

The Journal of **Public Inquiry**

A Publication of the Inspectors General of the United States

Commentary on the 25th Anniversary of the Inspector General Act

Marking the 25th Anniversary *Congress Commends the Inspectors General*

*President George W. Bush Meets with
Inspectors General*

The Ethics in Government Act of 1978 *Foundation of a Modern Ethics Program*

Amy L. Comstock

Independent Officials within the Executive Branch *Celebrating the Genius of the Inspector General Act and the Contract Disputes Act on Their 25th Anniversary*

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Core Competencies *A Driving Force for Organizational Excellence*

Kenneth F. Clarke and John Mullins

Washington and von Steuben *Defining the Role of the Inspector General*

Lieutenant Colonel Stephen M. Rusiecki

Theft and Misuse of Government Information

David Berry



Fall/Winter 2003



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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.

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A Publication of the Inspectors General of the United States **Inquiry**

Fall/Winter 2003

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In This Issue

This issue of *The Journal of Public Inquiry* was prepared during an important period for the Federal Inspector General (IG) community: the 25th anniversary of enactment of the IG Act of 1978. To help mark this historic milestone, we have included some special features.

We begin with commentary by key lawmakers from the 95th Congress who were instrumental in the creation of the law, Senators John Glenn and William V. Roth, Jr., former Chairman and Ranking Member of the Senate Government Affairs Committee, respectively. The IG community lost a trusted friend and supporter when former Senator Roth died on December 13, 2003. Senator Roth served as Chairman of the Senate Governmental Affairs Committee and Chairman of the Senate Permanent Subcommittee on Investigations and was a strong advocate for the mission of Offices of Inspector General throughout his congressional tenure. The IG community especially appreciates that recently Senator Roth recognized the work of the IG community on the occasion of the 25th anniversary of the Inspector General Act, as articulated in his statement on page five of this Journal. We are honored that our newly established annual award for Exemplary Service to Congress bears Senator Roth's name, along with former Senator John Glenn's. This award will help ensure that Senator Roth's memory lives on in the IG community. We extend deepest sympathy to Senator Roth's family, friends, and colleagues.

We follow with commentary from our current IG community leadership, Clay Johnson III, Office of Management and Budget Deputy Director for Management, and Chair, President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency, and Council Vice Chairs Gaston Gianni and Barry Snyder, IGs of the Federal Deposit Insurance Corporation and the Federal Reserve Board, respectively.

As the Vice Chairs note in their commentary, both the Congress and the President observed the 25th anniversary. We are pleased to include in this issue a copy of the Congressional Joint Resolution, signed by the

President, commending the IGs for their accomplishments on behalf of taxpayers over the past 25 years, as well as photographs taken from a meeting of the President with the IGs in October, 2003.

As part of our silver anniversary activities this year, we also have recognized the contributions of other related Federal entities created in 1978. In our first issue of 2003, Office of Personnel Management (OPM) Deputy Director Dan Blair provided an overview of the Civil Service Reform Act and the important role that OPM plays in human capital management for the Federal Government. We continue in this issue with two additional articles. Former Director of the Office of Government Ethics, Amy Comstock, has written on the 25th anniversary of the Ethics in Government Act, and Chairman of the General Services Board of Contract Appeals Stephen Daniels, has written on the relationship between the IG Act and the Contract Disputes Act of 1978.

Several of our Offices of Inspector General also have made important contributions to this issue. With the community's continuing interest in improving human resources in mind, the IG of the International Trade Commission, Kenneth Clarke, has written on the development of core competencies in the establishment of organizational excellence. Our law update is furnished by Counsel to the IG of the National Labor Relations Board, Dave Berry, who addresses the legal issues surrounding theft and misuse of government information.

Finally, we are pleased to continue our custom of recognizing various aspects of IG history, this time through the valuable perspective of the Defense Department's Inspector General School. Lieutenant Colonel Stephen M. Rusiecki has written on the 225 year-old Army IG system, beginning with President Washington and Inspector General von Steuben.

We hope you enjoy this issue.

The Honorable John Glenn

United States Senator, Ohio 1975-1999

In looking back over my career in the United States Senate, the passage and subsequent expansion of the Inspector General (IG) Act ranks as one of my most significant and satisfying accomplishments. Creating statutorily independent and non-partisan Offices of Inspector General (OIGs), requiring them to report to both the agency head *and* Congress, providing sufficient resources to conduct professional audits and investigations, and reporting on their results without fear of reprisal was still a rather novel concept when I arrived in the Senate in 1975.

There were some who said this idea was unconstitutional; others believed it would prove impractical. Working with a bipartisan group of Members, such as Senators Ribicoff, Percy, Eagleton, and my good friend, Bill Roth, as well as Representatives Fountain, Brooks, and Horton, we effectively refuted those notions and did not rest until President Carter signed the Act into law.

On this, the 25th anniversary, I am proud to say the Act has not only withstood the test of time, it has brought about pronounced and productive changes to the manner in which government does business. Indeed, no one can quarrel with the fact that IGs have made outstanding contributions in helping to improve program integrity and efficiency while saving billions of taxpayer dollars and cracking down on those who would seek to defraud the government. Over the past few years, the fact that Congress has provided IGs with even more responsibilities over agency financial statements, computer security, and the Government Performance and Results Act is a testament to the lasting success and institutionalization of the IG concept.

Because I considered the position of Inspector General to be one of the most important—and difficult—in all of government, I took a particular interest in meeting with those who had been nominated for these posts prior to confirmation by our Committee. I wanted to be sure that they understood the role of an IG, what Congress expected of them, and

that they had the “mettle” to make the tough calls. My advice was to always be fair, but firm; lay out the facts, pull no punches, and let the “chips fall where they may”; do not take “independence” to such an extreme that an IG becomes marginalized and irrelevant, and; keep Congress continually apprised of your activities—I did not believe once every 6 months created the foundation necessary for establishing a solid working relationship.

I think those words still ring true today, and Inspectors General have genuinely embraced them through both their actions and deeds. The IG community has much to be thankful for and proud of in its first 25 years. I, and all Americans, owe a profound debt of gratitude for your service. For that, we salute you!

Now, let’s get back to work in rooting out fraud, waste, and abuse.

The Honorable William V. Roth, Jr.

United States Senator, Delaware 1971-2001

I am pleased to recognize the 25th Anniversary of the Inspector General (IG) Act. While I served in the United States Senate, I was always a strong supporter of the IGs. In fact, I was a co-sponsor of the 1988 Amendments to the IG Act, which significantly expanded the reach of the Act.

I believe that over the past 25 years the IGs have had a profound impact on the operation of the Federal Government. I consider them to be the government's watchdogs. Although their mission has expanded in recent years, their primary goal has remained rooting out "waste, fraud, and abuse." This was also one of my main objectives when I served as Chairman of the Senate Governmental Affairs Committee and chairman of the Senate Permanent Subcommittee on Investigations. Over the years I worked closely with many different IGs and generally found their work to be of the highest quality. I agree with numerous other observers in concluding that the IGs have functioned both as "guardians of good government" and "agents of positive change," by identifying opportunities and promoting solutions for the improved performance of numerous government programs.

The IGs have been able to do this while operating in a most difficult environment, because the IG Act requires them to keep both their agency head and Congress "fully and currently" informed about program or operational deficiencies. This dual reporting requirement has forced the IGs to constantly balance the needs and requests of "two masters," each with often very different and competing agendas. Despite this difficult reporting structure, the IGs have been able to serve both the executive and legislative branches of government, as well as the public, in an exemplary manner over the past 25 years.

I would like to congratulate the entire IG community for their years of outstanding dedication and service, and also thank them for naming the 2003 Exemplary Service to Congress Award after me and Senator John Glenn. It was an unexpected and much appreciated honor.

The Honorable Clay Johnson III

*Deputy Director for Management, Office of Management and Budget
Chair, President's Council on Integrity and Efficiency and
Executive Council on Integrity and Efficiency*

Dear Colleagues:

The Federal Government is becoming results oriented, with the help of the Inspector General (IG) community. With increasing frequency and skill, departments and agencies are asking. . . .

- Are my programs working, and if not, what can I do about it?
- Am I making payments to the right people in the right amounts, and if not, what can I do about it?
- What does it cost me to perform a particular function? Is my financial information accurate and timely enough to answer questions like this, and if not, what can I do about it?
- Are my contractors performing per our agreement? Are they doing what they said they'd do for the money I promised to pay them?
- Are my IT systems and facilities and employees secure?

IGs help agencies answer these questions and more. They help agencies become more successful. They are much, much more than “watchdogs”; they are agents of positive change.

I am honored to be an official part of the IG community.

The Vice Chairs' Perspective: 25th Anniversary Activities Focus on Education and Recognition

Twenty-five years ago, the Inspector General (IG) concept was enacted into law. At that time, the Federal Government was witnessing serious and widespread internal control breakdowns that resulted in significant monetary losses, reduced efficiency, and effectiveness in Federal activities, and a general loss of confidence in government operations. The IG concept, which stood for integrity and good government, was a unique fix to a troubling situation. In those early days, IGs faced the challenges of ferreting out fraud, waste, and abuse as well as explaining their role and responsibilities and how they fit into their agency.

Over the years, the Congress has added new IGs and important responsibilities designed to enhance and improve Federal operations and activities. As a result of key legislative initiatives, IGs are playing pivotal roles within their agencies by conducting financial audits, reporting on Results Act compliance and accountability, assessing information security efforts, and identifying their agencies' most significant challenges. These responsibilities, coupled with the basic tenets of the Act, enable IGs to facilitate constructive solutions; promote economy, efficiency, and effectiveness; and serve as "agents of positive change" for their agencies.

Now, 25 years later, although the concept itself has been institutionalized, the IG community continues to look for opportunities to educate its stakeholders on its mission. The silver anniversary of the passage of the IG Act presented a perfect opportunity to celebrate the community's accomplishments, reflect on opportunities for improvement, and continue efforts to educate the recipients of its work. What follows is a brief discussion of how the IG community recognized its 25th anniversary:

- On October 8, 2003, Todd Platts, the Chair of the House Government Reform Subcommittee on Government Efficiency and Financial Management, convened an oversight hearing to examine the progress that has been made since the passage of the IG Act. Chairman Platts was also interested in discussing what, if any,

legislative changes were needed to help the IG community ensure efficiency, accountability, and effectiveness within the Federal Government. Comptroller General David Walker and Office of Management and Budget Deputy Director for Management Clay Johnson joined us in testimony before the Subcommittee. As discussed repeatedly during the hearing, IGs have been successful in carrying out their mission by reporting billions of dollars in savings and cost recoveries, as well as thousands of successful criminal prosecutions.

- During the week of October 12, 2003, seven IGs were featured on C-Span's *Washington Journal* to discuss the mission and responsibility of the IG community and address specific issues related to their agencies. The IGs addressed homeland security, justice, transportation, space, environmental, banking, and government printing matters.
- On October 14, 2003, the President of the United States, George W. Bush, met with the Inspectors General to honor and recognize the 25th anniversary of the passage of the IG Act. Mr. Bush applauded the IGs for their dedication to their mission of combating fraud, waste, and abuse to make programs work better for the taxpayers. He also commended the community's vigilance to remain "agents of positive change."
- On October 16, 2003, 134 IG community awards were presented to individuals and groups to recognize career achievements, individual accomplishments, and excellence in the areas of audits, investigations, evaluations, law and legislation, management, and administrative services. As part of the 25th anniversary recognition, three of these awards honored the "best of the best" from the community. Individuals and groups from Offices of Inspector General (OIGs) in 32 Federal departments,

agencies, and corporations were recognized for their significant contributions toward good government.

- During October 2003, the IG community updated and issued its *Quality Standards for Federal Offices of Inspector General*. These standards set forth the overall quality framework for managing, operating, and conducting OIG work and serve as a guide for the IG community's efforts into the future. To commemorate the 25th anniversary, the update was issued with a silver cover, and will be referred to as the "Silver Book" standards.
- Throughout October and November, OIGs hosted "open houses" within their agencies. The goal of these "open houses" was to provide information on the mission and responsibilities of an IG. As the community has discovered over the years, educating the various agencies as to where and how the IG fits into the organization enhances communication and promotes its "good government" philosophy.
- On December 1, 2003, President Bush signed a joint congressional resolution commending the IGs for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years.
- In anticipation of the 25th anniversary, the community designed a logo and poster to serve as a reminder of IG history to all who come in contact with the IG community. The logo has been featured prominently on various documents and publications. The 25th anniversary poster, which includes the names of each OIG, was designed to illustrate the breadth of the community. These posters hang proudly in each OIG and express gratitude to the over 11,000 OIG employees for their contributions in making the Federal Government a better place.

The community continues to look for additional ways to promote education and communication. This publication, *The Journal of Public Inquiry*, will serve as a commemorative edition and one that the community can share with those unfamiliar with the IG concept. The IG community's Web site, www.ignet.gov, has been updated to feature many of the 25th anniversary activities. In addition, the community is exploring the possibility of producing a public service announcement accessible on the community's as well as individual OIG Web sites to further educate its stakeholders.

Twenty-five years ago, IGs were given the authority to be independent voices for ensuring economy, efficiency, and effectiveness and promoting integrity, accountability, and transparency

in the Federal Government. Every member of the community takes this authority and responsibility very seriously. In the next 25 years, the community looks forward to building on its accomplishments and fulfilling its commitment to serve throughout the Federal Government as "agents of positive change."

Gaston L. Gianni, Jr., Inspector General
Federal Deposit Insurance Corporation
Vice Chair, President's Council on
Integrity and Efficiency

Barry R. Snyder, Inspector General
Federal Reserve Board
Vice Chair, Executive Council on
Integrity and Efficiency

One Hundred Eighth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday,
the seventh day of January, two thousand and three*

Joint Resolution

Commending the Inspectors General for their efforts to prevent and detect waste, fraud, abuse, and mismanagement, and to promote economy, efficiency, and effectiveness in the Federal Government during the past 25 years.

Whereas the Inspector General Act of 1978 (5 U.S.C. App.) was signed into law on October 12, 1978, with overwhelming bipartisan support;

Whereas Inspectors General now exist in the 29 largest executive branch agencies and in 28 other designated Federal entities;

Whereas Inspectors General work to serve the American taxpayer by promoting economy, efficiency, effectiveness, and integrity in the administration of the programs and operations of the Federal Government;

Whereas Inspectors General conduct audits and investigations to both prevent and detect waste, fraud, abuse, and mismanagement in the programs and operations of the Federal Government;

Whereas Inspectors General make Congress and agency heads aware, through semiannual reports and other communications, of problems and deficiencies in the administration of programs and operations of the Federal Government;

Whereas Congress and agency heads utilize the recommendations of Inspectors General in the development and implementation of policies that promote economy and efficiency in the administration of, or prevent and detect waste, fraud, abuse, and mismanagement in, the programs and operations of the Federal Government;

Whereas Federal employees and other dedicated citizens report information to Inspectors General regarding the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety;

Whereas Inspector General audits and investigations result in annual recommendations for more effective spending of billions of taxpayer dollars, thousands of successful criminal prosecutions, hundreds of millions of dollars returned to the United States Treasury through investigative recoveries, and the suspension and debarment of thousands of individuals or entities from doing business with the Government; and

Whereas for 25 years the Inspectors General have worked with Congress to facilitate effective oversight to improve the programs and operations of the Federal Government: Now, therefore, be it

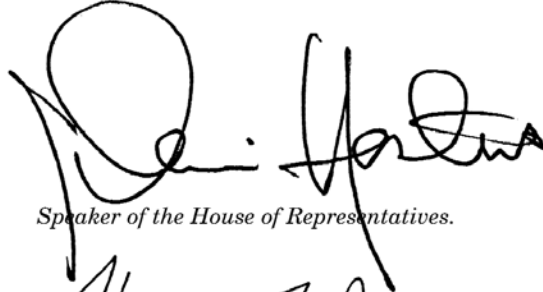
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

S. J. Res. 18—2

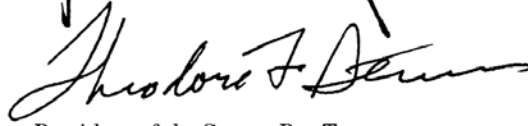
(1) recognizes the many accomplishments of the Inspectors General in preventing and detecting waste, fraud, abuse, and mismanagement in the Federal Government;

(2) commends the Inspectors General and their employees for the dedication and professionalism displayed in the performance of their duties; and

(3) reaffirms the role of Inspectors General in promoting economy, efficiency, and effectiveness in the administration of the programs and operations of the Federal Government.



Speaker of the House of Representatives.



President of the Senate Pro Tempore.

APPROVED

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President George W. Bush Meets with Inspectors General



Defense and Science Agencies. President George W. Bush meets with Inspectors General from defense and science agencies on the 25th anniversary of the IG Act. From left, Robert Cobb, IG, National Aeronautics and Space Administration; Richard Moore, IG, Tennessee Valley Authority; Hubert Bell, IG, Nuclear Regulatory Commission; Gregory Friedman, IG, Department of Energy; President Bush; Christine Boesz, IG, National Science Foundation; Richard Griffin, IG, Department of Veterans Affairs; Joseph Schmitz, IG, Department of Defense; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



International and Homeland Agencies. President George W. Bush meets with Inspectors General from international and homeland agencies on the 25th anniversary of the IG Act. From left Charles Smith, IG, Peace Corps; Phyllis Fong, IG, Department of Agriculture; Earl Devaney, IG, Department of the Interior; Clark Ervin, Acting IG, Department of Homeland Security; President Bush; Anne Patterson, Acting IG, Department of State; Everett Mosley, IG, Agency for International Development; Nikki Tinsley, IG, Environmental Protection Agency; Glenn Fine, IG, Department of Justice; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



Domestic Agencies. President George W. Bush meets with Inspectors General from domestic agencies on the 25th anniversary of the IG Act. From left James Huse, IG, Social Security Administration; Russell George, IG, Corporation for National and Community Service; Kenneth Mead, IG, Department of Transportation; Dara Corrigan, Acting Principal Deputy IG, Department of Health and Human Services; President Bush; John Higgins, IG, Department of Education; Kenneth Donohue, IG, Department of Housing and Urban Development; Fred Weiderhold, IG, AMTRAK; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



Labor and Commerce Agencies. President George W. Bush meets with Inspectors General from labor and commerce agencies on the 25th anniversary of the IG Act. From left Patrick McFarland, IG, Office of Personnel Management; Martin Dickman, IG, Railroad Retirement Board; Gordon Heddell, IG, Department of Labor; Jane Althenhofen, IG, National Labor Relations Board; President Bush; Francine Eichler, IG, Federal Labor Relations Authority; Harold Damelin, IG, Small Business Administration; Johnnie Frazier, IG, Department of Commerce; Robert Emmons, IG, Pension Benefit Guaranty Corporation; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



Financial Agencies. President George W. Bush meets with Inspectors General from financial agencies on the 25th anniversary of the IG Act. From left Gaston Gianni, IG, Federal Deposit Insurance Corporation; Barry Snyder, IG, Federal Reserve Board; Jeffrey Rush, IG, Department of Treasury; Pamela Gardiner, Acting Treasury Inspector General for Tax Administration; President Bush; Walter Stachnik, IG, Securities and Exchange Commission; Herbert Yolles, IG, National Credit Union Administration; Stephen Smith, IG, Farm Credit Administration; Edward Kelley, IG, Federal Housing Finance Board; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



General Government Agencies. President George W. Bush meets with Inspectors General from general government agencies on the 25th anniversary of the IG Act. From left David Williams, IG, U.S. Postal Service; Paul Brachfeld, IG, National Archives and Records Administration; Dan Levinson, IG, General Services Administration; Sheldon Bernstein, IG, National Endowment for the Humanities; President Bush; Marc Nichols, IG, Government Printing Office; Kenneth Konz, IG, Corporation for Public Broadcasting; Leonard Koczur, Acting IG, Legal Services Corporation; Daniel Shaw, IG, National Endowment for the Arts; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



Commissions. President George W. Bush meets with Inspectors General of commissions on the 25th anniversary of the IG Act. From left Tony Kominoth, IG, Federal Maritime Commission; Clifford Jennings, IG, Appalachian Regional Commission; Lynne McFarland, IG, Federal Elections Commission; President Bush; Aletha Brown, IG, Equal Employment Opportunity Commission; Kenneth Clarke, IG, U.S. International Trade Commission; Frederick Zirkel, IG, Federal Trade Commission; Walter Feaster, IG, Federal Communications Commission; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.



PCIE and ECIE Members. President George W. Bush meets with officials who are members of both the PCIE and ECIE on the 25th anniversary of the IG Act. From left William Reukauf, Acting Special Counsel, Office of Special Counsel; Dan Blair, Deputy Director, Office of Personnel Management; President Bush; Amy Comstock, Director, Office of Government Ethics; and Clay Johnson, Deputy Director for Management, Office of Management and Budget.

AMY L. COMSTOCK

Former Director, United States Office of Government Ethics

The Ethics in Government Act of 1978

Foundation of a Modern Ethics Program

This year marks the 25th anniversary of the Ethics in Government Act (EIGA) of 1978.¹ In many respects, it also marks the silver anniversary of the modern executive branch ethics program. Today, the ethics program does provide a “cohesive infrastructure for the enforcement of current statutes, executive orders, and regulations dealing with standards of conduct,” something that the Congress found lacking in the executive branch at the time the EIGA was enacted.²

In addition to a framework of ethics laws and regulations, the elements of that “cohesive infrastructure” include preventive measures and management systems designed to avoid conflicts of interest and maintain government integrity. It also includes an office, the Office of Government Ethics (OGE), that provides leadership and direction for setting ethics policy for the executive branch, and a network of Designated Agency Ethics Officials located in each executive branch department and agency who administer the agency’s ethics program. Finally, it includes relationships between the ethics community and the Offices of Inspector General, as well as Federal prosecutors, that are essential for enforcing the ethics program and maintaining its credibility.

Not all of these elements of the ethics program were established by the passage of the EIGA. Rather, the ethics program has evolved and

¹See Pub. L. No. 95-521, 92 Stat. 1824, 5 U.S.C. app. 4, October 26, 1978.

²See Senate Report No. 95-170, reprinted in 1978 U.S. Code Cong. & Admin. News, Vol. 4 at p. 4246, hereinafter the “Senate Report.”

developed over time through subsequent legislation, executive order, and regulations, as well as through the growth and maturation of the institutions established by the EIGA. But the EIGA did lay the foundation for a comprehensive executive branch ethics program by establishing a separate office to provide direction and oversight of the program and by inaugurating a system of public financial disclosure.

Origins and Innovations of the Ethics in Government Act of 1978

The Watergate scandal created a climate of heightened concern about the integrity of government officials and government operations, and provided an impetus for a number of legislative reform measures. One of those measures was the EIGA which was passed on October 26 of that year. Earlier that same month, on October 12, Congress had enacted the Inspector General Act of 1978 to increase the “economy and efficiency” of the government by establishing independent Offices of Inspector General in 12 executive branch departments and agencies. The next day on October 13, the Civil Service Reform Act of 1978 was enacted to provide a “competent, honest, and productive” Federal workforce based on merit system principles.³ Although each of these enactments had its own particular history and addressed its own issues and concerns, all three came to fruition in the aftermath of Watergate and were intended to improve the operations of government.

The EIGA was an omnibus piece of legislation that contained seven titles addressing a wide range

³The Office of Special Counsel was established on January 1, 1979, by Reorganization Plan Number 2 of 1978. See 5 U.S.C. app. 1, § 204. The Civil Service Reform Act of 1978 enlarged its functions and powers. The Office was the autonomous enforcement arm of the Merit Systems Protection Board (MSPB) until 1989 when it was established as an independent agency within the executive branch, separate from the MSPB, pursuant to the Whistleblower Protection Act. See U.S. Office of Special Counsel Fiscal Year 2002 Annual Report at p. 3.

of legislative concerns. In addition to creating the Office of Government Ethics,⁴ and establishing public financial disclosure requirements for personnel in the legislative, executive, and judicial branches, respectively,⁵ the EIGA amended the post-employment law,⁶ established a Special Prosecutor,⁷ and established the Office of Senate Legal Counsel.⁸ From a strictly programmatic perspective, the EIGA titles of particular interest are those dealing with the Office of Government Ethics and public financial disclosure.⁹ Both of these titles have been amended over the course of the past 25 years. The general structure that they established though, has served as a foundation of the executive branch ethics program.

Office of Government Ethics

A major innovation of the EIGA in terms of the ethics program was its establishment of a separate office that would have sufficient authority to provide direction for ethics policy for the executive branch, as well as to properly administer a public financial disclosure system. The EIGA established the U.S. Office of Government Ethics (OGE) as an entity within the Office of Personnel Management (OPM). OGE was charged with providing “overall direction of executive branch policies related to preventing conflicts of interest on the

⁴ Title IV of the EIGA established OGE.

⁵ Title I, Title II, and Title III were subsequently merged in a single title dealing with public financial disclosure in all three branches.

⁶ Title V amended 18 U.S.C. § 207.

⁷ Title VI established a Special Prosecutor, the reform measure of the EIGA that was most closely linked to the circumstances of the Watergate scandal. The position of Special Prosecutor was subsequently renamed an Independent Counsel. The law was renewed several times and then allowed to lapse.

⁸ Title VII established the Office of Senate Legal Counsel.

⁹ Title V amended the existing post-employment law, one of the key statutes administered under the ethics program. Title II and Title IV, on the other hand, created a new system of conflict prevention and a new institution for setting executive branch ethics policy. The changes made by Title V are not discussed in this article.

part of officers and employees of any executive branch agency.”¹⁰

Lawmakers had found that “the most substantial contributing factor to the inadequate performance of the executive branch conflict of interest enforcement system has been the decided lack of a centralized supervisory authority.”¹¹ An ethics office “would centralize executive branch responsibility for enforcement; provide guidance to agencies on standard procedures to ensure the collection, review, and monitoring of financial disclosure statements; issue clear and understandable standards of conduct regulations; provide advisory opinions to agencies; and develop financial disclosure forms tailored to obtain all relevant information necessary to make conflict of interest determinations. Perhaps, most importantly, the ethics office would also bear responsibility for conducting an ongoing program to inform employees of those laws and regulations which govern their conduct.”¹²

In keeping with the broader mandate to provide leadership in setting policies to prevent conflicts of interest, OGE was also given regulatory responsibilities not only with respect to a new system of public disclosure, but also more generally pertaining to conflicts of interest and ethics in the executive branch. OGE was also given a number of other authorities and functions including:

- interpreting ethics laws and regulations;
- providing advisory opinions on ethics issues;
- working with agency ethics officials on the resolution of ethics issues in individual cases;
- providing information on, and promoting understanding of, ethical standards in executive agencies;
- ordering corrective action where necessary;
- evaluating the effectiveness of existing conflicts laws and recommending appropriate amendments; and

- cooperating with the Attorney General in developing a system for reporting allegations of violations of the conflict of interest laws.¹³

These authorities provided the statutory foundation upon which the modern ethics program has been built.

The EIGA also provided the basis for one other key feature of the modern ethics program, namely the role of OGE in the nomination process. The law required that nominees to positions that require confirmation by the Senate transmit their financial disclosure reports to OGE. The Director of OGE in turn shall certify that reports filed with OGE are “in compliance with applicable laws and regulations.” These provisions have provided the basis for today’s procedures for the review and certification of nominee financial disclosure reports. Though not specified in the EIGA, Senate confirming committees generally require that the financial disclosure report of a nominee be certified by the Director of OGE before holding a nomination hearing. This process fulfills one of the major purposes of the public financial disclosure system established by the EIGA, namely to identify and remedy potential conflicts of interest and thereby prevent them from occurring.

Public Financial Disclosure

A second major innovation of the EIGA was the establishment of a system of public financial disclosure for certain senior officers and employees in the executive branch. Prior to 1978, public reporting of financial interests occurred only in certain limited areas. A Senate rule, for example, required Senators, candidates for the Senate, and certain senior Senate staffers to file an annual financial disclosure statement with the Secretary of

¹⁰ See EIGA, section 402(a), 5 U.S.C. app. 4 § 402(a).

¹¹ See Senate Report at p. 4246.

¹² See Senate Report at pp. 4246-47.

¹³ See section 402(b) of the EIGA for the list of 14 original authorities and functions of the Office of Government Ethics. There was some subsequent expansion of these authorities but the basic structure was put in place by the EIGA. For the current list of authorities, see 5 U.S.C. app. 4 § 402(b).

the Senate that was a publicly available document.¹⁴ In the executive branch, certain senior officials and employees were required to file a confidential report pursuant to a 1965 executive order.¹⁵

Prior to 1978, the then Civil Service Commission had limited authority under Executive Order 11222 to establish a system of confidential financial disclosure.¹⁶ Lawmakers found the existing system to be ineffectively managed, inadequately staffed, and subject to incoherent regulations.¹⁷ With regard to the executive branch, lawmakers gave the following criticisms of that system:

- requirements were inconsistent and varied;
- the President and Vice President were exempt from reporting; and
- reports were not publicly available.¹⁸

The EIGA remedied this situation by establishing uniform reporting requirements for certain officials throughout the executive branch. In addition to the President and Vice President, it covered persons who held positions to which they were appointed by the President with Senate confirmation, certain senior graded employees (today's Senior Executive Service), flag rank military officers, and other senior officials. And, finally, these reports were to be made readily available to the public.

¹⁴ See Senate Report at p. 4241.

¹⁵ See Senate Report at p. 4242.

¹⁶ See Senate Report at p. 4244.

¹⁷ See Senate Report at p. 4247. Particularly telling was a series of reports issued by the General Accounting Office (GAO) detailing deficiencies in the existing financial disclosure system. GAO surveys of the financial disclosure systems in a number of executive branch departments and agencies had found frequent conflicts of interest, failure to file and late filed reports, and ineffective and untimely resolution of conflicts. In its Report to Congress, "Action Needed to Make the Executive Branch Financial Disclosure System Effective," B-103987, at p. i, GAO recommended that "an office of ethics be established in the executive branch with administrative and enforcement authority strong enough to carry out the multiple responsibilities involved in operating a sound financial disclosure system."

¹⁸ See Senate Report at pp. 4243-44.

This last aspect of the financial disclosure title of the EIGA, namely public availability, is one of the distinctive innovations of this statute. Interestingly enough this provision was not seen as a way of changing the behavior of employees, but as a system that would:

- restore public confidence in the integrity of government;
- demonstrate the high level of integrity of the vast majority of government officials;
- prevent conflicts of interest from arising;
- deter some persons who should not be entering public service from doing so; and
- enable the public to judge the performance of public officials.¹⁹

Although this rationale bears the stamp of the post-Watergate era concern with restoring public confidence in the integrity of government and government officials, it continues to be a strong justification for public financial disclosure.

The Role of the Designated Agency Ethics Official

A third innovation of the EIGA was that it provided for a statutory definition of the Designated Agency Ethics Official (DAEO) and confirmed the DAEO's role in the administration of the executive branch ethics program.²⁰ The EIGA actually used the term "designated agency official" which it defined as, "an officer or employee who is designated to administer the provisions of this title within an agency." Subsequent amendment of the EIGA changed "designated agency official" to "designated agency ethics official" or DAEO as this official is commonly referred to today.

The DAEO was given significant responsibilities under the EIGA in terms of the filing, custody, and review of public financial disclosure reports.

¹⁹ See Senate Report at pp. 4237-38 for a discussion of the reasons for public financial disclosure.

²⁰ Prior to the EIGA, executive branch agencies had "ethics counselors" who carried out various ethics responsibilities. The EIGA itself occasionally uses the term "ethics counselor." See, for example, section 402(b)(7).

Section 203(a) of the EIGA stated that, with certain exceptions, public reports are to be filed with the DAEO at the agency where the filer is employed or will serve. Section 205 assigned responsibilities in terms of custody and public access to reports. Of particular importance were the DAEO's responsibilities under section 206 for the substantive review of reports to determine compliance with applicable laws and regulations.

The effect of these responsibilities of the DAEO for the financial disclosure system, together with OGE's responsibility for monitoring compliance with the EIGA's financial disclosure requirements, was to create a partnership between OGE and ethics officials to ensure the effectiveness of the financial disclosure system. The EIGA was the cornerstone of that partnership which has developed over the subsequent 25 years to embrace other aspects of the ethics program as it has matured and evolved.

Today, the more than 125 DAEO's throughout the executive branch ethics program are a corps of experienced professionals who breathe life into the ethics program. In managing the ethics programs of their agencies, they carry out a wide range of duties including:

- reviewing financial disclosure reports;
- conducting ethics training programs;
- providing advice and counseling for employees; and
- maintaining a close liaison with OGE.

DAEO's are also required to ensure that the services of the agency's Office of the Inspector General are utilized when appropriate, including the referral of matters to and the acceptance of matters from that Office.²¹

In addition to the DAEO's in each agency, there are more than 8,000 ethics officials located throughout the United States and around the world who work full or part time in the executive

²¹ See 5 C.F.R. § 2638.203 for a complete list of the duties of the DAEO.

branch ethics program. These regional ethics officials provide an important leadership presence for the ethics program.

Subsequent Amendments to the Ethics in Government Act of 1978

Subsequently, there have been numerous amendments to the EIGA. One particularly significant amendment occurred in 1988. In connection with its second reauthorization, OGE was removed from OPM and made a separate agency and the Director was given a set term of 5 years.²² The purpose of this legislation was to ensure the effectiveness of the executive branch ethics system, to clarify the mandate of OGE, and to increase OGE's independence and effectiveness.²³ In 1989, the Ethics Reform Act made changes in the financial disclosure provisions including adding new categories for reporting assets, income, and other items.²⁴

Improving Public Financial Disclosure

The Presidential Transition Act of 2000 directed OGE to study the nomination and confirmation process and propose ways to streamline the public financial disclosure process for nominees, reduce the burden of public financial disclosure filing, and address any other relevant matters.²⁵ In April 2001, OGE submitted its report with recommendations for streamlining the public financial disclosure system.²⁶

²² See Office of Government Ethics: Reauthorization, Pub. L. No. 100-598, 102 Stat. 3031, November 3, 1988.

²³ See House Report No. 100-1017, reprinted in 1988 U.S. Code, Cong. & Admin. News, Vol. 6 at p. 4127.

²⁴ See Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716, November 30, 1989. Additional increases in the upper categories were made under the Lobbying Disclosure Act of 1995, Pub. L. No. 104-65, 109 Stat. 691, December 19, 1995.

²⁵ See Presidential Transition Act of 2000, Pub. L. No. 106-293, 114 Stat. 1035, October 12, 2000.

²⁶ See Office of Government Ethics, Report on Improvements to the Financial Disclosure Process for Presidential

In order to simplify public financial disclosure and reduce the filing burden, OGE recommended the following changes to the EIGA for the executive branch:

- reduce the number of valuation categories;
- shorten reporting time-periods;
- limit the scope of reporting by raising certain dollar thresholds;
- reduce details that are unnecessary for conflicts analysis; and
- eliminate redundant reporting.²⁷

The OGE report emphasized that all of these changes could be accomplished without lessening substantive compliance with any conflict of interest requirement.

A bill, S. 1811, was introduced in the 107th Congress to amend the EIGA to streamline the financial disclosure process for executive branch employees. S. 1811 was favorably reported by the Senate Committee on Governmental Affairs but was not acted on before the conclusion of the 107th

Nominees to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives, April 2001 (hereinafter OGE Report).

²⁷ See OGE Report at p. 2. The report contains a detailed discussion of these recommendations.

Congress.²⁸ OGE has recently submitted its proposal to streamline the financial disclosure provisions of the EIGA to the relevant Congressional committees for consideration in the current Congress.²⁹

Legacy of the Ethics in Government Act of 1978

The EIGA established the Office of Government Ethics to provide leadership in setting ethics policy for the executive branch and oversee the ethics program. OGE fulfills this mission through a vital partnership with ethics officials throughout the executive branch. Today, we have a thriving ethics program that focuses primarily on training to prevent conflicts of interest and promote public trust in government. Nevertheless, public financial disclosure remains a significant part of the ethics program. Although there are areas where the public financial disclosure system can be streamlined and improved, it has introduced greater transparency and accountability into government operations and decision-making. This enduring legacy warrants recognition of the EIGA as a milestone in the history of ethics legislation in the United States. 🏛️

²⁸ See Senate Report No. 107-152, Presidential Appointments Improvement Act of 2002, May 16, 2002.

²⁹ This proposal may be found on OGE's Web site at www.usoge.gov.

STEPHEN M. DANIELS

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Independent Officials within the Executive Branch

Celebrating the Genius of the Inspector General Act and the Contract Disputes Act on Their 25th Anniversary

The Constitution vests the executive power of the United States in the President. In statutes, Congress has authorized the President to exercise that power through officials he appoints and personnel those officials select. In the performance of their duties, these people spend billions of dollars every year on behalf of, and for the benefit of, the citizens of the country. For the most part, they do their work well.

Being human, though, the line officials of the executive branch do not act perfectly when spending the money entrusted to them. On occasion, they spend that money in ways that an impartial observer might consider unwise. More rarely, they spend it fraudulently. These actions clearly and directly waste the people's money. When dealing with contractors, line officials sometimes refuse to spend money that an impartial observer might consider fairly owed. These actions may appear to save the people's money, but in the long run they waste it by inducing future contractors to increase their prices so as to cover the risk that Government officials will try to deal unjustly with them, too.

¹As chairman of the General Services Board of Contract Appeals (GSBCA), Judge Daniels is familiar on a daily basis with the workings of the Contract Disputes Act of 1978. The judge previously served as counsel to the House Government Operations Committee during the time that the committee wrote the Inspector General Act of 1978.

Quite naturally, public servants are unlikely to tell the world about their missteps in guarding the public fisc. People outside the executive branch, on the other hand, have always been inquisitive about matters of this sort. The citizenry as a whole speaks its mind about spending patterns every 4 years by deciding, through the electoral process, whether to change the chief executive. More specifically, people concerned about particular spending determinations investigate, publicize, and litigate in court as to the matters that trouble them. Congress, with the assistance of its General Accounting Office, has been an especially keen practitioner of investigation and publicity about what it perceives as problem areas. But these outsiders often don't know where to look to find misuse of public funds.

In 1978, in two separate initiatives, Congress attempted to marry the honest questioning of the outsiders with the knowledge of the insiders. The legislature created a framework for attacking fraud, waste, and abuse broadly by enacting the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101. The next month, it established a framework for attacking misuse of funds in the contracting process by enacting the Contract Disputes Act of 1978, Public Law 95-563, 92 Stat. 2383. In both these statutes, Congress determined that the problems it had identified could best be remedied by the work of highly-qualified professionals within the executive branch itself. These professionals could do the work only if they were protected by institutional independence and had the tools for obtaining necessary information and publicizing their findings.

In the Inspector General Act, Congress established Inspectors General (IGs) in twelve major Government agencies and departments. (The Act built upon earlier mid-'70s legislation which had established IGs in two other departments. In turn, after the Act had been deemed a success, it was amended in 1988 to provide for IGs in virtually every other agency and department.) The IGs were intended "to provide leadership and coordination and recommend policies for activities designed

(A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations."² There had been audit and investigation units in agencies previously, but they had been hampered by "basic organizational deficiencies." They were scattered throughout their agencies, resulting in a lack of coordination; reported to the very people they were supposed to be monitoring, subjecting them to possible reprisals for objective reporting; and lacked resources to do their job well.³

In the Contract Disputes Act (CDA), Congress authorized the principal Government contracting agencies and departments to establish Boards of Contract Appeals (BCAs). The Boards were to provide expeditious and inexpensive resolution of contract disputes in a manner which was as informal as possible, while at the same time giving contractors the feeling that they had their "day in court."⁴ Congress explained: "How procurement functions has a far-reaching impact on the economy of our society and on the success of many major Government programs. Both can be affected by the existence of competition and quality contractors—or by the lack thereof. The way potential contractors view the disputes-resolving system influences how, whether, and at what prices they compete for Government contract business."⁵ The Boards, "acting as quasi-judicial forums and strengthened by adding additional safeguards to assure objectivity and independence," would give contractors the confidence they would be treated fairly, and this would induce them to offer the government better goods and services at more competitive prices.⁶ There had been contract appeals boards in most of these agencies before,

² Pub. L. No. 95-452, § 2(2); *see also id.* § 4(a)(3), (4).

³ S. Rept. 95-1071 at 5-6, *reprinted in* 1978 U.S.C.C.A.N. 2676, 2680-81.

⁴ S. Rept. 95-1118 at 23-25, *reprinted in* 1978 U.S.C.C.A.N. 5235, 5257-59.

⁵ *Id.* at 4.

⁶ *Id.* at 13.

but they reported to the same high-level officials who were responsible for contracting, and this had proved a disincentive to protect the rights of contractors and render decisions contrary to the agencies' desire. In addition, they had limited authority to command the information they needed to resolve disputes.⁷

Although both IGs and BCA judges were to be appointed by politicians, Congress demanded that they be selected on the basis of professional qualifications. IGs were to be appointed by the President,⁸ but "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."⁹ The legislative history shows that the Congress "intend[ed] to safeguard against the appointment of an Inspector . . . General that is motivated by any considerations other than merit."¹⁰ BCA judges were to be "selected and appointed to serve in the same manner as administrative law judges . . . , with an additional requirement that [BCA judges] shall have had not fewer than five years' experience in public contract law."¹¹ This method of appointment was "intended to guarantee that contract appeals board members . . . be appointed strictly on the basis of merit."¹²

Although these officials were placed within agencies and departments, they were to function independently. "Above all," said Congress, an IG must "have the requisite independence to do an effective job." To achieve that objective, "the head of the agency may not prohibit, prevent or limit the Inspector . . . General from undertaking and completing any audits and investigations which

the Inspector . . . General deems necessary."¹³ Amplifying that independence, IGs could not be removed from office by the President unless he gave reasons for his action to the Congress. And IGs were given separate authority to choose personnel, obtain the services of experts and consultants, and enter into contracts.¹⁴ Similarly, boards of contract appeals were to be "full time and staffed so as to assure the independence and impartiality" of their judges. "[I]n conducting proceedings and deciding cases," Congress said, the judges "would not be subject to direction or control by procuring agency management authorities." Importantly, the Boards "do not act as a representative of the agency, since the agency is contesting the contractor's entitlement to relief."¹⁵ If an agency head disagrees with a Board decision, his only recourse is to appeal it to the Court of Appeals for the Federal Circuit. In this regard, his rights are no greater than the contractor's.¹⁶ Neither an IG nor a BCA may be assigned duties inconsistent with statutory responsibilities.¹⁷

For both IGs and BCAs, access to relevant information is key to the performance of their work. The IG Act and the CDA contain provisions to ensure that this information is provided by the agencies. The IG Act states, "[E]ach Inspector General . . . is authorized . . . to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which the Inspector General has responsibilities under this Act."¹⁸ An IG may also require by subpoena the production of documents from non-Federal entities.¹⁹ Similarly, the CDA provides, "A [judge] of

⁷ *Id.* at 2-3.

⁸ IGs in smaller agencies are now appointed by the heads of those agencies. Pub. L. No. 100-504, 102 Stat. 2515, 2523, § 104(a) (1988).

⁹ Pub. L. No. 95-452, § 3(a).

¹⁰ S. Rept. 95-1071 at 25.

¹¹ Pub. L. No. 95-563, § 8(b)(1).

¹² S. Rept. 95-1118 at 24.

¹³ S. Rept. 95-1071 at 2, 7; *see also* Pub. L. No. 95-452, § 3(a).

¹⁴ Pub. L. No. 95-452, §§ 3(b), 6(a)(6)-(8).

¹⁵ S. Rept. 95-1118 at 2, 24, 26.

¹⁶ Pub. L. No. 95-563, § 8(g); S. Rept. 95-1118 at 26.

¹⁷ S. Rept. 95-1071 at 7; Pub. L. No. 95-563, § 8(a); S. Rept. 95-1118 at 23.

¹⁸ Pub. L. No. 95-452, § 6(a)(1).

¹⁹ *Id.* § 6(a)(4).

an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpoena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board.” This authority extends to agencies as well as non-Federal entities.²⁰ Congress explained, “It is the intent of this increased authority to improve upon the quality of the board records, and to insure that the tools are available to make complete and accurate findings.”²¹

A final similarity between the IG Act and the CDA, designed to increase the impact of the work of the independent officials, is the direction that the officials publicize their determinations. Each IG is required to publish semiannual reports, which cannot be altered by the head of an agency before they are submitted to the Congress. The

²⁰ Pub. L. No. 95-563, § 11.

²¹ S. Rept. 95-1118 at 31.

legislature considered the “[r]equirement for transmission of reports to Congress without alteration or deletion [to be] fundamental; it provides the foundation of the Inspector . . . General’s independence.”²² Each BCA is required to issue a decision in writing on each case submitted to it.²³ These decisions are published in bound volumes (and now on BCA Web sites), where they enlighten agencies and contractors alike as to the Boards’ unvarnished views of contract law.

In the past 25 years, Inspectors General and Boards of Contract Appeals, through highly-professional work, performed structurally inside agencies but functionally independent of them, have used their investigative and analytical powers to bring greater care and fair dealing to the government’s spending habits. A quarter-century after the enactment of their charters, these anomalous institutions continue to serve important purposes for the citizens. 🏠

²² Pub. L. No. 95-452, § 5; S. Rept. 95-1071 at 9, 31.

²³ Pub. L. No. 95-563, § 8(e).

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Core Competencies

A Driving Force for Organizational Excellence

An effective organization knows its mission, has a clear and inspirational vision, and develops measurable goals and objectives, complete with a strategy for achievement. Foundational to this achievement is an acknowledgement that success depends on resources—the most important of which are an organization's people, or human resources. This is particularly true in the audit, evaluation, and investigations arena, where an organization's capacity for conducting operations depends on the knowledge, skills, commitment, and energy of its people. Recruiting and retaining good people, then, is key to an organization's success. To know whom to recruit and retain, you must first define the knowledge, skills, and abilities that your organization needs. While this is an important first step, one that most personnel departments do on a regular basis, at the highest levels of management, the leadership must identify which of these are core. In other words, which knowledge, skills, abilities, and, increasingly, behaviors are so important that failure to possess them would compromise an organization's ability to compete successfully and achieve its mission. Taken to this level, we call these qualities core competencies.

The concept of core competencies was introduced to modern organizations in a 1990 *Harvard Business Review* article¹ written by C.K. Prahalad and Gary Hamel. Concerned with private corporations, Prahalad and

¹ C.K. Prahalad and Gary Hamel, "The Core Competence of the Corporation," *Harvard Business Review* (May-June, 1990).

Hamel wrote that each company develops its own distinctive key areas of expertise that are critical to its long-term development. To successfully apply the company's unique expertise, managers must be able to "identify, cultivate, and exploit the core competencies that make growth possible." For those of us in the public sector, this translates into "value." In an era where programs are being asked to justify their existence and demonstrate competitive performance, being able to demonstrate value moves the argument away from cost alone. Long-term development requires an organization to demonstrate its value—return on investment to both its customers and investors. For those of us in the public sector, this means many times that our customers—the benefactors of our services—recognize and acknowledge that they are receiving benefits that are worthwhile and delivered in a manner that generates loyalty. In addition, our investors—the Congress, or legislative branch—need to see value in their continued funding of this particular program and that, in the long term, it is sufficiently distinctive that it stands out as a program that works and works well. Excellence in this arena, while not a guarantee, provides the greatest insurance for continued funding and long-term health.

Although the concept seems simple, Prahalad and Hamel suggested that core competencies might be difficult to identify in a given company. They advised that one way to identify a core competency is that it should contribute significantly to the customer's perceived benefits of the end product. To those of us who provide audit, evaluation, and investigation services, we need to understand how our products and services provide "value" to our direct customers and, more broadly, to our larger stakeholders. Having a good understanding of these relationships is critical to identifying an organization's core competencies.

Many types of organizations have labored over their core competencies—the Virginia Community College System, the American Association for

Paralegal Education,² public health organizations, corporations, librarians, school principals, and consultants. The process is always difficult but is made easier when an organization understands clearly the mission, its competitive niche—what gives it competitive advantage—and who its competitors are. When this is known, the identification of core competencies becomes a logical extension of the business model. The President's Council on Integrity and Efficiency (PCIE) and Executive Council on Integrity and Efficiency (ECIE) Human Resources Committee³ has been studying application of core competencies to Federal Offices of Inspector General (OIGs) for the explicit purpose of evaluating the training programs for auditors, evaluators, and investigators. Increasingly, the missions of the Inspectors General have been expanding from a traditional compliance orientation to a focus on effectiveness. The reasons for this are many. Certainly one could cite the Government Performance and Results Act as an impetus for this expanding orientation. But even without this mandate, IGs have seen their role moving from compliance to actually working with their departments and agencies to improve performance. With this expanding role, the Committee felt that we needed to take a look at the community to see how this expansion has impacted on the critical competencies in our field.

To that end, last summer, the Committee surveyed 57 Federal OIGs to determine who had developed core competencies for auditors, investigators, inspectors or evaluators, and other OIG professionals. OIGs responding to our survey

² AAFPE Core Competencies for Paralegal Professionals may be found at <http://www.aafpe.org/core.html>.

³ The PCIE is the President's Council on Integrity and Efficiency comprised of Presidentially appointed Inspectors General, and the ECIE is the Executive Council on Integrity and Efficiency comprised of designated Federal entity Inspectors General. The Human Resources Committee is chaired by Nikki Tinsley, Inspector General, U.S. Environmental Protection Agency.

indicated varying degrees of progress in developing or implementing core competencies for auditors (26 OIGs), investigators (15 OIGs), and inspectors or evaluators (5 OIGs). Survey respondents indicated the following competency development leaders:

TABLE 1.

Investigation	Audit	Inspection/ Evaluation
Environmental Protection Agency	Department of Defense	Department of Health and Human Services
Department of Labor	Department of Education	
	Department of Health and Human Services	
	Social Security Administration	

Building on the survey results, the Human Resources Committee developed an Inspector General Core Competencies Worksheet to be administered to OIG professionals, starting with the Association of Directors of Investigation (ADI) Conference, held in Knoxville, Tennessee, in mid-March 2003. Participants were instructed to select no more than 10 skills by placing a "1" to the right of a specific skill they deemed critical to their organization from three perspectives. Participants were encouraged to write in additional skills to be included in the selection. The three perspectives were: journeyman, senior management, and organizational. First, by making these three cuts, participants expressed their understanding of the degree to which employees must apply different competencies as they take on added leadership responsibility. Second, given the changing occupational diversity of OIGs, we wanted to understand better and therefore test whether there were organizational core competencies that were critical/

foundational regardless of occupation and/or level. Can we say, for example, that the functions of IGs require a set of competencies that distinguish them from other Federal activities? If so, what are they?

TABLE 2. Inspector General Core Competencies Worksheet

Instructions: Select no more than 10 skills by placing a "1" to the right of the specific skill and total and circle the number of "1s" for each skill selected.

Leadership	Management
Constitution	Stewardship
Vision	Accountability
Political Skills	Customer Service
Influencing/Negotiation with External Groups	Financial Management
Globalization & Cultural Awareness	Human Capital
Entrepreneurship/Business Practices	Technology Management
Continual Learning	Project Management
Results Orientation	Systems Thinking
Resilience	Decisiveness
Leading People	Strategic Thinking
Integrity	
Team Skills	Occupational Mastery
Creativity	Agency/Mission Knowledge
Team Problem Solving	Audit Standards and Practices

(Continued)

TABLE 2. Inspector General Core Competencies Worksheet (Continued)

Instructions: Select no more than 10 skills by placing a “1” to the right of the specific skill and total and circle the number of “1s” for each skill selected.

Team Skills	Occupational Mastery
Coaching	Criminal Laws and Procedures
Conflict Resolution	Evaluation Methods and Techniques
Integration	Oral Communication
Time Management	Written Communication
Group Facilitation	Administrative Law and Procedures
Team Development	Information Technology Tools
Additions	Additions

Directors of Investigation, who responded to the worksheet, agreed significantly about what competencies drove success in their organizations at all three levels. As would be expected at the journeyman level, the emphasis was on occupational mastery, followed by behavioral competencies in leadership. Moving into the higher levels of management for IG investigators, respondents agreed that managers needed balance between leadership and management on the one hand and communication skills and agency/mission knowledge on the other (see Table 3).

Following the ADI Conference, we administered the worksheet to attendees of the Federal Executive Audit Council Conference in Philadelphia in mid-May 2003. Again, the conferees took three cuts of the organization, starting with

TABLE 3. Criminal Investigator Core Competencies Results

Journeyman (GS 12–13)	
Leadership	Management
Results Orientation	Accountability
Integrity	
Continual Learning	
Team Skills	Occupational Mastery
Time Management	Agency/Mission Knowledge
	Criminal Laws and Procedures
	Oral Communication
	Written Communication
	Information Technology
Senior Management (GS 15–SES)	
Influencing/Negotiation with	Management
External Groups	Accountability
Integrity	Financial Management
Vision	Decisiveness
Leading People	
Team Skills	Occupational Mastery
	Agency/Mission Knowledge
	Oral Communication
	Written Communication
Organizational (All grades)	
Leadership	Management
Results Orientation	Accountability
Integrity	
Team Skills	Occupational Mastery
	Agency/Mission Knowledge
	Oral Communication
	Written Communication

journeyman, then senior management, and concluding with organizational. The results of their work can be found in Table 4, Audit Core Competencies Results. Like their associates, criminal investigators, “integrity,” “agency/mission knowledge,” and “oral and written communication”

continue to receive the highest frequency of responses. Similarly, there is, as one would expect, variation in competencies as one advances into management and leadership positions. Competencies such as “vision” and “results orientation” jump out in both occupations. Interestingly, teamwork is not viewed by criminal investigators with the same degree of importance as auditors to successful job performance. Admittedly, the authors are rather perplexed at this difference in responses for teamwork. We intend to explore this further as we see teamwork as a critical component to successful criminal investigations and prosecution. This may only be a difference of definitions, but is something on which the community needs to get a handle (see Table 4).

Given what we gathered and learned, we now need to take what we have learned to the next level. We feel fairly comfortable that our technical training is on track with an understanding that information technology and technology skills sets are becoming increasingly the norm, not the exception, and that in all fields of endeavor our IG associates will need to acquire, retain, and improve skills in technology as tools in the performance of their occupational duties. However, something else has come out of this exercise, and that is the importance placed on new behaviors and programmatic expertise. As stated earlier in this article, our community is moving towards a paradigm on effectiveness. With that, more and more of our work is done through multidisciplinary teams where personal leadership, judgment, and interdependence are required for success. These teams are not just looking at whether programs are working within established law and regulation. How effectively are they working and to what end? What is the impact these programs are having? These questions are significantly different—an order of magnitude that takes our offices into new territory. To work at this level, we need staff with increased interpersonal skills, an understanding of business principles and practices, and expertise in public policy and research

TABLE 4. Audit Core Competencies Results—May 9, 2003

Journeyman (GS 12-13)	
Leadership	Management
Results Orientation	Accountability
Integrity	
Team Skills	Occupational Mastery
Creativity	Audit Standards and Practices
Team Problem Solving	Oral Communication
Time Management	Written Communication
	Information Technology
Senior Management (GS 15-SES)	
Leadership	Management
Results Orientation	Accountability
Integrity	Strategic Thinking
Vision	
Leading People	
Team Skills	Occupational Mastery
	Agency/Mission Knowledge
	Oral Communication
	Written Communication
Organizational (All grades)	
Leadership	Management
Results Orientation	Accountability
Integrity	Customer Service
Continual Learning	
Team Skills	Occupational Mastery
Creativity	Agency/Mission Knowledge
	Oral Communication
	Written Communication

methods. Finally, our staffs must be equally proficient in the purpose, law, and administration of the programs for which we audit, investigate, and evaluate. Clearly the hurdle bar has risen.

Traditionally, our training programs have been devoted to transferring technical skill sets. Our focus was on making good auditors, evaluators,

and investigators. Teaching the techniques for each occupation and their professional standards was the primary objective. Recruiting, training, and building organizations along new competencies, such as results orientation, creativity, vision, and strategic thinking, were and continue to be far afield from what our technical schools delivered.

These new core competencies will require us to recruit differently and our training programs must address these new requirements. We will need to recruit and retain people who are self-starters, understand systems theory, think strategically, and accept risk. To achieve programmatic results we envision for our client organizations, we ourselves will have to venture out into new territory. Increasingly, we will have to exercise our independent judgment into areas for which we have had little experience in the past as we move from compliance to effectiveness. We must be able to accept this if we are to change organizational behavior and improve programmatic performance. These are not words, but a charge to change the basic fabric of what it means to be an OIG. What we are hearing is that we must move from bureaucracy to enterprise.

In the next months, we will be engaging experts in detailing what a curriculum that entails education, training, and on-the-job experience would look like to prepare our community for this emerging new role. We have already taken the first step on this path with a pilot leadership program. The leadership pilot for mid-level and executive management levels addresses creativity, systems thinking, networks, and leadership, with an orientation toward performance improvement. It will be interesting to see how this pilot does, given what we have learned from our data gathering.

What's next? Our project will continue to meet with various groups to collect and analyze the core competencies. Once the collection and analysis phase is complete, we will present the findings to the PCIE. Our purpose will be to get their buy-in and support from this governing group to support the development of a new curriculum for the IG community. Working with both Federal and

for-profit training providers, we will create a new curriculum that resonates with and supports our collective missions around these new critical core competencies. Concurrently, the PCIE Human Resources Committee is working on several other complementary projects that will build off of this effort. They include a leadership course and increasing rotations between and among IG offices. In both cases, the building of new core competencies is very much a part of these additional efforts.

In closing, our community has taken a giant step toward improved performance in the identification of IG core competencies. This effort has been supported and led by the IGs themselves and has the full support of the PCIE and ECIE. The acknowledgement that competencies are more than technical but include behavior is a significant step forward in that it recognizes that character and interpersonal skills are equally important to professional expertise in auditing, investigations, and inspections. Furthermore, this effort has highlighted and documented what we already knew but for the first time formally document: that the skills sets within the IG community are becoming increasingly diverse. Finally, while our work methods and work itself is becoming more complex and interdependent—collaborative work methods, disciplines, and styles—our data gathering efforts have documented little support for team skills. This is despite evidence in the published records. We need to do more here to understand why this is so. It may be a matter of definition. Still, teamwork must be looked at in terms of working collaboratively with others and building agreements that work.

As a final word, we want to thank the PCIE and this Journal for giving us the opportunity to share with you what we have learned, what we hope to accomplish, and to ask you the reader to participate in your own organization in the conversation over what are our core competencies. What drives our business? Those of us who accept this challenge, work the issues, and drive the change will be well positioned to meet tomorrow's opportunities. 🏠

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Washington and von Steuben

Defining the Role of the Inspector General and Celebrating 225 Years of the U.S. Army Inspector General System

Major General Friedrich Wilhelm Augustin *Freiherr* (Baron) von Steuben has always stood as the U.S. Army's defining inspiration for the role of the Inspector General (IG). As General George Washington's expert drillmaster and organizer of the Continental Army in 1778, von Steuben not only trained the bedraggled American troops at Valley Forge for immediate success on the battlefield but also defined a role for the IG that would ensure the continued growth and refinement of the Continental Army for years to come. On May 5, 2003, the U.S. Army celebrated the 225th anniversary of Major General von Steuben's appointment as the IG, a role that has remained largely unchanged. But defining that role required that the Commander in Chief, General Washington, limit the IG's authority and instead have the Inspector General serve, with great effect, as an agent of the commander and not as an independent entity. This fully defined and accepted relationship between Washington and von Steuben allowed the Prussian officer to flourish and provide his greatest service to the American cause.

Freiherr von Steuben's introduction to the position that would earn him an unquestionable place in American history began somewhat inauspiciously.¹ Born in Magdeburg, Prussia, on September 17, 1730, von

¹ The principal source for this paper is David A. Clary and Joseph W. A. Whitehorne's *The Inspectors General of the United States Army 1777-1903* (Washington, D.C.: Office of the Inspector General and Center of Military History, United States Army, 1987), Chapters 2, 3, and 4.

Steuben entered the Prussian Army at the age of 17. He served with credit in the Seven Years' War as an infantry and staff officer and, after assignment to the general staff in 1761, achieved the grade of captain, the highest rank that he would attain in the Prussian Army.

His personal skills and energy brought favorable attention upon him, but not so much attention that his military career soared to great heights. Following his discharge from the army (for reasons unknown), he served as a chamberlain at the court of Hohenzollern-Hechingen and received a knighthood and the honorific title of *Freiherr* (Baron).² Strangely enough, this modestly successful former Prussian captain fell into bankruptcy by 1775 and was out of work. He could not even secure military service with the armies of France, Austria, and the Margrave of Baden. But he soon stumbled upon an acquaintance of Benjamin Franklin, who suggested that he might find some work fighting for the American cause and therefore earn some money to pay his debts.

Benjamin Franklin had ensconced himself in Paris with the purpose of lobbying for overseas assistance to the American revolutionary cause. Franklin knew that the Continental Army needed European soldiers skilled in the martial craft, and he learned of von Steuben's reputation as a fully trained Prussian staff officer from the French minister of war, *Comte* (Count) de St. Germain. Von Steuben arrived in Paris in the summer of 1777, but his reputation as a practical expert on military training preceded him. Franklin and Silas Deane met with von Steuben and developed a very favorable opinion of the man and his abilities.

Franklin, St. Germain, Deane, and French author and merchant Caron de Beaumarchais immediately began negotiating for von Steuben's service in the Continental Army. De Beaumarchais offered to pay the cash-strapped von Steuben's travel expenses while Franklin doctored the Baron's

resume. When Franklin wrote Washington in September 1777 about this new Prussian volunteer to the American cause, he stated that von Steuben had served as a lieutenant general in the Prussian king's service. Franklin felt that the altered resume would at least get Congress to give von Steuben a chance. Von Steuben went along with the ruse.

When von Steuben arrived at Portsmouth, New Hampshire, on December 6, 1777, he immediately wrote to Congress to volunteer his services. In exchange for his skill and expertise, he requested only payment for his expenses and, if the war concluded successfully, reimbursement for the loss of income he would have earned in Europe (he failed to mention that he was unemployed at the time). He closed the message by stating that he only wanted to serve General Washington in the same way that he had served the Prussian king in seven different campaigns. He also wrote to Washington that same day and requested American citizenship as compensation for his services.

Von Steuben's letter evoked a favorable reaction from Congress. Henry Laurens, the president of the now displaced Continental Congress in York, Pennsylvania, warned von Steuben that the Continental Army at Valley Forge was suffering under the most austere of conditions and not to expect much. Von Steuben offered no reaction.

Meanwhile, General Washington was more determined than ever to institute an IG system in the Continental Army. Still smarting from the grievous failures of three previous IGs, Washington vowed to proceed cautiously before selecting his next candidate for the position.

Freiherr von Steuben arrived at Valley Forge on February 23, 1778 to a polite reception. But Washington soon warmed to the gregarious Prussian as von Steuben readily displayed a remarkable knowledge of all things military. Von Steuben was a breath of fresh air to Washington and his staff as they grappled with the problems of an army that was, for all intents and purposes, dying. The bitter winter nagged the underdressed and poorly fed troops. Meat was unavailable to the

² Historic Valley Forge Web Site <http://www.ushistory.org/valleyforge/served/steuben.html>.

men. Horses died almost hourly. Von Steuben was aghast. He inquired about the logistics system only to learn that quartermaster agents scored a commission for what they spent on supplies. Von Steuben immediately proclaimed the system to be “a mere farce,” but the neophyte’s entreaties fell upon deaf ears.³

Although not yet designated as the IG, *Freiherr* von Steuben set to work as an advisor to General Washington. Von Steuben began assessing the Army’s organization. Exasperated, the Prussian officer stated that: “I have seen a regiment consisting of thirty men, and a company of one corporal!”⁴ The most onerous task for von Steuben was obtaining an accurate roster of the companies, regiments, and corps within the Army. Many men had deserted and taken their weapons with them. Most of the remaining troops were employed on work details or serving as orderlies for officers.

From this chaos, von Steuben began to define his personal role and ultimately the role of the IG. On his own initiative, he undertook the daunting task of overhauling the Army’s discipline. He recognized fully that European methods would not work with the American troops, so he simplified the drill manuals and replaced Prussian formality and rigidity with practicality. He stated that: “In our European armies a man who has been drilled for three months is called a recruit; here, in two months, I must have a soldier.”⁵ He also realized that he must not concern himself simply with tactical matters but also with financial issues to ensure that supplies flowed steadily and in abundance.

By the middle of March, General Washington allowed von Steuben to prove himself and his theories. The Baron’s reward would be the position of IG. Von Steuben decided to begin on a small scale. He requested that Washington supply him with 100 of the Army’s best men to be attached to the Commander in Chief’s guard for training

purposes. Washington complied and on March 17, 1778 ordered only “well limbed” men of “robust constitution” to report to von Steuben for duty.⁶

Freiherr von Steuben’s training regimen began immediately. On March 19, von Steuben drilled and trained one squad while his sub-inspectors (whom Washington had recently appointed) watched and learned. The sub-inspectors then drilled and trained other squads under von Steuben’s watchful eye. When the squads were trained, he drilled them as a company. Von Steuben began each day with squad drills and ended the day with company drills. The troops quickly learned the simplified manual of arms devised by von Steuben. As the training progressed, Washington’s observant officer corps began to recognize the development of American battle tactics and techniques. The officers were impressed.

Von Steuben also instructed the officers in how to train their own troops and units. After the first company was trained and ready, von Steuben shifted his drilling system to battalions and then brigades. Within 3 weeks, he maneuvered an entire division before Washington’s delighted eyes. Washington now firmly believed that his Prussian adviser really knew his craft. On March 22, Washington ordered all other training stopped and directed that his officers adopt von Steuben’s training system immediately. On March 28, he rewarded von Steuben with the title of IG. When Washington asked Congress to approve and finance his new IG system, he suggested expanding (at von Steuben’s prodding) the role of the Inspector General from that of mere drillmaster to one that was more comprehensive in nature. Washington also considered bestowing the rank of major general upon von Steuben. Washington had to proceed carefully with this new system so that he did not alienate his officers or suggest that von Steuben held greater stature than them.

Now that the drilling and training program designed by von Steuben was at work under the

³ Clary, page 37.

⁴ Ibid.

⁵ Ibid.

⁶ Clary, page 38.

direction of the lower inspectors and troop commanders, von Steuben proceeded to set down on paper the new drill regulations. Since Valley Forge lacked printing presses, von Steuben wrote by hand each chapter of the drill manual.

With the drill regulations complete, von Steuben turned to the Army's organization. He immediately divided the brigades into provisional training battalions of 112 to 224 privates and then further divided these battalions into companies and platoons with officers and non-commissioned officers assigned throughout. Each battalion now became a known quantity of trained troops that could achieve specific results on the battlefield no matter how many losses the Army suffered in battle.

The Baron also addressed the Army's standing problem of being unable to attack from a march column effectively. By marching in columns, the Army was always strung out and could not reinforce the lead units in a timely manner. This inability to advance quickly had cost the Continental Army dearly at the battles of Brandywine and Germantown. Von Steuben also emphasized the use of the bayonet and within mere weeks turned the men into expert bayonet fighters. This skill would serve them well within a few weeks at Monmouth and the following year at Stony Point. Von Steuben also established rules for military inspections which, he proclaimed, were not simply a function of designated inspectors but were a function of command.⁷

By the end of April 1778, the Continental Army was eager to show the British what the Americans could do on the battlefield. Von Steuben had his chance to witness the fruits of his labors on May 19 when the Marquis de Lafayette, in command of 2,200 Continental troops and 800 militia men, was cut off by the British at Barren Hill across from the Schuylkill River. Only a skillful withdrawal would save the troops. As the British advanced for what they believed to be an easy kill, Lafayette barked an order, and the troops

⁷ Ibid. page 42.

von Steuben had trained withdrew quickly and in good order from the trap. The old rabble that marched in long columns could never have escaped such a trap. This success caused von Steuben's stock to increase greatly in the eyes of his Commander in Chief, General Washington.

Washington soon forwarded his plan for the IG system to Congress for final approval. In that plan, Washington stated that the IG and his inspectors would be "the instructors and censors of the Army in everything connected with its discipline and management."⁸ Washington proposed that the IG serve directly under the Commander in Chief and that the IG's deputies would inspect wings or divisions commanded by major generals while brigade inspectors would serve their brigade commanders. Washington wanted inspections to remain a command function and for inspectors to stay subordinate to the commanders. The order Washington issued on May 4, 1778 further stated that all subordinate inspectors would receive their technical direction from von Steuben to ensure standardization throughout the Army.

On May 5, 1778, Congress approved Washington's plan.⁹ The resolution also carried with it a promotion for von Steuben to the grade of major general and back payment in that grade for services rendered since February. Congress further authorized additional pay for inspectors based upon the demands that their duties would entail and authorized Washington to appoint all inspectors below the IG. The Inspector General system had now taken root in the Army, but the Inspector General's role still required some greater refinement. The IG was no longer just a drillmaster.

As many officers in the Army feared, Major General von Steuben's success in training and organizing the troops gave way to greater ambition for the Prussian officer. Many officers worried that he

⁸ Ibid. page 43.

⁹ *Handbook for Inspectors General* (Washington 25, D.C.: War Department, Office of the Inspector General, June 1947), page 1.

would seek a command position as a means to cement further his prestige and power within the Continental Army. The lack of a fully defined role created further angst among the officer ranks since they did not understand the limits placed upon von Steuben as the IG.

Major General von Steuben also began developing his own ideas for the role of IG. He opined that the IG should have legal authority and status equal to that of the Commander in Chief and answer separately to Congress. These proposals resulted in great rumblings among Washington's senior officers, who still struggled to grasp the intent and parameters of von Steuben's rather novel position.

Washington acted immediately to curb von Steuben's ambitions. He published a general order on June 15, 1778 that established an interim role and duties for the IG until Congress could define the role officially. Washington charged the Prussian officer and his subordinate inspectors with setting rules and standards for drill and maneuvers as well as policies for camp and garrison routines. But commanders at their respective levels would have to approve of these rules. In addition, all brigade and divisional inspectors worked directly for their commanders, which established for the long term the notion that inspections are a function of command and that inspectors are agents of the commander.

Freiherr von Steuben challenged Washington's attempt to curb the IG's authority. First, he sought an independent command and then attempted to release the IG from the Commander in Chief's grip. Feeling cocky over the Continental Army's recent success at Monmouth (largely due to his personal efforts), von Steuben opted to lobby Congress directly for these changes. Washington had even given von Steuben temporary command of three brigades after the battle of Monmouth to mollify the Prussian's ambitions; however, Washington removed von Steuben when the original commander returned from temporary duty. Von Steuben protested in vain.

With Washington's permission, von Steuben went to Philadelphia on personal business. Washington was unaware of the Prussian's desire to lobby Congress directly. When he arrived, several highly placed friends told the Baron that they did not support his attempt to secure a command but felt that he should become chief of all inspectors. Congress soon granted his request. Von Steuben then suggested that he report both to the Board of War and the Commander in Chief. In August, a Congressional committee outlined this proposed role for the IG and asked General Washington to comment. Washington balked. He believed that inspectors should not operate independently of commanders but should serve a valuable staff function. Congress compromised and, by the end of the summer of 1778, issued a plan acceptable to both Washington and von Steuben. Von Steuben had become the chief of all inspectors but remained subordinate to the Commander in Chief. At some point during the discussions over his future role, von Steuben recognized the merits of Washington's perspective and the fact that he did not require the powers of command to be effective.

With the issue of the IG's role resolved, the energetic Prussian resumed his invaluable service to Washington and to the Continental Army. Instead of simply serving as the drillmaster-general of the Army, he became a staff officer in the greatest sense and offered sage counsel to Washington based upon the Baron's years of service in the Prussian Army. Von Steuben realized that he could be more effective by serving within Washington's command than by serving outside of it. Likewise, Washington could not have asked for a better staff officer and advisor. At that moment in time, von Steuben had no peer within the Continental Army.

Major General von Steuben immediately immersed himself and his inspectors in the business of training and inspecting the Army. He instituted an inspection system and inspection service for the whole Army under the direction and

approval of General Washington. His inspectors inspected all organizations for discipline, logistics, equipment, and administration. He and his inspectors offered constructive criticism and, since von Steuben reported these results directly to Washington, did not need the powers of command to fulfill his charter. Fairness and thoroughness became the IG's watchwords, and setting and maintaining high standards became part of the Continental Army's culture almost overnight.

When the Army settled into winter quarters in 1778, von Steuben's inspection service was operating under its own power throughout the Army. Von Steuben then turned his attention to codifying the initial regulations that he had scratched out at Valley Forge nearly a year earlier. Von Steuben gathered a literary committee in Philadelphia in late 1778 and began work on a comprehensive set of drill regulations based upon the early Valley Forge documents.

The final product was a text entitled *Regulations for the Order and Discipline of the Troops of the United States*. Printing and binding the book became a major problem for von Steuben due to a shortage of ink, paper, and other materials. Instead of leather binding, the printer used blue paper to cover the book, which forever gave the manual the nickname of the Blue Book. Major William North, von Steuben's most trusted aide-de-camp, recalled in 1814 that: "except [for] the Bible, it [the Blue Book] was held in the highest estimation."¹⁰

The Blue Book endured 75 printings through 1809. Instead of simply outlining von Steuben's simplified manual of arms, the book taught officers to inspect their troops. Chapter XX, "Of the Inspection of the Men, their Dress, Necessaries, Arms, Accoutrements and Ammunition," set the standard and established a tradition of inspections that has endured into the 21st Century. The Blue Book directed that "Every Saturday morning the captains are to make a general inspection of their

companies," an Army tradition that lasted well into the 20th Century.¹¹ Remarkably, the Blue Book did not address the role of the IG and his inspectors or their relationship to their commanders. Perhaps von Steuben wanted to keep open the possibility that his role, and the role of his inspectors, might change again in the near future.

While von Steuben worked on his Blue Book, Congress formally issued a charter on February 18, 1779 authorizing the position of IG with the rank of major general. The charter specified that the IG's principal task was to form a system of regulations for maneuvers and discipline. The IG and all inspectors also reported directly to their commanders, thus placing commanders in complete control of all officers in their charge. Von Steuben's reports would go directly to General Washington with a copy furnished to the Board of War. The Congressional charter finally put to rest the long-standing debate and controversy over the role and authority of the IG that had surfaced the previous year.

Major General von Steuben clearly embraced his newly defined role as IG and showed Washington and Congress that he was not a man to abuse power. As a result, his invaluable counsel as a staff officer to General Washington elevated him and his office to a stature that made him a de facto Chief of Staff to the Commander in Chief. Congress even entrusted the IG office with the mustering of troops in January 1780 since so many problems had resulted in that area. Although von Steuben's influence and reputation helped to increase the stature and scope of his office, his role never changed. He worked for his Commander in Chief, and he never forgot that simple fact.¹²

Limiting the authority of the IG not only helped to define von Steuben's role within the

¹⁰ Clary, page 49.

¹¹ Frederick William Baron von Steuben. *Baron von Steuben's Revolutionary War Drill Manual: A Facsimile Reprint of the 1794 Edition* (New York: Dover Publications, Inc., 1985), page 88.

¹² Clary, pages 52-53.

Continental Army but also allowed the Prussian officer to recognize the importance and effect of his position while still serving as the Commander in Chief's subordinate. As the eyes, ears, and conscience of General Washington, Major General von Steuben did not have to serve as a sitting commander to have a positive impact on the Army. He realized that by serving as an agent of the Commander in Chief, he could have an equal effect on the training and discipline of the troops. Von Steuben's usefulness and productivity flourished in the wake of a well-defined role that limited his authority but not his influence. The American Revolution would have faltered and, dare one say it, failed if not for the ingenuity and raw talent of this great Prussian-American soldier. 🇺🇸

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Theft and Misuse of Government Information

Most people have a general understanding that improper release of certain categories of information, such as classified documents or Privacy Act¹ information, is wrong and that doing so may result in criminal charges. Notorious examples of these cases range from FBI agents who become spies and provide classified information to foreign countries to illegal interceptions of wireless telephone calls that are tape recorded and then released to the news media. More mundane examples may involve administrative penalties for the improper release of Privacy Act information. What these examples and others have in common is a statute that protects a particular category of information from improper disclosure by imposing criminal penalties.²

There is also a broad category of nonpublic government information that is not protected by a specific criminal statute, but its improper release may, nevertheless, be equally as detrimental to government as improper release of the information is specifically protected by a criminal statute. Examples of this type of information may include the amounts of sealed bids, recommendations for a policy that have not yet been adopted, draft agency decisions, drafts of proposals for rules, and opinions or recommendations of government attorneys. Although a specific statute does not

¹ 5 U.S.C. § 552a.

² *See, Id.* (Privacy Act information); 18 U.S.C. § 793 (national defense information); 18 U.S.C. § 794 (national defense information); 18 U.S.C. § 1902 (crop information); 18 U.S.C. § 1905 (trade secrets); 18 U.S.C. § 1906 (bank examination information); 18 U.S.C. § 1907 (farm credit information); 18 U.S.C. § 2511(c) (communications interceptions).

protect this information, the improper release of such information can be prosecuted as a crime under the general theft of government property statute 18 U.S.C. § 641.³

The protection provided by 18 U.S.C. § 641 is based on two distinct theories. The first is the technical larceny of property, namely the government supplies that were used in creating the document that memorializes the information.⁴ The second has its origins in the common law action of trover—conversion of property occurring when the owner's rights to that property are seriously interfered with so as to justify compensating the owner for the full value of the property.⁵

Larceny—The Theft of a Record

Larceny is generally the unlawful taking and carrying away of another person's property with the intent to permanently deprive that person of the possession of the property.⁶ Government records are government property. If a person copies a government record by using government equipment and supplies, those duplicate copies likewise belong to the government.⁷ The fact that the

person who made the copies was not authorized to do so does not alter the nature of the character of the records as government property.⁸ As a form of government property, the asportation of the originals or copies, as records, is well within the fair warning of the statute in that it “proscribes all larceny-type offenses.”⁹

Although this theory hinges on the theft of the tangible property that memorializes the information, the value of the information is not limited to the value of the paper and toner. While the statute allows for a cost valuation (i.e. the cost of the paper and toner), it also allows for the value as face, par or market. Market value is determined by what a willing buyer will pay a willing seller and, if no commercial market exists for a contraband item, the value of the record may be determined by reference to a thieves' market.¹⁰ If the government can prove the value of the information exceeds \$1,000 by reference to a thieves' market, that value would be a basis for enhancing the nature of the prosecution from a misdemeanor to a felony.¹¹

Conversion—The Misuse of a Thing of Value

It is not always necessary for a thief to take the paper that memorializes the information. Easily memorized small amounts of information may be just as valuable as volumes of printed information. Examples of this type of information include amounts of bids in a sealed bidding situation, knowing in advance an agency's regulatory decision, or even who may be the subject of an investigation. When information is improperly released without the theft of the tangible property

³ 18 U.S.C. § 641 provides: Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; . . . [s]hall be fined under this title or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

⁴ See, *United States v. DiGilio*, 538 F.2d 972 (3d Cir. 1976) (The defendants were convicted of misappropriation of government records consisting of photocopies of official files. Although the photocopies were made without authorization, the photocopies were government records because one of the defendants used government supplies and equipment to make the photocopies).

⁵ See, Restatement (Second) of Torts § 222A (1965).

⁶ See, *United States v. Coachman*, 727 F.2d 1293, 1302, 234 U.S.App.D.C. 194, 203 (1984); BLACK'S LAW DICTIONARY 885 (7th ed. 1999).

⁷ *DiGilio*, 538 F.2d at 977.

⁸ *Id.*

⁹ See, *Id.* at 978.

¹⁰ *Id.* at 979.

¹¹ *Id.* at 978-82, see, *cf.*, *United States v. Jeter*, 775 F.2d 670, 680-81 (6th Cir. 1985), *cert. denied*, 475 U.S. 1142, 106 S.Ct. 1796, 90 L.Ed.2d 341 (1986) (the court applied a conversion theory when valuing the information based on a thieves market rather value of the carbon copies).

that memorializes that information, that conduct is a misuse of the information that is akin to theft of the intangible information and it is as equally proscribed by 18 U.S.C. § 641.

At common law, conversion provided a tort remedy to the owner whose material property was taken from him.¹² That remedy made the owner whole for the loss of the use of the property. This theory works very well when dealing with tangible property and some measurable loss of use. The theory is less clearly applicable when the property is intangible nonpublic information that is improperly disclosed to a third party. This is particularly evident considering that when nonpublic information is improperly disclosed what is taken are the benefits of ownership of the information without the loss of the physical possession of the information.

What is central to the prosecution under a conversion theory is that the information itself must have some value and that the improper release of the information lessens that value. As stated earlier, the value is not limited to the expense of producing or memorializing the information itself. The true value of a document or record is the content and the paper itself generally has little value apart from its content.¹³ In fact, the primary motivation in pursuing an investigation and eventual prosecution and/or personnel action is the loss of the value of the information once the improper release occurs.

Although this reasoning has been accepted by almost every circuit that has considered this issue,¹⁴ the Ninth Circuit, in a case in 1959, held

that conversion was limited to tangible property.¹⁵ In that case, the court found that appropriating the services of another did not constitute a thing of value under 18 U.S.C. § 641. Since then, however, the Ninth Circuit seemed to embrace the notion that a “thing of value,” as the term is used in other criminal statutes, does include intangible property.¹⁶ In 1986, the court stated that the validity of the earlier holding as binding authority had been seriously undermined and appeared to have been rejected.¹⁷ Despite that statement, the court continues to find that information in an intangible form cannot be the subject of a prosecution based on conversion under 18 U.S.C. § 641.¹⁸

In enacting 18 U.S.C. § 641, Congress codified more than the common law principles of larceny.¹⁹ The section is broader and includes acts of misuse and abuse of government property.²⁰ The Supreme Court interpreted 18 U.S.C. § 641 as applying to “acts which constituted larceny or embezzlement at common law and also acts which shade into those crimes but which, most strictly considered, might not be found to fit their fixed definitions.”²¹ Between the common law offense of embezzlement and larceny lies a gap in which the

¹⁵ *Chappell v. United States*, 270 F.2d 274, 277 (9th Cir. 1959).

¹⁶ *See*, *United States v. Schwartz*, 785 F.2d 673, 680-81 (9th Cir. 1986) (holding assistance in arranging a merger between union was a thing of value under 18 U.S.C. §1954); *United States v. Sheker*, 618 F.2d 607, 609 (9th Cir. 1980) (holding information regarding the whereabouts of a witness was a thing of value under 18 U.S.C. § 912); *United States v. Friedman*, 445 F.2d 1076 (9th Cir.), *cert. denied*, 404 U.S. 958, 92 S.Ct. 326, 30 L.Ed.2d 275 (1971) (implicitly holding that government information is a thing of value under 18 U.S.C. § 641).

¹⁷ *Schwartz*, 785 F.2d at 681 n4.

¹⁸ *See*, *United States v. Tobias*, 836 F.2d 449, 451 (9th Cir. 1988); *United States v. Hulberg*, Nos. 90-50659, 91-50000, 1992 WL 16802 (9th Cir. Feb. 4, 1992).

¹⁹ *See*, *United States v. Matzkin*, 14 F.3d 1014, 1020 (4th Cir. 1994).

²⁰ *See, Id.*

²¹ *Morissette v. United States*, 342 U.S. 246, 269 n.28, 72 S.Ct. 240, 253, 96 L.Ed. 288 (1952).

¹² *See*, Restatement (Second) of Torts § 222A (1965).

¹³ *United States v. Lambert*, 446 F.Supp. 890, 894 (D. Conn. 1978), *aff'd*, 601 F.2d 69 (2d Cir 1979).

¹⁴ *See, e.g.*, *United States v. Matzkin*, 14 F.3d 1004, 1020 (4th Cir. 1994); *Jeter*, 775 F.2d at 680; *United States v. May*, 625 F.2d 186, 191-92 (8th Cir. 1980); *United States v. Croft*, 750 F.2d 1354, 1359-62 (7th Cir. 1984); *United States v. Girard*, 601 F.2d 69, 71 (2d Cir.), *cert. denied*, 444 U.S. 871, 100 S.Ct. 148, 62 L.Ed.2d 96 (1979).

intangible information fits nicely. “To fill this gap, Congress included the word ‘steal,’ a word ‘having no common law definition to restrict its meaning as an offense, and commonly used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another, and deprives the owner of the right and benefits of ownership”²² While at common law this remedy is available only for the conversion of tangible property, the inclusion of the phrase “thing of value” in 18 U.S.C. § 641 expands the statute’s protection to intangible property.²³

The Value May Determine Whether It Is Larceny or Conversion

There are instances when the intangible nature of information will prevent a true valuation. If the monetary value of the information itself cannot be proved, the government must establish that a larceny of the record occurred; and the government may not resort to theory of conversion because without proof of a monetary value, the “thing of value” element of conversion has not been proven.²⁴ This point is illustrated by comparing two cases: one involving contracting bids, the other involving information from a draft administrative law judge’s opinion.

In the contracting bid case,²⁵ the defendant paid a procurement official for information related to scheduling, quality, and bidding that was not available to the public. The payments from the defendant to the procurement official started at \$200 and eventually increased to \$1,000. Part of the information the defendant received was that his client’s bid was \$50 million less than the main competitor’s bid. The value of this information

was far greater than the amount paid for it or what it would cost to copy the bid proposal. “This information was of great value to the government because the unauthorized use of this bid amount would allow [the defendant’s] client to increase its bid by many millions and still be the low bidder on the procurement.”²⁶ In this case it was not necessary to prove that tangible property was removed from the government’s possession.

In the draft administrative law judge’s opinion case,²⁷ a clerical employee who was responsible for formatting the opinion provided a copy of the draft opinion to a party to the litigation. The party in the litigation also happened to be the clerical employee’s outside employer. The party did not request, solicit, or offer to pay for the draft opinion. In fact, when the party received the draft opinion, they provided it to their attorney who then notified the administrative law judge. Although there are circumstances where this information might have some monetary value, in this case there was no known monetary value. Rather, the value of the information was the nonmonetary loss of the integrity of the judicial process. While this particular type of loss in the value might be quite detrimental to an agency, the government was limited to valuing the information based upon the technical larceny of the supplies used to create the copies of the draft opinion.²⁸

Intent and the First Amendment

Equally as important as value is criminal intent because without criminal intent there is no crime. Although the statute imposes the requirement of the government to prove that the conversion was “knowingly” and “without authority,” these requirements do not equate with criminal intent. For that, the text of the statute is silent. Nevertheless, the

²² *United States v. Lambert*, 446 F.Supp. at 894 (quoting *Crabb v. Zerbst*, 99 F.2d 562, 565 (5th Cir. 1938)).

²³ *See, United States v. Collins*, 56 F.3d 1416, 1419, 312 U.S.App.D.C. 346, 349 (1995).

²⁴ *See, DiGilio* 538 F.2d at 978-79.

²⁵ *Matzkin*, 14 F.3d at 1014.

²⁶ *See, Id.* at 1021.

²⁷ *See, OIG, NLRB Semiannual Report Oct. 2000* at 12-13.

²⁸ *See, c.f., DiGilio*, 538 F.2d at 978-79.

statute has been interpreted to require criminal intent despite its failure to explicitly refer such a mental state—intent to commit a wrongful deed without justification, excuse, or defense.²⁹

Closely linked to the notion of criminal intent is the constitutional protection of free speech. “The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. . . . [S]ecrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors.”³⁰ The use of a criminal statute to regulate the flow of information can raise particularly sensitive constitutional issues of overbreadth and vagueness. This is especially true in light of the fact that 18 U.S.C. § 641 is a general theft statute that criminalizes many types of larceny offenses rather than a statute that specifically criminalizes the improper use of a particular type of information that has been deemed to require greater protection.

To remedy this potential conflict with the First Amendment principles of overbreadth and vagueness in this context, 18 U.S.C. § 641 has been interpreted as “neither authorizing nor prohibiting the transfer of particular types of information.”³¹

²⁹ *Morissette*, 342 U.S. at 263-74.

³⁰ *Lambert*, 446 F.Supp. at 890 (quoting *New York Times Co. v. United States*, 403 U.S. 713, 724-25, 91 S.Ct. 2140, 29 L.Ed.2d 822 (1971) (Douglas, J., concurring)).

³¹ *See*, *Lambert*, 446 F.Supp. at 899.

“The section must be read as merely establishing a penalty for the violation of other, more particular prohibitions against disclosures.”³² In addition to proving the disclosure of information, the government must also prove that the disclosure of information was affirmatively prohibited by other Federal statutes, administrative rules and regulations, or longstanding government practices.³³

Conclusion

There are countless reasons that may cause a person to disclose nonpublic government information. Without regard to whatever the particular reason may be, the loss of sensitive information can be very detrimental to a program or mission of an agency. If an agency has not already done so, the agency should enact internal rules and practices prohibiting the improper disclosure of information. Once the internal rules and practices are in place, OIG investigations should carefully consider the reason for the improper disclosure of information to determine if a crime has occurred.³⁴ 🏠

³² *Id.*

³³ *Id.*

³⁴ *United States v. Lambert*, 446 F.Supp. at 890, is a good case involving these issues that could be used as an example when presenting an investigation to a prosecutor. This case involved the sale of informant information by Drug Enforcement Administration agents.

