agreed, at my urging, to accept the matter for investigation by the Committee.

Since I left the Defense IG and the PCIE in 1999, I am unable to report on accountability efforts by the current Integrity Committee. The PCIE's Progress Report to the President for FY 2006, however, does report on the Integrity Committee's workload for the 2006 time period: 36 new allegations received, resulting in 2 investigations and 25 closed cases, 15 of which were referred elsewhere for resolution.

H.R. 928 specifically addresses both the PCIE and the Integrity Committee. The bill would combine the PCIE and its counterpart, the Executive Council on Integrity and Efficiency (ECIE) into a single, statutorily-authorized "Council of the Inspectors General on Integrity and Efficiency", an idea that I support. By separating the IGs into the PCIE and the ECIE, it has been more difficult for the IG community as a whole to speak, and to impact, important cross-government issues of efficiency and effectiveness. During my time as IG, I was always struck by the huge differences in size, in capabilities, and in focus among the offices within the IG community. While a single Council will not eliminate all those differences, it will encourage greater opportunities for communication and learning across the community. Statutory authorization of the Council will also, in my view, allow and encourage greater communication and interaction between the Council and the Congress, which should prove helpful to Congressional oversight efforts.

If enacted, this legislation would also codify the existence and authority of the Integrity Committee, essentially replacing Executive Order 12993 with similar statutory language. I support that provision, not only because it further clarifies and solidifies the Integrity Committee's authority, but also because it sends a very clear message to the departments and agencies in which IGs work, and to the American public, that the law insures that IGs will be held accountable. IGs play a unique and extremely important role in insuring that meaningful oversight of federal programs takes place, both within the Executive Branch and in the Congress. The IGs' ability to play that role credibly and effectively depends, to a large degree, on the existence of a clear and well-defined accountability process.

Conclusion

In closing, I would only add that I have been genuinely dismayed by reports and suggestions in recent years of less Congressional oversight, coupled with reports of less independence and less professionalism in the IG community. I am no longer in government and, as an investigator, I know better than to prejudge the accuracy of individual reports without access to all the facts. I do not know to what degree all those reports are true. I can only say that, for the good of the country, I hope they are not. In my view, the rigorous, but always objective and fair, exercise of the Congressional oversight power, bolstered by the work of an independent and professional IG community, is clearly the surest way to promote integrity, credibility, and effectiveness in government. The American people deserve, and quite rightly, expect no less. Thank you and I welcome any questions you may have.