



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
Inspector General, U.S. Department of Justice

before the

U.S. House of Representatives
Committee on the Judiciary

concerning

"Examining Systemic Management and Fiscal Challenges within the Department of
Justice"

March 21, 2017

Mr. Chairman, Ranking Member Conyers, and Members of the Committee:

Thank you for inviting me today to discuss the Department of Justice (Department) Office of the Inspector General's (OIG) work related to the management and fiscal challenges facing the Department. I sincerely appreciate the steadfast support of this Committee for our oversight work, and for its strong bipartisan support last year of the Inspector General Empowerment Act (IG Empowerment Act).

The OIG has delivered an outstanding value to the taxpayer by identifying waste, fraud, abuse, mismanagement, and misconduct, and by making recommendations on how to reform Department programs and operations to better serve the public. For example, last year, following a whistleblower complaint, the OIG uncovered \$86 million in wasteful spending by the Drug Enforcement Administration (DEA) and the Defense Department on an aircraft that was inoperable and had never flown any of the operational missions for which it was purchased. In its most recent update, the DEA informed us that the aircraft is still not certified as airworthy, and the DEA intends to sell the airplane through a General Services Administration (GSA) auction. Similarly, an OIG review last year of the Federal Bureau of Prisons' (BOP) medical costs found that its rising costs were due, in part, to the fact that BOP often pays substantially more than the Medicare reimbursement rates for outside medical care for inmates. We estimated that the additional cost to the BOP was at least \$100 million in FY 2014. We were told this was due to the fact that BOP is the only federal agency that pays for medical care without being able to rely on a federal statute or regulation that limits reimbursement to the Medicare rates.

In FY 2016, the OIG identified nearly \$25 million in questioned costs and over \$2 million in taxpayer funds that could be put to better use by the Department. And our criminal, civil, and administrative investigations resulted in imposition or identification of approximately \$7.5 million in fines, restitution, recoveries, and other monetary results within the last fiscal year. In addition, the OIG's investigative work last fiscal year resulted in 88 convictions or agreements to plead guilty, and 263 administrative actions. For example, our Investigative Division identified over \$800,000 in wasteful payments by DEA to an Amtrak employee for information that the Amtrak employee was obligated to provide for free. We subsequently found additional wasteful spending by DEA on payments to Transportation Security Administration employees.

These monetary savings, recoveries, and investigative actions, however, do not take into account some of our most significant reviews affecting national security, law enforcement operations, civil liberties, safety and security at federal prisons, and the effectiveness of DOJ programs. Examples include our reviews of the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) use of undercover storefront operations, the handling of firearms purchase denials through the National Instant Criminal Background Check System, the DEA's use of confidential sources, the Federal Bureau of Investigation's (FBI) use of Section 215 orders for business records from 2012 through 2014, the Department's and ATF's

implementation of recommendations from our review of Operation Fast and Furious, the BOP's efforts to prevent the introduction of contraband into federal institutions, and the Department's use of pretrial diversion and diversion-based court programs. While the impact of these and our many other reviews may not necessarily be quantifiable, the corrective actions implemented as a result of our recommendations have led to significant programmatic improvements, streamlined processes, and more effective operations.

We also play a critical role in assisting whistleblowers, addressing claims of whistleblower retaliation, and educating Department employees on the invaluable service to the public that whistleblowers perform when they come forward with evidence of waste, fraud, abuse, or mismanagement. Whistleblowers are direct witnesses to potential wrongdoing, and they play a critical role in bringing forward information to the OIG or other appropriate recipients so that it can be looked into and appropriate action taken. Ensuring that whistleblowers are comfortable, informed, and protected in coming forward to provide these integral insights, and that they are never retaliated against for doing so, is critical to an OIG's core mission of detecting and deterring waste, fraud, abuse, and corruption. Over the past year, we have reported on several instances where we substantiated whistleblower retaliation claims.

We did all of this work that I describe above, and more, with a direct budget of about \$93.7 million and an FTE of about 470, while overseeing a Department with a discretionary budget of \$28.7 billion and with over 112,000 employees. The OIG's budget represents only approximately 0.33% of the Department's discretionary budget.

Top Challenges Facing the DOJ

Let me turn now to issues that we feel represent significant management and fiscal challenges facing the Department in 2017. We have identified nine major challenges for the Department: (1) safeguarding national security and ensuring privacy and civil liberties protections; (2) enhancing cybersecurity in an era of increasing threats; (3) managing an overcrowded federal prison system in an era of limited budgets and continuing security concerns; (4) strengthening the relationships between law enforcement and local communities through partnership and oversight; (5) helping to address violent crime through effective management of Department anti-violence programs; (6) ensuring effective management and oversight of law enforcement programs and promoting public trust; (7) monitoring Department contracts and grants; (8) managing human capital and promoting diversity with a workforce increasingly eligible to retire; and (9) using performance-based management to improve Department programs. A detailed discussion of our assessment of each challenge is available in the "Top Management Challenges" section of our website, www.oig.justice.gov. I would like to briefly highlight for the Committee two of these challenges.

Managing an Overcrowded Federal Prison System in an Era of Limited Budgets and Continuing Security Concerns

Confining offenders in prisons and community-based facilities that are safe and humane, while controlling costs and the size of the inmate population, is the constant challenge faced by the BOP. While the inmate population has dropped 3 years in a row, falling to 192,170 at the end of FY 2016, overcrowding remains a challenge. At the end of FY 2016, BOP's institutions remained 16 percent over rated capacity, and high security institutions were 31 percent over rated capacity. The BOP currently has the largest budget of any Department component other than the FBI, accounting for more than 25 percent of the Department's discretionary budget in FY 2016. Department spending on the federal prison system impacts its ability to fund other important Department operations, such as its critical law enforcement and national security missions. As such, it is imperative that the Department manage the prison system in the most cost-efficient manner possible.

To accomplish this, the Department must consider innovative solutions to contain costs. For example, inmate medical care continues to be a major part of BOP's overall spending, and is an area that needs to be monitored closely. From FY 2010 to FY 2014, BOP spending for outside medical services increased 24 percent, from \$263 million to \$327 million. As noted above, we found that these costs would have been reduced by at least \$100 million if BOP contracted using the applicable Medicare reimbursement rates. In our June 2016 review on this topic, we recommended that the BOP convene a working group of officials from the Department, BOP, and other federal agencies, as necessary, to consider potential legislative options to improve the BOP's ability to manage reimbursement rates for medical care, including potential amendments to the *Social Security Act*. The BOP agreed with our recommendation and has started taking steps toward implementation. We will continue to assess the BOP's efforts to address our concerns.

The Department should also continue to utilize existing programs to reduce overcrowding and drive down costs. Through our audits and reviews, we identified ways the BOP can better prepare inmates for release into the community and develop metrics for determining programs' performance; develop eligibility requirements so certain inmates can take advantage of the Department's Compassionate Release Program; and take additional steps to identify and address the reasons eligible inmates are not interested in and approved to participate in the Department's International Prisoner Transfer Program, which allows the Department to transfer foreign inmates to their home countries to serve their prison sentence. Through the effective use of these existing programs, the BOP could potentially reduce the size of its inmate population and drive down costs.

In addition to containing costs, the Department must continue its efforts to ensure the safety and security of staff, inmates, and the general public in federal prisons. In this regard, the smuggling of contraband into federal prisons, including cellphones, remains a serious and significant problem, and addressing it must remain a high priority for the BOP. The OIG continues to investigate allegations of

contraband smuggling, bribery, and physical and sexual abuse of inmates by BOP employees. In FY 2016, these types of allegations resulted in 79 BOP employees receiving administrative sanctions or resigning while under investigation, and 50 BOP employees being convicted criminally. We also conducted reviews that identified issues related to the BOP's contraband interdiction efforts and operation of its armories. These reports were issued in June and March 2016, respectively.

The operation of the federal prison system presents a host of continuing challenges for the Department. While the BOP has taken positive steps in some areas, there is still substantial progress to be made to ensure the safety and security of staff and inmates while reducing the BOP's budgetary impact on the Department.

Monitoring Department Contracts and Grants

Grant and contract funds are spent to help accomplish goals as varied as reducing crime, housing prisoners, and providing services to victims and at-risk populations. As stewards of taxpayer funds, the Department must act responsibly and wisely in managing these resources. From FY 2005 to FY 2015, Department annual spending on contracts increased from \$4.5 billion to \$7.8 billion. For much of that same period, grant spending was also on a downward trend. Recently, however, that trend has reversed and Department spending on grants has increased significantly. For example, the Department's grant awards grew from approximately \$2.3 billion in FY 2014 to around \$4.5 billion in FY 2016, due in large part to an increase in grant awards under the Crime Victims Fund (CVF), which I will discuss in more detail below. Appropriate oversight of these funds is crucial, especially since contract and grant spending represents a considerable slice of the Department's budget.

The Department awards contracts to procure a range of goods and services, from basic office supplies to aircraft operations. Given the increase in the amount of Department funds awarded to contractors over the past decade, the OIG has become increasingly involved in auditing contracts. In that role, we have observed significant challenges in both the Department's awarding and its monitoring of contract funds.

To effectively use the contracting process, the Department must comply with federal regulations by determining its needs prior to solicitation and then fully evaluating all bids prior to award. Our recent audit work has identified instances in which the Department failed to follow procedures designed to ensure fiscal responsibility and basic fairness in these processes. For example, in an audit of two FBI fuel procurement contracts, we found that the FBI did not fully comply with the Federal Acquisition Regulation (FAR) and that they failed to take basic actions like confirming the delivery of fuel before paying invoices.

The Department also faces challenges monitoring contracts after they have been awarded. Monitoring a contract post-award helps ensure the contractor abides by its terms, including those that govern the proper use of funds,

compliance with laws and regulations, and contractor performance to achieve anticipated outcomes. Again, our audit of the DEA's Aviation Operations in Afghanistan showed major deficiencies in these areas. We found that the program had missed every intended delivery date from the first delivery date in December 2012. Those missed deadlines contributed to the program cost spiraling to over \$86 million, almost four times the original anticipated amount of \$22 million, and the aircraft was still not certified to fly as of February 2017. In addition, our audits of BOP contract prisons also identified concerns related to significant staffing deficiencies, compliance with contract requirements, and BOP oversight of contractor performance.

Grant funding also presents challenges in both allocation and oversight of these expenditures. Significantly, the Department is authorized to award a substantial amount of grant funds with distributions from CVF. In FY 2015, Congress authorized the Department to distribute over \$2.3 billion from the CVF, which is approximately 3 times more than what was authorized in FY 2014. In FY 2016, Congress again expanded this amount to over \$3 billion. While this funding goes to a variety of Department programs, the majority of it is used for Office of Justice Programs (OJP) grants. This significant increase requires OJP to have sufficient controls and oversight to ensure that the funds are used appropriately. We currently are auditing the risks associated with OJP's management of the increase in the amount of funds available for distribution from the CVF. Additionally, we are auditing state agencies that administer CVF-funded formula grant programs and state-run victim compensation programs. Since January 2016, we have issued seven audit reports of state agencies, identifying improvements to the formula grant programs, including clarified guidance from OJP. We further identified corrective actions that states should implement to ensure proper and effective administration of DOJ's CVF grant-funded programs, such as improvements in properly monitoring sub-grantees.

In addition to these challenges in grant management, the Department must also ensure proper post-award oversight and do a better job assessing whether grant awards have achieved their intended results. The taxpayers have a right to know that these grant funds are not only being distributed for their intended purpose, but that they have produced measurable, positive results. OIG work has identified instances in which the Department was unable to ensure adequate performance by grantees and sub-grantees. For example, in 2015, we conducted an audit of grants awarded to the Navajo Division of Public Safety through OJP's former Correctional Systems and Correctional Alternatives on Tribal Lands Program. We found that the grantee constructed two correctional facilities with capacities that were at least 250 percent larger than the need stated in its application. Since the completion of our audit, one facility has not yet opened due to construction issues, and the other facility is partially opened. The OIG recently issued a report on the Tribal Justice Systems Infrastructure Program (TJSIP) (formerly the Correctional Systems and Correctional Alternatives on Tribal Lands Program), which found, among other things, that OJP's due diligence when evaluating grant applications and its oversight of TJSIP grantees was inadequate. This led to, among other issues, the construction of excessively large facilities that were not aligned with the

tribes' documented needs, the premature funding of construction before adequate planning was completed, and the ineffective use of some TJSIP funds.

In short, the Department must use performance measures that provide adequate information to enable it to evaluate the benefits achieved from its investment of grant funds. This will, among other things, allow the Department to better determine which grants to fund and at what levels, in order to ensure the most efficient and effective use of taxpayer funds.

Challenges Facing the OIG

Probably the biggest challenge facing my office is the absence of a budget for FY 2017, and the uncertainty of the budget for FY 2018. We are currently operating under a continuing resolution that has had the effect of causing us to slightly reduce of our staffing levels. Because over 93 percent of the OIG's budget supports salaries for personnel and office space to house them, a budget reduction would inevitably result in reducing the number of OIG staff. For example, the budget reduction for the OIG in FY 2013 due to sequestration, combined with the then-uncertain budget situation for FY 2014, caused me to lower our staffing ceilings at the time by 8 percent. Only recently did our staffing level recover to its pre-sequestration number. While we always strive to improve our productivity and efficiency, substantial reductions in personnel would likely require us to reduce the number of audits, investigations, and reviews that we conduct, and could impact how we would proceed with the audits, investigations, and reviews that we would be able to perform. Many of my colleagues in the Inspector General community share similar concerns with respect to their own offices. Given our strong track record of producing measurable and substantial results for the taxpayers, I hope that careful consideration will be given before effectively reducing our oversight budgets.

I also want to mention my particular concern about the potential impact that a sharp reduction in our budget could have on our whistleblower-related efforts. The Whistleblower Protection Enhancement Act of 2012 (WPEA) created additional whistleblower responsibilities for IGs, which we welcome, and we anticipate that last year's FBI whistleblower legislation will create substantial additional work for my office, which we also welcome. In fact, the Council of the Inspectors General on Integrity and Efficiency recently expressed its support for reauthorization of provisions of the WPEA. Accordingly, we are dedicating ever increasing resources to handle our substantially increasing docket of whistleblower retaliation cases. However, our ability to fulfill these additional responsibilities and our growing docket of cases in a timely fashion requires sufficient staffing. The OIG was already struggling, as evidenced by our FY 2017 budget request, with finding the staffing needed to handle these matters given the growth in the number of complaints we are receiving. Limitations on the OIG's ability to hire staff will make it difficult for the OIG to maintain the same level of oversight work while also carrying out the additional whistleblower responsibilities.

Another challenge for the OIG is that, unlike Inspectors General throughout the federal government, we do not have authority to investigate all allegations of misconduct within the agency we oversee. While we have jurisdiction to review alleged misconduct by Department law enforcement agents, under Section 8E of the Inspector General Act, we do not have the same jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers – namely, when they are litigating, investigating, or providing legal advice. In those instances, the Inspector General Act grants exclusive investigative authority to the Department’s Office of Professional Responsibility (OPR). As a result, these types of misconduct allegations against Department lawyers, including those that may be made against the most senior Department lawyers (including those in leadership positions) are handled differently than misconduct allegations made against law enforcement agents or other Department employees.

The OIG has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department employees, and such a system cannot help but have a detrimental effect on the public’s confidence in the Department’s ability to review misconduct by its own attorneys. Over the past 28 years, the OIG has shown itself to be capable of fair and independent oversight of the Department, including investigating misconduct allegations against its law enforcement agents. We have demonstrated through the numerous investigations and reviews involving Department law enforcement matters that the OIG has the means and expertise to handle the most sophisticated legal and factual issues thoroughly, effectively, and fairly. Seen in this context, the carve-out for OPR from the OIG’s oversight jurisdiction is best understood as an unnecessary historical artifact.

We look forward to working with this Committee to address the management and budgetary challenges faced by the Department and to provide the OIG with the necessary tools to continue its crucial oversight mission. This concludes my prepared statement, and I would be pleased to answer any questions that you may have.