

NLWJC - Kagan

Counsel - Box 023- Folder 006

Inspector General EO

EXECUTIVE ORDER

ADMINISTRATIVE ALLEGATIONS AGAINST INSPECTORS GENERAL

Certain Executive branch agencies are authorized to conduct investigations of allegations of wrongdoing by employees of the federal government. For certain administrative allegations against Inspectors General ("IGs") and, as explained below, against [certain senior staff members of the Offices of Inspectors General ("OIGs")], it is desirable to authorize an independent investigative mechanism. *Which?*

The Chair of the President's Council on Integrity and Efficiency ("PCIE") and the Executive Council on Integrity and Efficiency ("ECIE"), in consultation with members of the Councils, has established an Integrity Committee pursuant to the authority granted by Executive Order 12805;

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure that administrative allegations against IGs and certain senior staff members of the OIGs are appropriately and expeditiously investigated and resolved, it is hereby ordered as follows:

Section 1. The Integrity Committee

(a) To the extent permitted by law, and in accordance with this order, the Integrity Committee shall receive, review, and refer for investigation allegations of wrongdoing against IGs and certain senior staff members of the OIGs.

(b) The Integrity Committee shall consist of at least the following members:

- (1) The official of the Federal Bureau of Investigation (FBI) serving on the PCIE, as designated by the Director of the FBI. The FBI member shall serve as Chair of the Integrity Committee.
- (2) The Special Counsel of the Office of Special Counsel;
- (3) The Director of the Office of Government Ethics;
- (4) *fox - how coop?* [Three or more IGs,] representing both the PCIE and the ECIE, appointed by the Chair of the PCIE/ECIE.

(c) The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his designee, shall

serve as an advisor to the Integrity Committee with respect to its responsibilities and functions in accordance with this Order.

Sec. 2. Referral of Allegations.

(a) The Integrity Committee shall review all allegations of wrongdoing it receives against an IG, [or against a senior staff member of an OIG with the apparent involvement of the IG] except that where an allegation concerns a member of the Integrity Committee, that member shall recuse himself from consideration of the matter.

(b) An IG shall refer any administrative allegation against a senior staff member to the Integrity Committee when:

clear who is sr staff?

(1) review of the substance of the allegation cannot be assigned to an agency of the Executive branch with appropriate jurisdiction over the matter; and

} meaning?

(2) the IG determines that an objective internal investigation of the allegation, or the appearance thereof, is not feasible.

(c) The Integrity Committee shall determine if there is a substantial likelihood that the allegation, referred to it under paragraphs (a) and (b) of this Section, discloses a violation of any law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority [and shall refer] the allegation to the agency of the Executive branch with appropriate jurisdiction over the matter. However, if a [potentially meritorious] administrative allegation cannot be referred to an agency of the Executive branch with appropriate jurisdiction over the matter, the Committee shall certify the matter to its Chair, who shall cause a thorough and timely investigation of the allegation to be conducted in accordance with this Order.

ie - if there's a subst likelihood?

again, meaning what?

} by whom? The committee itself?

(d) If the Integrity Committee determines that an allegation does not warrant further action, it shall close the matter without referral for investigation and notify the Chair of the PCIE/ECIE of its determination.

Sec. 3. Authority to Investigate.

(a) The Director of the FBI, through his designee serving as Chair of the Integrity Committee, is authorized and directed to consider and, where appropriate, to investigate administrative allegations against the IGs and, in limited cases as described in sections 2(a) and 2(b) above, against other senior staff members of the OIGs, when such allegations cannot be assigned to another agency of the Executive branch and are referred by the Integrity Committee pursuant to section 2(c) of this order.

again, by whom? see next section

(b) At the request of the Director of the FBI, through his designee serving as Chair, heads of agencies and entities represented in the PCIE and ECIE may provide resources necessary to the Integrity Committee. Employees from those agencies and entities will be detailed to the Committee, subject to the control and direction of the Chair, to conduct an investigation pursuant to Section 2(c): Provided, That such agencies or entities shall be reimbursed by the agency or entity employing the subject of the investigation. Reimbursement for any costs associated with the detail shall be consistent with applicable law, including but not limited to the Economy Act (31 U.S.C. 1535 and 1536), and subject to the availability of funds. *Oh.*

(c) Nothing in the above delegation shall augment, diminish, or otherwise modify any existing responsibilities and authorities of any other Executive branch agency.

Sec. 4. Results of Investigation.

(a) The report containing the results of the investigation conducted under the supervision of the Chair of the Integrity Committee shall be provided to the members of the Integrity Committee for consideration.

(b) With respect to those matters that the Integrity Committee has referred an administrative allegation to an agency of the Executive branch with appropriate jurisdiction over the matter, the head of that agency shall provide a report to the Integrity Committee concerning the scope and results of the inquiry. *awk*

(c) The Integrity Committee shall assess the report received under (a) or (b) of this section and determine whether the results require forwarding of the report, with Integrity Committee recommendations, to the Chair of the PCIE/ECIE for resolution. If the Integrity Committee determines that the report requires no further referral or recommendations, it shall so notify the Chair of the PCIE/ECIE. *how does it determine this? criteria?*

What sort of resolution?
Just as in (d)?
(d) Where the Chair of the PCIE/ECIE determines that dissemination of the report to the head of the subject's employing agency or entity is appropriate, the head of the agency or entity shall certify to the Chair of the PCIE/ECIE within sixty (60) days that he has personally reviewed the report, what action, if any, has been or is to be taken, and when any action taken will be completed. The head of an agency or entity may be granted a thirty (30) day extension when circumstances necessitate such extension. *how does he determine this? agency criteria?*

(e) The Chair of the PCIE/ECIE shall report to the Integrity Committee the final disposition of the matter, including what action, if any, has been or is to be taken by the head of the subject's employing agency or entity. When the Committee

receives notice of the final disposition, it shall advise the subject of the investigation that the matter referred to the Committee for review has been closed.

Sec. 5. Procedures.

(a) The Integrity Committee, in conjunction with the Chair of the PCIE/ECIE, shall establish the policies and procedures necessary to ensure uniformity in conducting investigations and reporting activities under this order.

(b) Such policies and procedures shall specify the circumstances under which the Integrity Committee, upon review of a complaint containing allegations of wrongdoing, may determine that an allegation is without merit and therefore the investigation is unwarranted. A determination by the Integrity Committee that an investigation is unwarranted shall be considered the Integrity Committee's final disposition of the complaint.

*relationship to 2(c)?
What exactly does this mean?*

(c) The policies and procedures may be expanded to encompass other issues related to the mechanics of handling allegations against IGS and others covered by this order.

Sec. 6. Records Maintenance.

All records created and received pursuant to this order are records of the Integrity Committee and shall be maintained by the FBI.

Sec. 7. Judicial Review.

This order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

WORKING DRAFT
SEPTEMBER 1995

EXECUTIVE ORDER _____ OF -DATE-, 1995

ADMINISTRATIVE ALLEGATIONS AGAINST INSPECTORS GENERAL

WHEREAS certain Executive branch agencies are authorized to conduct investigations of allegations of wrongdoing by employees of the federal government; and

WHEREAS for certain administrative allegations against Inspectors General (IGs) and, as explained below, against certain senior staff members of the Offices of Inspectors General (OIGs), it is desirable to authorize an independent investigative mechanism; and

WHEREAS the Chair of the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE), in consultation with members of the Councils, has established an Integrity Committee pursuant to the authority granted by Executive Order 12805;

NOW, THEREFORE, by the authority vested in me as President of the United States of America, and in order to ensure that administrative allegations against IGs and certain senior staff members of the OIGs are appropriately and expeditiously investigated and resolved, it is hereby ordered as follows:

SECTION 1. The Integrity Committee.

(a) To the extent permitted by law, and in accordance with this Order, the Integrity Committee shall receive, review, and refer for investigation allegations of wrongdoing against IGs and certain senior staff members of the OIGs.

(b) The Integrity Committee shall consist of at least the following members:

- (1) The official of the Federal Bureau of Investigation (FBI) serving on the PCIE, as designated by the Director of the FBI. The FBI member shall serve as Chair of the Committee.
- (2) The Special Counsel of the Office of Special Counsel;
- (3) The Director of the Office of Government Ethics;
- (4) Three or more IGs, representing both the PCIE and the ECIE, appointed by the Chair of the PCIE/ECIE.

(c) The Chief of the Public Integrity Section of the Criminal Division of the Department of Justice, or his or her designee, shall serve as an advisor to the Integrity Committee with respect to its responsibilities and functions in accordance with this Order.

SEC. 2. Referral of Allegations.

(a) The Integrity Committee shall review all allegations of wrongdoing it receives against an IG or against a senior staff member of an OIG (with the apparent involvement of the IG,) except that where an allegation concerns a member of the Committee, he or she shall recuse himself or herself from consideration of the matter.

(b) An IG shall refer any administrative allegation against a senior staff member to the Integrity Committee when:

- (1) review of the substance of the allegation cannot be assigned to an agency of the Executive branch with appropriate jurisdiction over the matter; and
- (2) the IG determines that an objective internal investigation of the allegation, or the appearance thereof, is not feasible.

(c) The Integrity Committee shall determine if there is a substantial likelihood that the allegation, referred to it under paragraphs (a) and (b) above, discloses a violation of any law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority (and refer) the allegation to the agency of the Executive branch with appropriate jurisdiction over the matter. However, if a potentially meritorious administrative allegation cannot be referred to an agency of the Executive branch with appropriate jurisdiction over the matter, the Committee shall certify the matter to its Chair, who shall cause a thorough and timely investigation of the allegation to be conducted in accordance with this Order.

(d) If the Integrity Committee determines that an allegation does not warrant further action, it shall close the matter without referral for investigation and notify the Chair of the PCIE/ECIE of its determination.

SEC. 3. Authority to Investigate.

(a) The Director of the FBI, through his designee serving as Chair of the Integrity Committee, is authorized and directed to consider, and where appropriate to investigate, administrative allegations against the IGs and, in limited cases as described in Sections 2(a) and 2(b) above, against other senior staff members of the OIGs, when such allegations cannot be assigned to another

Sho also refer?

always in cert. when there is a subst. likelihood? change lang.

like what?

agency of the Executive branch and are referred by the Committee pursuant to Section 2(c) of this Order.

(b) At the request of the Director of the FBI, through his designee serving as Chair, heads of agencies and entities represented in the PCIE and ECIE may provide resources necessary to the Integrity Committee. Employees from those agencies and entities will be detailed to the Committee, subject to the control and direction of its Chair, to conduct an investigation pursuant to Section 2(c): Provided, That such agencies or entities shall be reimbursed by the agency or entity employing the subject of the investigation. Reimbursement for any costs associated with the detail shall be consistent with applicable law, including but not limited to the Economy Act (31 U.S.C. 1535 and 1536), and subject to the availability of funds.

(c) Nothing in the above delegation shall augment, diminish, or otherwise modify any existing responsibilities and authorities of any other Executive branch agency.

SEC. 4. Results of Investigation.

(a) The report containing the results of the investigation conducted under the supervision of the Chair of the Integrity Committee shall be provided to the members of the Committee for consideration.

(b) In those matters where the Integrity Committee has referred an administrative allegation to an agency of the Executive branch with appropriate jurisdiction over the matter, the head of that agency shall provide a report to the Committee concerning the scope and results of the inquiry.

(c) The Integrity Committee shall assess the report received under (a) or (b) above and determine whether the results require distribution of the report, with Committee recommendations, to the Chair of the PCIE/ECIE for resolution. If the Committee determines that the report requires no further distribution or recommendations, it shall so notify the Chair of the PCIE/ECIE.

(d) Where the Chair of the PCIE/ECIE determines that distribution of the report to the head of the subject's employing agency or entity is appropriate, the head of the agency or entity shall certify to the Chair of the PCIE/ECIE within sixty (60) days that he or she has personally reviewed the report, what action, if any, has been or is to be taken, and when any action taken will be completed. The head of an agency or entity may be granted a thirty (30) day extension where circumstances necessitate such extension.

(e) The Chair of the PCIE/ECIE shall report to the Integrity Committee the final disposition of the matter, including what

action, if any, has been or is to be taken by the head of the subject's employing agency or entity. When the Committee receives notice of the final disposition, it shall advise the subject of the investigation that the matter referred to the Committee for review has been closed.

SEC. 5. Procedures.

(a) The Integrity Committee, in conjunction with the Chair of the PCIE/ECIE, shall establish the policies and procedures necessary to ensure uniformity in conducting investigations and reporting activities under this Order.

(b) Such policies and procedures shall specify the circumstances under which the Integrity Committee, upon review of a complaint containing allegations of wrongdoing, may determine that an allegation is without merit and therefore the investigation is unwarranted. A determination by the Integrity Committee that an investigation is unwarranted shall be considered the Committee's final disposition of the complaint.

(c) The policies and procedures may be expanded to encompass other issues related to the mechanics of handling allegations against IGs and others covered by this Order.

SEC. 6. Records Maintenance.

All records created and received pursuant to this Order are records of the Integrity Committee and shall be maintained by the FBI.

SEC. 7. Judicial Review.

This Order is intended only to improve the internal management of the Executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

SEC. 8. Effective Date.

This Order shall be effective immediately.



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

DATE: 9/28/95

TO: Elaina Kagan

FAX NO.: () 456 - 1647 TELEPHONE NO.: () -

FROM: David Mangolis

FAX NO.: (202) 616 - 1239 TELEPHONE NO.: (202) 514 - 4945

TRANSMISSION CONTAINS 6 SHEETS INCLUDING THIS COVER SHEET

COMMENT(S):

If any page(s) are missing from this transmission, please telephone sender at the above telephone number for re-transmission.1

FAX TRANSMISSION

FINANCIAL CRIMES SECTION, CRIMINAL INVESTIGATIVE DIVISION

NINTH STREET AND PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C.

202-324-5590 (FRONT OFFICE)

202-324-5594 (FINANCIAL INSTITUTION FRAUD UNIT)

202-324-5682 (GOVERNMENTAL FRAUD UNIT)

202-324-6056 (ECONOMIC CRIMES UNIT)

FAX: 202-324-6492

To: *MS. ELIANA KEGAN* Date: *9/28/95*
Fax #: *456-1647* Pages: *5*, including this cover sheet.
From: *GREGORY MEACHAM*
Subject: *IG EXECUTIVE ORDER*

COMMENTS:

*ATTACHED IS THE FINAL DRAFT OF THE ORDER
THAT EVERYONE CAN AGREE ON. I HAVE BEEN
UNABLE TO LOCATE MY FILE ON THIS ISSUE THIS
AFTERNOON - I'LL FAX YOU BACKGROUND MATERIAL
TOMORROW.*





U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

September 28, 1995

TO: Elaina Kagan

FROM: David Margolis

A handwritten signature in black ink that reads "David Margolis".

When we spoke yesterday, I indicated I would send you a copy of a memo from the Deputy Attorney General to the FBI noting three problematic areas in the draft Executive Order concerning the handling of allegations of wrongdoing by Inspectors General and their top staff. I have just learned that the three issues raised in that memorandum have been discussed by the Criminal Division and the FBI, and the two components have apparently resolved all three.

Rather than send you a memorandum discussing problems that, I am informed, have been resolved, I am now sending you a revised draft of the Executive Order that reflects these resolutions. I anticipate that this will be fairly close to what the Department will propose, although there may be some stylistic changes suggested by the Office of Legal Counsel, which is presently reviewing the draft.

Richard Schuthin - telecon

DOT still has things to work out w/ FBI
OCC has cleared its concerns

Deputy's Office -
memo to FBI -
re some S's.

David Margolis.

call him.

Will send EO

Deputy letter to FBI(?)

Get
Have some sense of timing
when look at memo.

THE WHITE HOUSE
WASHINGTON
OFFICE OF LEGISLATIVE AFFAIRS
FAX COVER SHEET

Elena - see me
Dawn Johnson
Bill Esposito
FBI
324-4260

NOTE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED FOR THE RECIPIENT ONLY.

DATE: 9-20-95

TO: Vicki Divoll

FAX #: 62146

FROM: JOCELYN M. JOLLEY
456-7500 (TEL) 456-6221(FAX)

RE: Please advise

PAGE 1 OF 3

If there are any problems with this transmission, please call (202) 456-7500.

FAX SENT:

TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
FRED THOMPSON, TENNESSEE
PHIL COCHRAN, MISSISSIPPI
CHARLES S. GRASSLEY, IOWA
JOHN MCCAIN, ARIZONA
BOB SMITH, NEW HAMPSHIRE

JOHN GLENN, OHIO
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
DAVID PRYOR, ARKANSAS
JOSEPH I. LIBERMAN, CONNECTICUT
DANIEL K. AKAKA, HAWAII
BYRON L. DORGAN, NORTH DAKOTA

FRANKLIN G. POLK, STAFF DIRECTOR AND CHIEF COUNSEL
LEONARD WEISS, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6260
August 31, 1995

05
82975
A10:108

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Committee on Governmental Affairs, which I chair, maintains primary oversight responsibility in the Senate for the Offices of Inspectors General (OIGs). I am writing to express my serious concern regarding the problem of alleged misconduct within the OIGs and how these allegations are investigated. I am particularly troubled by the current absence of a formal process for investigating allegations of misconduct made against an IG or senior OIG staff.

I have maintained a longstanding interest in establishing and preserving the unique and essential role of every OIG in protecting the integrity of federal government programs and agencies. Under the Inspector General Act of 1978 and its subsequent amendments, OIGs currently exist in more than 60 federal departments, agencies and other entities. OIGs have been granted a substantial amount of independence and authority to carry out their mandate of combatting waste, fraud and abuse within their respective organizations. Credibility and integrity are essential to an OIG's ability to carry out its responsibilities effectively.

I strongly believe that OIG staff must conduct themselves in a manner that is above reproach. Anything less severely impairs their ability to fulfill their mission. Therefore, I view with grave concern allegations of impropriety within an OIG. If not dealt with promptly, thoroughly and effectively, such allegations undermine an OIG's integrity and credibility. This is particularly true when the allegations are made against an IG or senior OIG staff. Yet, currently, no formal process exists by which to investigate allegations of non-criminal misconduct made against OIG officials.

In order to assess the scope of this problem, I directed the Permanent Subcommittee on Investigations, working in conjunction with the General Accounting Office, to conduct the first comprehensive analysis of misconduct allegations made against OIG staff. According to preliminary data reported by OIGs themselves, there have been more than one thousand allegations of misconduct against OIG staff during the last five years. Nearly 37 percent of these allegations involved senior level OIG staff (GS-14 and above, including IGs). Approximately 60 percent of all allegations reported proved to be substantiated.

The President
Page 2

Additional information the Subcommittee obtained from the Federal Bureau of Investigation (FBI) indicates that, of the 89 complaints referred to the Allegations Review Subcommittee of the President's Council on Integrity and Efficiency (PCIE) on which action has been completed, only three were considered to be possibly criminal and investigated by the FBI. The remaining complaints were either referred to the agency or its IG, against whom the allegations were made, or were closed without investigation. This data increases my concern regarding the fact that no standard procedure currently exists to investigate allegations of non-criminal misconduct made against an IG or high-level OIG staff. Since the FBI presently does not have the authority to investigate non-criminal allegations, the result is that those types of allegations are either investigated in an ad hoc manner or not at all.

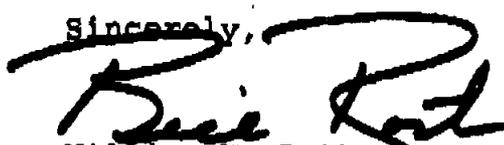
I am particularly concerned because this is not a new issue. In testimony before the Senate Governmental Affairs Committee on May 20, 1992, regarding the procedure for investigating and resolving allegations against IGs and OIG staff, Frank Hodsoil, then-Deputy Director for Management, Office of Management and Budget, and acting chair of both the PCIE and the Executive Council on Integrity and Efficiency (ECIE), acknowledged, "The current system is not satisfactory and must be replaced."

At that same hearing, in response to a question from then-Chairman Glenn, Mr. Hodsoil acknowledged, "I know this has been dragging on..." and stated that this problem would "be brought to closure within the next week..." More than three years later, we are still awaiting the solution and the problem remains unresolved.

I understand that an Executive Order, which would address this problem in large part by authorizing the FBI to investigate allegations of non-criminal misconduct made against IGs and senior OIG staff, has been pending for some time. It is also my understanding that the FBI has agreed to assume this additional responsibility. However, the delay in issuing this Executive Order has only exacerbated this already serious problem by allowing it to continue.

The Executive Order may go a long way toward filling the current oversight vacuum. Please advise me whether this Executive Order will be issued and, if so, when. If you are not going to issue the Executive Order, I would like to know what the Administration proposes to do to address this problem. I appreciate your attention to this important matter.

Sincerely,



William V. Roth, Jr.
Chairman

EO on IGs

Telecon John Korhinen

Bill Esposito at FBI 324-4260

Head of Integ. Dir. of PCIE (1 chair of all pres
appted IGs)

↓
handles complaints of IGs.

Concern as to whether process is clear

OLL, FBI, PCIE -
why for sev mos to
come up w/ acceptable
EO.

PCIE mtg reviewed a few
mos ago - signed off.

A few last issues raised.

Now trapped in bureaucracy at DOJ.

Need to get final push.

Esposito - on vacation for 10 days.

↓

dwens

Plan UP -
turn off on
FBI off.

~~Odetta~~
~~7:50~~

Dawn J. -
Richard S. - report on status -
afternoon
Mtg - yesterday aft.

~~Chris - Strader~~
~~3/1/87~~

8.15
Rene Sanchez
Chris Sanchez
87
Mark Greenberg
Jordan

324-5592



Greg Meechum - FBI counsel office

~~FBI Special Counsel~~

since

March - several drafts

now ~~draft~~ ~~went~~ ~~to~~ ~~DAG~~



PCIE - approved
in July mtg
superseding the
June - July

sent to DAG after July mtg

↳ shopped out to OLC

↳ turned out to DOT components -

incl. Public Integrity Section
(sits in ^{advis} capae in PCIE)

had same probs as already had
in PCIE mtgs -

couldn't reconcile w/ what IGs wanted.
same objections new.

DOT objections -

- spurious, alleges:

IGs objected to notif. of ap. head
when unannounced (likely link-sense
should just be dropped. IGs)

- When IGs should be notified
was alleged, received app then.

? Prefer not to know - then leave
to answer all IS

- ADA: ~~As paying for invrs controls?~~

↳ for IGs from other apps each
blanche?

Met last wk -

- ① office of
FBI (con'l counsel)
- ② Special Counsel
(Kathleen Cook)

③ Public Integrity Section

Deleted 1 out, clarified another.

Draft to be sent to DOT today.

(?)

OMB working on Oct 12 deadline -
responding to Sen. Roth.

↳ DOT to send to OMB
directly.

Anticipate...