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NOMINATIONS OF RICHARD L. SKINNER AND BRIAN D. MILLER

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF RICHARD L. SKINNER TO BE INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY, AND BRIAN D. MILLER TO BE THE INSPECTOR GENERAL OF THE GENERAL SERVICES ADMINISTRATION

JULY 18, 2005

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NOMINATIONS OF RICHARD L. SKINNER AND BRIAN D. MILLER

MONDAY, JULY 18, 2005

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2 p.m., in room 562, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins, Warner, and Akaka.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

Good afternoon. Today, the Committee will consider the nominations of Richard Skinner to be Inspector General of the Department of Homeland Security and Brian Miller to be Inspector General of the General Services Administration.

Congress enacted the Inspector General Act of 1978 in response to growing concerns that Federal agencies did not have sufficient internal protections against waste, fraud, and abuse. The Act has been amended several times to add new IGs and to clarify reporting requirements, but its basic tenets have remained constant: To provide independent voices in promoting the "economy, efficiency, and effectiveness" of programs and operations. Billions of dollars have been recovered or saved based upon IG recommendations, and thousands of prosecutions have resulted from those investigations.

In recent years, the responsibilities of IGs have expanded in response to new challenges. IGs today play increasingly vital role within their agencies by conducting financial audits, reporting on Results Act compliance and accountability, and assessing information security efforts.

Nowhere is the role of the Inspector General more important than at the Department of Homeland Security. This relatively new and extraordinarily large Department poses management and other challenges that demand oversight like few others. The execution of the DHS mission is crucial to our Nation, and effective, ongoing internal oversight is essential.

As the Department begins to adopt the restructuring proposed in Secretary Chertoff's just-completed Second Stage Review, this oversight will be even more important.

Our nominees' willingness to work closely with the Committee will be critical to our continued oversight of both Departments.

Richard Skinner became the first Deputy Inspector General at the Department of Homeland Security on March 1, 2003, the date that office was established. He assumed the role of Acting Inspector General on December 8, 2004.

Prior to joining DHS, Mr. Skinner was with the Federal Emergency Management Agency (FEMA), where he served as both Deputy and Acting Inspector General. And prior to that, he served in the Office of Inspector General at the Departments of State, Commerce, Justice, and Agriculture.

In all, he has dedicated more than 36 years to good government as a member of the audit and Inspector General community.

Mr. Skinner is no stranger to this Committee. He has provided valuable testimony at two hearings so far this year—in January on DHS management challenges, and in May, on FEMA's disaster relief efforts last year in Florida. So we welcome you back, Mr. Skinner.

Another Federal agency at which effective, ongoing internal oversight is paramount is the General Services Administration. As the provider of office space, equipment, supplies, telecommunications, and information technology throughout the Federal Government, GSA is the gateway for nearly $66 billion in Federal spending. The agency also has a central role in the management of some $500 billion in Federal assets, including more than 8,300 government-owned or leased buildings, a fleet of more than 170,000 vehicles, and computer systems worth hundreds of millions of dollars.

With the financial stakes so high, it is imperative that GSA provide taxpayers with the best possible return on investment in terms of value, efficiency, and integrity. As this Committee knows all too well, this has not always been the case. From our investigations of Federal real estate, purchase cards, and agency vehicle fleets, we have seen that GSA has not kept sufficient track of these valuable taxpayer-owned assets.

GSA faces significant challenges. From his responses to our prehearing questions, it appears that this Inspector General nominee, Mr. Miller, knows full well how serious these challenges are. He recognizes that much of what GSA does has a tremendous impact across every agency of government, and thus a great impact upon the American people. He has stated his commitment to strengthening GSA performance by conducting independent and objective audits and investigations, and by seeking legislative and regulatory remedies when needed.

Mr. Miller currently is Cousnel to the U.S. Attorney for the Eastern District of Virginia. Prior to that, he served as Senior Counsel to the Deputy Attorney General, an Assistant U.S. Attorney, and a Senior Attorney-Advisor at the Department of Justice. During that time, he has supervised audits and investigations of procurement, grant, and healthcare fraud. He has worked with Inspector Generals in prosecuting criminal and civil cases, and, in fact, has provided training to the Inspector General community on conducting effective investigations.

Mr. Miller has a very impressive background, he has the two distinguished Senators from the Commonwealth of Virginia here to comment on his background, I am going to allow those who know him better than I to speak to his qualifications.

I welcome Mr. Miller to the Committee. I know we will be working closely with both of our nominees today. I look forward to the testimony of both of these nominees.

I would now like to call upon Senator Akaka for his opening comments.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. Thank you, Madam Chairman. Senator Allen, good to have you with us. Mr. Skinner and Mr. Miller, I welcome you to this Committee, and I welcome your families, who are seated back of you, to this Committee. I want to congratulate each of you on your nominations.

In 2003, we celebrated the 25th anniversary of the Inspector General Act. Through amendments to the Act and the hard work and the dedication of the IG community, IGs have established themselves as independent voices for economy, efficiency, and effectiveness within the Federal Government. IGs are also responsible for protecting employees from retaliation for blowing the whistle on waste, fraud, and abuse. We all agree that Federal employees should be at liberty to report such matters without fear of losing their jobs.

As you know, this Committee and the Congress depend on the integrity and frequency of your reports for assisting in our oversight role of the Executive Branch.

Mr. Skinner, under your predecessor, the DHS IG office established a reputation for thorough and insightful analysis. If confirmed, I hope you will continue that practice.

You both face significant challenges. DHS and GSA have programs on the Government Accountability Office high-risk list, which are identified as having the greatest risk of waste, fraud, abuse, and mismanagement. Solutions to these problems have the potential to save billions of dollars. Mr. Miller, you will have your work cut out for you, particularly in the areas of interagency contracting, technology procurement, and Federal real property management. And, Mr. Skinner, as you know from your present position, there are many challenges at DHS, including management transformation, human capital management, procurement, and information security, to name a few.

And with that, I welcome you to this Committee. Thank you.

Chairman COLLINS. Thank you, Senator.

I would now like to recognize the distinguished Chairman of the Armed Services Committee and a very valuable Member of this Committee, Senator Warner.

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. Thank you very much, Madam Chairman, and I join with you in welcoming these distinguished individuals. As I look back over my experience here in the Senate of quite a few years, this is a very important hearing because each of you have been carefully selected by the President, and I commend you for that first step. And I am confident of confirmation.

But you will undertake a challenge unlike others in public service in that you want to express a loyalty to the Cabinet Officer, under whom you serve, and/or the head of the agency. And at the

same time, you must, in order to fulfill your statutory mandate, find within yourself the courage to speak absolutely to the accuracy of the facts and your own opinion.

It is not easy. The system has worked, I think, reasonably effectively in the years I have been here, and I was here when this statute was first passed, so I can speak from some modest observation. But it is going to be a challenge, and the distinguished Chairman has completely outlined the essential facts that are necessary for this hearing. I would ask to put mine into the record.

But I would ask each of you now, particularly, Mr. Skinner, you are almost, I think you would say, a professional Inspector General. Would you kindly introduce the family that has accompanied you today because this is a very important hearing for them, too.

Mr. SKINNER. Well, thank you, Senator. I would be glad to. Seated right behind me is my wife, Barbara, and my youngest daughter, Heidi, right here.

Senator WARNER. We welcome you.

Mr. SKINNER. My oldest daughter, Tasha, lives and works in San Francisco, and was unable to make the trip today to be here. But I would like to say, if I may, they have been and are my bedrock, and just for the record I would like to express my sincere thanks to them for their sustained support of me over the years as I pursued my Federal career.

Senator WARNER. Well, this Committee welcomes that representation, and we thank you very much.

Now, Mr. Miller, your family?

Mr. MILLER. Thank you, Senator. Behind me is my daughter, Rosemary.

Senator WARNER. Rosemary, we welcome you.

Mr. MILLER. My wife, Mary Frances, and my son, Andrew.

Senator WARNER. Andrew, nice to see you.

Mr. MILLER. And, I, too, thank my family for their sacrifice. Often public service can be hard on a family, and I would like to thank them for their sacrifice and their support.

Senator WARNER. Well, each of you is going to be entrusted with one of the more complicated portfolios of decisions because homeland security is rapidly expanding, if I may say under the distinguished oversight of this distinguished Chairman and Ranking Member of this Committee, and others on the Committee. And your agency has been around a long time. I see that from the perspective of this Committee on which I serve and also the Environment and Public Works Committee. And I have had a long affiliation with your agency, and I wish you well because it, too, has had a record of some problems in the past and my very best good luck to you as you address the complicated matrix of decisions that will come before you.

With that, Madam Chairman, I yield the floor to my distinguished colleague, if I may.

[The prepared statement of Senator Warner follows:]

PREPARED STATEMENT OF SENATOR WARNER

Chairman Collins, Senator Lieberman, and my other distinguished colleagues on the Senate's Homeland Security and Governmental Affairs Committee, I thank you for holding this confirmation hearing.

Today, I am pleased to introduce to you, Mr. Skinner, who has been nominated to serve as the Inspector General of the Department of Homeland Security. Mr. Skinner is supported here today by his wife Barbara and his youngest daughter Heidi.

Subsequent to earning his B.S. degree in business administration from Fairmont State College in 1968, Mr. Skinner has served as a dedicated public servant for over 35 years. Mr. Skinner began his Federal career in the Office of Inspector General at the U.S. Department of Agriculture (USDA) as an auditor.

Since working at USDA, Mr. Skinner has worked in five other Federal agencies' Offices of Inspector General. Most recently, he has served as the Acting Inspector General of Homeland Security.

Having worked exclusively within the Inspector General community, Mr. Skinner has had the opportunity to rise through the ranks in a variety of management and executive positions. Consequently, he has participated in and directed all operational functions associated with an Office of Inspector General.

Madam Chairwoman, obviously, Mr. Skinner is highly qualified to serve as Inspector General of the Department of Homeland Security. I urge my colleagues to support his nomination, and I look forward to the Committee reporting out his nomination favorably.

Also, today, I am pleased to introduce to you, Mr. Miller, who has been nominated to serve as the Inspector General of the General Services Administration. Mr. Miller is supported here today by his wife Mary Frances, his son Andrew, and his daughter Rosemary.

The job of Inspector General is a critical one, tasked with the responsibility of detecting and deterring waste, fraud, and abuse within the agency. Mr. Miller has a strong legal background and extensive work experience in the Federal Government, which makes him highly qualified to serve in this position.

Subsequent to earning his B.A. at Temple University and J.D. at the University of Texas, Mr. Miller has served as a public servant for nearly two decades. For over a decade now, Mr. Miller has served as an Assistant U.S. Attorney in a diverse number of roles and has handled many cases. In one such role, he assisted in some of the most important terrorism cases the Federal Government has pursued since the September 11 attacks, including *United States v. Moussaoui.*

In addition, Mr. Miller served as the Special Counsel on Health Care Fraud. In that position, Mr. Miller was charged with overseeing the U.S. Department of Justice's health care fraud litigation, prosecution, and policy development within the Department.

Madam Chairman, obviously, Mr. Miller is highly qualified to serve as Inspector General of the General Services Administration. I urge my colleagues to support his nomination, and I look forward to the Committee reporting out his nomination favorably.

Chairman COLLINS. Thank you. Senator Allen, we are delighted to have you with us today to introduce the nominee.

STATEMENT OF HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Madam Chairman, Senator Akaka, and my good colleague, Senator Warner. Thank you all for allowing me to have this opportunity to present to you Mr. Miller, who the President has nominated to be Inspector General of the General Services Administration.

I consider Mr. Miller to be a trusted friend. His family has been introduced here, they are proud residents of Fredericksburg, Virginia. I heard you all talking about economy, value, and efficiency. I asked his son, Andrew, what were the gas prices at the Wawa Station in Fredericksburg; he knew it was $2.19. As my colleague Senator Warner knows, I look for efficiency, value, and economy in fuel prices, and so that is a good sign that young Andrew here doesn't want to squander money on paying unnecessarily high prices for gasoline.

At any rate, I, Madam Chairman and Members of the Committee, highly recommend Mr. Miller for confirmation as an Inspec-

tor General for the General Services Administration. For nearly 20 years, Mr. Miller has dedicated his professional life to public service. Whether as a leader in the community in Fredericksburg, Alexandria, or in Washington, DC, he has worked closely with some of the most effective leaders of our time. Mr. Miller has provided wise counsel to FBI Director, Robert Mueller, when he was Acting Deputy Attorney General. He also gave counsel to Deputy Attorney General Larry Thompson and our outstanding U.S. Attorney for the Eastern District of Virginia presently, Paul McNulty.

Mr. Miller's skills are well respected and have been utilized in a variety of different ways by different agencies and prosecutions. In fact, even when there was a prosecution in the Southern District of West Virginia that was in jeopardy because of misconduct by the lead investigator, the Department of Justice asked Mr. Miller to go down there to investigate the investigation, to make sure that moved forward.

Now, as Inspector General, Mr. Miller is going to be charged with the very important responsibility of preventing waste, fraud, and abuse in an agency that, as you stated, has one of the largest, if not the largest procurement budgets in our whole government. It is a task that Mr. Miller is well suited for. He has been a principal architect for U.S. Attorney Paul McNulty's Federal Procurement Fraud Initiative. Mr. Miller, therefore, is no stranger to this sort of prevention and prosecution of procurement fraud. He has over 12 years of experience as an assistant U.S. Attorney, and has handled numerous procurement, health care, and grant fraud cases. He has the legal courtroom experience to not just investigate, but also prosecute, which I think will give his scrutiny and eyeballing of what is going on added credibility, and hopefully giving those who would be making these decisions the understanding that there is someone watching who understands what is going on.

And so, I believe for us in Congress, Mr. Miller is the type of person we would want as we all care so much, regardless of party, we don't want our taxpayers' dollars being wasted or squandered or being misused, and Mr. Miller will be our eyes and ears, not just ours, but also the taxpayers.

So I thank you Madam Chairman and Members of the Committee for the courtesy provided to me here. I hope you will move swiftly on Mr. Miller's nomination. I strongly endorse his nomination and look forward to working for his confirmation on the Senate floor. I thank you, all.

Chairman COLLINS. Thank you very much, Senator.

Your strong endorsement carries great weight with this Committee, and we look forward to working with you.

I am aware that you have other scheduled appointments this afternoon, and so we are pleased to excuse you at this time.

Senator WARNER. Madam Chairman, he made reference to the young Mr. Miller about the price of gas. [Laughter.]

I remember the night very well. The two of us had been on a long trip, as most Senators, traveling in a small plane, bouncing through the skies, finally arriving back at around 11 o'clock, having called our respective wives to join each other and have a drink who had been waiting 2 hours late for us.

We then get into his beat up old SUV, and he finds it has no gas in it. So now the problem is at this hour of the night trying to find a gas station. And the first one was closed. The second—when we started pumping, he would only have 90-cent regular. That was all he was going to pay.

So they had five gallons. So we pumped that. We went to the next gas station, and the fellow was all out of regular, but he had some high test. And George said no, I am moving on. I said, George, I am buying all the high test this guy has or I will buy the gas station and give it to you. [Laughter.]

We finally got home. [Laughter.]

Chairman COLLINS. Well, I would have you know, Mr. Chairman, that when I heard the price of gas in Virginia, I was envious, since it was 15 cents lower than that in the State of Maine this past weekend.

Senator WARNER. I am out of here.

Chairman COLLINS. So thank you, Senator.

Senator ALLEN. Bring Senator Warner with you. He will pay for that high test.

Chairman COLLINS. Yes. [Laughter.]

And that was just regular.

Senator ALLEN. Thank you.

Chairman COLLINS. I want to thank both of the Senators from Virginia for being here in support of the nominees. Both nominees have filed responses to biographical and financial questionnaires, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record, with the exception of the financial data, which are on file and available for public inspection in the Committee offices.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath. So I would ask that you both stand at this time and raise your right hand.

[Witnesses sworn.]

Chairman COLLINS. You may be seated.

Mr. Skinner, I would ask that you proceed first with your statement.

TESTIMONY OF RICHARD L. SKINNER,[1] TO BE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. SKINNER. Thank you, Chairman Collins.

Senator Akaka, I would like to thank you for having this hearing today on my nomination, and I'd also like to thank Senator Warner for taking time out of his busy schedule to be here today as well.

Again, I express my sincere thanks to President Bush for the confidence that he has shown by nominating me for such a high Federal position.

The importance of the Department's mission cannot be overstated. And by conducting independent and objective audits, inves-

[1] The prepared statement of Mr. Skinner appears in the Appendix on page 17.
The biographical information and questionnaire appears in the Appendix on page 21.
The pre-hearing questionnaire appears in the Appendix on page 25.
The post-hearing questions appears in the Appendix on page 63.

tigations, and inspections, the Inspector General can play a very critical or very important role in aiding the Department to accomplish its mission.

Since their arrival in the Department several months ago, I've had the opportunity to meet with Secretary Chertoff and Deputy Secretary Jackson on several occasions. They both underscored their appreciation of the Inspector General's oversight role and dual reporting responsibilities. I thank them for their support.

Based upon my experience today, I am confident that, if confirmed, I will have a very close working relationship with them both.

Furthermore, since March 2003, I've had the privilege to serve with some of the most dedicated employees in the Federal Government. I cannot begin to tell you how rewarding it has been over the past 28 plus months to work side by side with the men and women employed within both the Department and the OIG.

I would like to take a moment now to provide you a brief summary of my work experience and what I would bring to the Inspector General job, if confirmed.

I feel as though I've been training for this job for the past 36 plus years. I spent my entire Federal career in Inspector General organizations dedicated solely to the implementation of the principles specified in the Inspector General Act. My background has afforded me the opportunity to be involved in all operational functions associated with an Office of Inspector General. I believe this experience has prepared me to perform the duties of an Inspector General with confidence and integrity.

If confirmed, I would bring that experience, knowledge, dedication, and independence to the job as the Inspector General of the Department of Homeland Security.

There are several lessons I've learned over the years. One is the importance of teamwork. Notwithstanding the independent role of the OIG, the Inspector General must work to build relationships within the Department and the Congress, relationships that are based on trust and mutual respect, and a shared commitment to improving the Department's operations and programs.

If confirmed, I pledge to keep both the Secretary and the Congress currently informed and to promote the open exchange of information and ideas.

Second, it is imperative that the Inspector General has the flexibility to respond to unanticipated requirements or conditions and to do so in a timely manner.

If confirmed, I would stand ready to initiate special reviews responsive to the needs of the Secretary and the Congress on short notice.

The third and possibly most important lesson is never to rest on your laurels. The Inspector General must continually strive to do better, to anticipate ways in which operations can be improved, both within the Department and within the OIG itself.

If confirmed, I would very much look forward to working closely and routinely with this Committee, as well as the many other congressional committees with homeland security oversight responsibilities, and I pledge to carry out my responsibilities as Inspector

General to the very best of my ability, with enthusiasm and dedication, and in an objective, independent, and apolitical manner.

Madam Chairman, that concludes my statement. I'd be pleased to answer any questions.

Chairman COLLINS. Thank you. Mr. Miller.

TESTIMONY OF BRIAN D. MILLER[1], TO BE INSPECTOR GENERAL, SERVICES ADMINISTRATION

Mr. MILLER. Chairman Collins, Senator Akaka, and Members of the Committee, thank you for the opportunity to appear before you today.

I've also submitted a written statement that I would ask be included in the record.

Chairman COLLINS. Without objection.

Mr. MILLER. Thank you. It is an extraordinary honor and privilege to be the President's nominee to serve as the Inspector General of the General Services Administration.

I'd also like to thank Senators Warner and Allen from my home state of Virginia for their kind introduction. I really appreciate their support throughout this nomination process.

I'd also like to thank the members of my family, again, and I'm also encouraged by so many of my friends and colleagues who have come here to this hearing.

If confirmed, I welcome the challenges of this position at this historic time, and I will work hard every day to carry out my responsibilities. I also look forward to working with you and the other Senators and Members of Congress to achieve our mutual goals for the operations of the General Services Administration.

Chairman Collins, thank you for allowing me to testify here this afternoon. I would be happy to answer any questions that you or other Members of the Committee may have. Thank you.

Chairman COLLINS. Thank you very much. I will start my questioning with standard questions that we ask of all nominees who come before this Committee.

First, is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Skinner.

Mr. SKINNER. No, Madam Chairman.

Chairman COLLINS. Mr. Miller.

Mr. MILLER. No, Madam Chairman.

Chairman COLLINS. Two, do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Skinner.

Mr. SKINNER. No.

Chairman COLLINS. Mr. Miller.

Mr. MILLER. No.

Chairman COLLINS. And finally, on this segment, do you agree without reservation to respond to any reasonable summons to ap-

[1] The prepared statement of Mr. Miller appears in the Appendix on page 71.
The biographical information and questionnaire appears in the Appendix on page 73.
The pre-hearing questionnaire of appears in the Appendix on page 78.
The post-hearing questions appears in the Appendix on page 97.

pear and testify before any duly constituted Committee of Congress if you are confirmed? Mr. Skinner.

Mr. SKINNER. Absolutely.

Chairman COLLINS. Mr. Miller.

Mr. MILLER. I will.

Chairman COLLINS. Well, you both passed that section very well.

I will now do a round of questions limited to 8 minutes each.

Mr. Miller, I have long been concerned about whether the Federal Government is doing enough to protect the integrity of the procurement process. One essential area is determining whether or not government contractors are responsible under the law as the Federal Acquisition Regulations require.

For some time, I have questioned whether GSA has done everything that it could in the area of debarring or suspending contractors who fail to meet ethical standards or in some cases may have been convicted of a crime. This Committee pursued at great length the WorldCom situation, where GSA was very slow to make a responsibility determination to determine whether this major telecommunications contractor should continue to do business with the Federal Government. I wasn't prejudging the outcome of that process, but I was concerned that but for this Committee's prompting GSA to begin its analysis and review it might never have reached a determination.

Similarly, this Committee's Permanent Subcommittee on Investigations has held hearings over the past 2 years that have revealed that numerous Federal contractors have deliberately failed to pay taxes that they owe, payroll taxes, for example. One problem is that the Federal contracting officials often delay in taking action against the contractor until an investigative agency brings charges against them or even in some cases until a conviction is secured.

Do you see any opportunity for the GSA IG to take a more active role in probing Federal contractors, since GSA is the largest procurement agency and maintains the debarment and suspension list upon which other agencies rely?

Mr. MILLER. Thank you for the question, Chairman Collins. I share your concern regarding contractors who have defrauded the Federal Government or have not paid taxes, and I, too, would like to see them debarred. And that is an issue that when I did meet with the former Inspector General, Dan Levinson, I brought that up with him, and we had a discussion about debarment practices and bringing action against those individuals.

In fact, we talked about WorldCom. So I share your concern. If confirmed, I would do everything in my power to pursue debarment and administrative remedies against contractors who are engaged in defrauding the government or misusing government funds, and I would like to see our office move in a direction where it is much easier for contracting officers to recognize the potential for debarment proceedings earlier on in the investigation or if they see an irregularity. I would strive to work closer with contracting officers so that we can move more quickly against Federal contractors who are engaged in fraud or abuse of the contract.

So I would do all in my power, if confirmed.

Chairman COLLINS. Thank you. Mr. Skinner, you made a very important point in your opening statement when you talked about

the necessity for the IG not only to be the independent watchdog, but to build relationships with managers in the Department so that you can help them avoid problems that improve the effectiveness and efficiency of the delivery of Federal programs.

In that regard, could you tell us whether you had any role in the second stage review recently undertaken by the Secretary of Homeland Security, which has led to significant reorganization proposals for the Department?

Mr. SKINNER. Madam Chairman, we were involved in this since March 2003. We've had the opportunity to issue several reports in which we questioned organizational structure and as well as delivery of different services within the Department. What we did, working with the Deputy Secretary, is to analyze all of our recommendations and all of our outstanding recommendations and to overlay those with the recommendations that were coming in from the other 17 working groups—I believe there were 18 working groups under the 2SR—to see if there were any contradictions or if there was anything that the Secretary could use from an Inspector General report to support any recommendations he may have. If there were differences, then the Secretary was at least made aware of what those differences are. That way, he can make an informed decision on which way he would choose to go.

So in that sense, we were.

Also, we participated in the law enforcement working group. That was one of the 18 working groups. We provided input to that group relative to the internal affairs operations that are scattered throughout the Department and the different bureaus and directorates and how those interact with the OIG.

Chairman COLLINS. I am glad to hear that, and the Secretary also told me that he had sought you out for your advice, which I think is so important. The Secretary ought to view the Inspector General as an ally, not an adversary, but that is not always the case.

At a January hearing before this Committee, Mr. Skinner, you kindly agreed to my request to conduct a review of whether it made sense to merge two agencies in the Department, the CBP and ICE.

As part of his second stage review, Secretary Chertoff proposes to actually move the two agencies out from under the control of a common directorate. I have told the Secretary that this concerns me because it further separates them potentially. He also told me, however, that he has not ruled out if some management reforms he puts into place are not effective eventually taking another look at combining the two agencies. We have had experts recommend the merger of CBP and ICE to us. It is not something that I have reached a decision on, but it is something I am interested in hearing views on.

Could you tell us where you are in the review process and whether you have reached any preliminary conclusions?

Mr. SKINNER. Chairman Collins, I'm pleased to report that if not today, tomorrow morning I will be signing a draft report.

It's been an arduous journey in doing a task like this. We have interviewed somewhere between 400 to 500 individuals across the country, in all parts of the BTS, Bureau of Transportation and Security, as well as those that the Department services, interacts

with, and that would be U.S. Attorneys Offices, State, and local governments.

We have just over the weekend started pulling together all of our conclusions. I have not seen the final draft. We keep making adjustments to it. But I hope to have that signed tomorrow, obtain comments from the Secretary himself, and have a report up to you very shortly, hopefully within the next 30 days.

Chairman COLLINS. Excellent. Thank you. Senator Akaka.

Senator AKAKA. Thank you, Madam Chairman.

Mr. Skinner, as I noted in my opening statement, I take the issue of whistleblower protection very seriously. Good government demands protection of employees who report waste, fraud, and abuse.

Federal Inspectors General are key partners in investigating whistleblower reprisal allegations. The number of referrals of reprisal allegations from the Office of Special Counsel to IGs is increasing.

Some OIGs have dedicated training units to handle such cases, such as the Defense Department OIG, which has two separate directorates for reprisal investigations, one for military and one for civilian employees.

My questions are how does DHS OIG currently handle reprisal investigations? And, in light of increases in referrals, how will your office act to ensure that whistleblower reprisal investigations are investigated properly?

Mr. SKINNER. Senator Akaka, I share your concerns with regard to the protections offered under the Whistleblower Protection Act.

In order to be successful, the Whistleblower Protection Act is something that we rely on very heavily. People have to be secure in the knowledge that they can come to the OIG without fear of reprisal. We work very closely with the Office of Special Counsel when we receive allegations under the Whistleblower Protection Act.

First of all, anytime we do get such an allegation, we counsel those individuals on how far we can go with those investigations. We contact the Office of Special Counsel to seek their advice, their input as to how we should proceed with these issues. If it's something that we can't handle or an investigation that we can't pursue; that is, we would have to share the identity of the allegator, then we would refer that individual to Office of Special Counsel for further investigation.

More often than not, those cases are referred back to us. We have, in the past 2 years or in 2004, set up an Office of Special Investigations within headquarters here in Washington that handles all allegations that involve whistleblower allegations. They pursue any of these special type cases where people feel like they have been reprised against as a result of coming to the OIG, or for that matter to OSC or to management itself.

It is something we do take very seriously. Our success depends on the ability of these people to come forward and be truthful and forthright.

Senator AKAKA. Thank you for your response. Mr. Miller, would you care to comment on the role of the GSA Inspector General in protecting whistleblowers and explain your view of the responsibil-

ities of the OIG and the Office of Special Counsel in handling whistleblower retaliation cases?

Mr. MILLER. OK. Thank you, Senator. I, too, share your concern about whistleblowers. Whistleblowers are a very important part of oversight of government operations. When I was Special Counsel on Health Care Fraud for the Department of Justice, I learned that it was very important to get—obtain information from all sources, including whistleblowers. In fact, some of our most significant cases started with whistleblowers. We settled a case with TAP Pharmaceutical Company. It ended up paying $875 million in criminal fines and civil penalties and that began with a whistleblower.

So I do recognize the importance of whistleblowers, and I believe they should be protected to the fullest extent possible, and I see the role of the OIG as very important in protecting them from retaliation.

Senator AKAKA. Thank you. Mr. Skinner, TSA is the only entity within DHS that is not required to follow the Federal Acquisition Regulation. As you know, the DHS OIG and the Government Accountability Office have audited TSA procurement practices, and have questioned the cost and effectiveness of many TSA contracts.

Your office attributed these problems to a lack of contract oversight personnel, poor management by the contractors, and weak financial controls at the agency.

Based on your investigations, do you believe TSA should still be exempt from the FAR?

Mr. SKINNER. That's an excellent question. The reports that we issued with regard to TSA and the problems that they're having with their procurement operations are somewhat dated. Those procurements occurred generally in 2002 and in early 2003, keeping in mind in 2002 and early 2003, TSA only had 12 employees and only one contracting officer. Things have changed considerably since then.

Today, they have over 70, close to 80, people dedicated to a procurement. They have established an entire division for procurement operations. They have an investment review board now for anything that's procured over $50 million. They have a review process for anything over $5 million. So things have improved considerably since the early days of TSA in 2002 and 2003.

With regard to using the FAR versus the other acquisition mechanisms, I think it's going to require a little closer study on our behalf before we can offer an opinion on that. I have been working with our Chief Procurement Executive within the Department of Homeland Security to make a determination whether it is still needed. At the time that they were stood up in 2002, the acquisition regulations under which they were operating may have been necessary because of the imminent requirement or the requirement to stand up so quickly, and they required exemptions to enable them to do that.

Today, the dust has settled, and now we're moving at a more steady pace. The question is could they operate under the FAR? My initial reaction to that is yes, they could. But before we draw that conclusion categorically, we have to study to see what impact that

would have on some of the procurements that are currently underway and what their future plans are.

Senator AKAKA. Chairman, I will wait for a second round.

Chairman COLLINS. Thank you.

Senator AKAKA. Thank you.

Chairman COLLINS. Mr. Skinner, in response to the Committee's written questions, you stated that at times the IG office has had difficulty in obtaining information from within the Department that it needed to conduct its investigations. You specifically cited significant problems involving a case of your review of a rendition of an individual to Syria. Are you satisfied that you will have the cooperation of high-ranking officials and the Secretary as far as getting timely access to all the information you need to conduct your duties?

Mr. SKINNER. Today, I'm very satisfied, Chairman Collins. That particular case you're referring to is a very frustrating process. It wasn't a matter of denial of access to records or individuals. There were extenuating circumstances. There was an outstanding civil suit. There was the question of whether the Department was going to waive certain privileges through the court proceedings.

That had to be resolved. There was also the issue of classified material that was under what they call an organizational control classification; that is, it was classified by other departments, and to have access, approval was required.

We had to work through that. It was the first time for them. It was the first time for us. We have worked through that. That particular case now is—we're moved very rapidly on that now. We have resolved all those issues. And it was a good lesson for us all because it taught us, a lot of people within the Department, what our authority really is; that is, we have unfettered access to individuals and records, and they understand that now.

I've talked and met with Secretary Chertoff, Deputy Secretary Jackson, General Counsel Phil Perry, and they've all assured me that if we do not receive the information that we're asking for, to report it to them immediately, and they will see to it that we get it.

Chairman COLLINS. I am glad to hear that. I would also encourage you to contact this Committee if ever you do run into those difficulties and let us know.

Mr. SKINNER. Rest assured, I will.

Chairman COLLINS. And, Mr. Miller, I would ask the same commitment from you. If you run into difficulties in securing documents or access to individuals within GSA that you believe are necessary to carry out your responsibilities, I would ask that you notify this Committee.

Mr. MILLER. I certainly will.

Chairman COLLINS. Mr. Miller, I have one final question for you. In January, the Government Accountability Office, GAO, once again placed Federal real property management on its high-risk list. This is at least the second time that the management of real property has been on GAO's high-risk list. In doing so, GAO noted that the area was designated as high-risk due to "longstanding problems with excess and underutilized property, deteriorating facilities, unreliable real property data, and costly space challenges."

GAO further stated, and this is even more troubling, that the underlying conditions that led to the high-risk designation continue, and more remains to be done to address these problems and the obstacles that prevent agencies from solving them.

This Committee did an in-depth investigation of this very issue. We found countless cases of valuable Federal property left to deteriorate. It is a real problem, and, as the landlord for the Federal Government, this should be a matter of great concern for the General Services Administration. What role do you think that the IG could play in assisting GSA in getting a handle on its real property and ensuring that the taxpayers' investment is protected?

Mr. MILLER. Thank you, Chairman Collins. I, too, share your concern. It is imperative that GSA maintains proper management of Federal real property and gets the best deal for the taxpayers. All improper management should be remedied and improvements made. Our Nation's building resources should not remain unproductive.

If confirmed as Inspector General, I will attempt to ensure that GSA makes better use of Federal property through audits, through investigations, and through any other means. I consider this a very important issue and will give it my full attention if confirmed as Inspector General.

Chairman COLLINS. I hope that you will make this as a personal priority a goal of getting the Federal property management off the high-risk list so that we don't have exactly this same conversation in 2007, when the GAO's list will come out again.

Mr. MILLER. Yes, Senator, I'll do my best.

Chairman COLLINS. Thank you. Senator Akaka.

Senator AKAKA. Thank you very much, Madam Chairman. I have further questions I would like to submit because I was just informed that I have to leave to attend another meeting. So I thank you very much, and I thank our witnesses very much for their responses.

Chairman COLLINS. Thank you, Senator. I am very sympathetic because I, too, have a BRAC meeting that is scheduled for this afternoon. Mine is about a half hour from now. That is probably good news for our next panel. But I do thank you for being here today.

I want to thank both of our nominees for appearing before the Committee. Without objection, the record will be kept open until 10 a.m. tomorrow for the submission of any written questions, statements, or other materials for the record.

In closing, let me just say that I feel we are very fortunate that both of you have been tapped for your respective posts. We need people like you who are willing to serve in such an important position, and I thank you and your families for your dedication to public service.

Mr. MILLER. Thank you, Senator.

Mr. SKINNER. Thank you.

Mr. MILLER. Thank you, Madam Chairman.

Chairman COLLINS. We look forward to working very closely with you. This hearing is now adjourned.

[Whereupon, at 2:49 p.m., the Committee was adjourned.]

APPENDIX

NOMINATION STATEMENT BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE FOR RICHARD LOUIS SKINNER AS INSPECTOR GENERAL

JULY 18, 2005

Chairman Collins, Senator Akaka, and members of the committee, thank you for having this hearing today on my nomination to serve as the Inspector General of the Department of Homeland Security.

Before I proceed with a brief opening statement, I would like to introduce my wife, Barbara, and my youngest daughter, Heidi, who are seated behind me in the first row. My oldest daughter, Tasha, who resides in San Francisco, was unable to be here today. I wish to thank them for their support, encouragement, and many sacrifices over the years.

I also wish to thank Senator Warner for taking time out of his busy schedule to be here today on my behalf and for his extraordinary kind words of support. He is a public servant of the highest order whom I have come to admire and respect throughout my federal career.

I express my sincere thanks and appreciation to President Bush for the confidence and support that he has shown by nominating me for such a high federal position. I am truly honored. The importance of the department's mission cannot be overstated. I cannot think of anything more important than protecting our homeland against another terrorist attack. And, by conducting independent and objective audits, inspections, and investigations, and keeping the Secretary and the Congress fully and currently informed of problems, the Inspector General can play a very important role in aiding the department accomplish its critical mission.

Since their arrival at the department several months ago, I have had the opportunity to meet with Secretary Chertoff and Deputy Secretary Michael Jackson on several occasions. They both underscored their support for me and their appreciation and understanding of the Inspector General's oversight role and dual reporting responsibilities. I thank them both for their support. Based upon my experiences to date, I am very confident that, if confirmed, I will have a close and collaborative working relationship with the Secretary and Deputy Secretary, as well as their management team.

In my capacity as Acting Inspector General and deputy inspector general, I have had the privilege to serve with some of the most knowledgeable, hard working, and dedicated employees in the federal government. I cannot begin to tell you how rewarding it has been over the past 28 or so months to work side by side with the men and women currently employed with the department and its OIG. It is truly an honor to be associated with such a cadre of conscientious public servants. If this committee and the Senate see fit, I would relish the opportunity to serve as the Inspector General.

I would like to take a moment to provide you with a very brief summary of my work experiences and what I would bring to the Inspector General job, if confirmed. I feel as though I have been training for this opportunity for the past 36 plus years. I have spent my entire federal career in Inspector General organizations dedicated solely to the implementation of the principles specified in the Inspector General Act. I am deeply committed to the mission of Inspectors General. If confirmed, I would bring that experience, knowledge, dedication, and independence to my job as the Inspector General of the Department of Homeland Security.

Before joining DHS as its deputy inspector general in March 2003, I was acting IG at the Federal Emergency Management Agency, now also known as DHS' Emergency Preparedness and Response Directorate, between October 2002 and February 2003. I was FEMA's deputy inspector general from April 1996 to September 2002. Between June 1991 and March 1996, I worked as the assistant inspector general for audits at FEMA. Before that, I worked in IG offices at the State, Commerce, Justice, and Agriculture departments, rising through the ranks in a wide variety of management and executive positions. My background and experience have afforded me the opportunity to participate in and direct all operational functions associated with an Office of Inspector General. I believe this experience has prepared me to perform the duties of the Inspector General of the Department of Homeland Security with confidence and integrity.

There are several lessons I learned over the years. One is the importance of teamwork. Recognizing the unique and independent nature of the OIG function, the Inspector General must, at the same time, work to build relationships with department managers, the Secretary, and Congress, based on trust and mutual respect, and a shared commitment to improving operations and effectiveness. If confirmed, I pledge to maintain continuous open dialogue with both the Secretary and the Congress, to keep both the Secretary and the Congress currently informed, and to promote the open exchange of information and ideas. Second, it is imperative that the Inspector General is flexible and innovative. The world we live in is constantly changing, and the challenges we face are formidable. It is important that the Inspector General has the flexibility to respond to unanticipated requests for an objective review, customized to fit the assignment, and in time to meet the need for a quick response. If confirmed, I would stand ready to initiate special reviews responsive to requests from the Secretary or Congress on short notice. The third, and possible most important lesson is to never "rest on your laurels." As an agent of positive change, to borrow a term coined by the President's Council on Integrity and Efficiency, the Inspector General must continually strive to do better, to anticipate ways in which operations can be improved, both within the department and within the OIG itself.

If confirmed, I would very much look forward to working closely and routinely with this committee, as well as the many other congressional committees with homeland security oversight responsibilities, and I pledge to carry out my responsibilities as Inspector General to the very best of my ability, with enthusiasm and dedication, and in an objective, independent, and apolitical manner.

I would be pleased to answer any questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.) **Richard L. Skinner**

2. **Position to which nominated: Inspector General, Department of Homeland Security**

3. **Date of nomination: April 28, 2005**

4. **Address:** (List current place of residence and office addresses.)

   Office: 1120 Vermont Avenue, Washington DC 20528

5. **Date and place of birth: July 12, 1947; Nashville, TN**

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married
   Wife's maiden name: Asterino

7. **Names and ages of children:**

   Tasha Age 30
   Heidi Age 29

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

Notre Dame High School	**1961-1965**	**H.S. Diploma**	**May 1965**
Fairmont State College	**1965-1968**	**B.S. in Business**	**December 1968**
George Washington Univ.	**1973-1977**	**MPA**	**May 1977**

9. **Employment record**: List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

   Auditor
   U.S. Dept. of Agriculture
   Office of Inspector General
   Hyattsville, MD
   February 1969 – February 1971

   Audit Manager
   U.S. Department of Justice
   Law Enforcement Assistance Administration
   Office of Inspector General
   Washington, DC
   February 1971 – June 1981

   Audit Manager
   U.S. Department of Commerce
   Office of Inspector General
   Washington, DC
   June 1981 – September 1988

Supervisory Inspector
U.S. Department of State
Office of Inspector General
Washington DC

Deputy Inspector General
Federal Emergency Management Agency
Office of Inspector General
Washington, DC
May 1991 – March 2003

Deputy Inspector General
Department of Homeland Security
Office of Inspector General
Washington, DC
March 2003 - Present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, other than those listed above. **None**

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution. **None**

12. **Membership:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organization.

-Association of Government Accountants – Past Board Member
-Institute of Internal Auditors
-Parklawn Recreation Association – Past President
- Theta Xi College Fraternity – Past Officer

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate. **None**

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years. **None**

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years. **None**

14. **Honors and awards:** List all scholarships, fellowships, honor degrees, honorary society memberships, military medals and any other special recognition for outstanding service or achievements. **President's Meritorious Executive Award - 1998**

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written. **"Single Audit Act" Association of Government Accountant's Newsletter - 1987**

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated. **None**

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?
Experience and background in the Inspector General Community and Department of Homeland Security

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment? **I have 36+ years experience in the Inspector General community. Also, I worked at the Department of Homeland Security as its Deputy Inspector General since its inception.**

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you server all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate? **N/A**

2. Do you have any plans, commitment or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain. **No**

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? **No**

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? **No**

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? **Yes**

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. **None**

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity. **None**

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? **Yes**

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details. **No**

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details. **No**

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details. **No**

4. Please advise the Committee of any additional information, favorable or unfavorable, which you will feel should be considered in connection with your nomination. **I have spent my entire Federal career in the Inspector General community in various staff, manager, and executive positions. I have an in-depth working knowledge of and appreciation for the Inspector General concept, its responsibilities, and its authorities. Throughout my federal career, I have worked successfully with Agency leadership and the Congress. Because of my background, I am passionate about the "independent" role that the Inspector General must play in the fulfillment of his/her mission, and the dual reporting responsibility—to the Agency head and the Congress—associated with that mission.**

AFFIDAVIT

Richard L. Skinner being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Richard L. Skinner

Subscribed and sworn before me this 9th day of May, 20 05

Notary Public

U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the
Nomination of Richard L. Skinner to be
Inspector General, Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Inspector General of the Department of Homeland Security?

   I believe the President nominated me to be Inspector General of the Department of Homeland Security for two reasons: my extensive background in federal government within the Inspector General community and my experience as the deputy inspector general of DHS since its inception in March 2003. I have spent my entire 36+ years in the federal government within the Inspector General community. Before joining DHS, I was acting IG at the Federal Emergency Management Agency, now also known as DHS' Emergency Preparedness and Response Directorate, between October 2002 and February 2003. I was FEMA's deputy inspector general from April 1996 to September 2002. Between June 1991 and March 1996, I worked as the assistant inspector general for audits at FEMA. Before that, I worked in the IG offices of the State, Commerce, Justice, and Agriculture departments.

2. Were any conditions, expressed or implied, attached to your nomination? **No**

3. What specific background and experience affirmatively qualifies you to be Inspector General of the Department of Homeland Security?

   As noted above, I have spent my entire federal career within the Inspector General community, rising through the ranks in a wide variety of management and executive positions. My background and experience have afforded me the opportunity to participate in and direct all operational functions associated with an Office of Inspector General (OIG): audits, investigations, inspections, administrative services, and legal. Additionally, as the DHS deputy inspector general, I provided leadership and executive direction to all elements of the OIG with regards to administration, audits, investigations, and inspections. This included, but was not limited to, developing the OIG's annual performance plans, monitoring the implementation of those plans, and ensuring the delivery of quality products and services to the Secretary and Congress.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Inspector General? **No**
   If so, what are they and to whom have the commitments been made? **N/A**

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest?
No
If so, please explain what procedures you will use to carry out such a recusal or disqualification. **N/A**

II. Role of the Inspector General

6. Please discuss the role of the Inspector General at the Department of Homeland Security and your qualifications to meet the requirements of this role.

The role of the DHS Inspector General is spelled out in the Homeland Security Act of 2002, which established the Office of Inspector General in the DHS, by amendment to the Inspector General Act of 1978. By this action, Congress ensured independent and objective audits, inspections, and investigations of the programs and operations of the department.

The Inspector General Act established Inspector General offices in federal departments and agencies to create independent and objective units to: (1) conduct and supervise audits, inspections, and investigations relating to the programs and operations of the department; (2) provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and, (3) provide a means for keeping the head of the department and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action. In addition to those statutory prerequisites, the Inspector General must be a firm believer in the IG concept and its mission and passionate about its independence.

I have spent my entire federal career in organizations dedicated solely to the implementation of the principles specified in the Inspector General Act, i.e., pursuing fraud, waste, and abuse aggressively and promoting the economy, efficiency, and effectiveness of government programs and operations. If confirmed, I would bring that experience, knowledge, dedication, and independence to my job as the DHS Inspector General.

7. How will you, as Inspector General, keep the Congress and the Secretary of the Department of Homeland Security concurrently informed about issues surfaced by your office? How do you foresee your working relationship with both the Congress and the Secretary?

To be truly effective, it is essential that the OIG build formal and informal working relationships with not only the Secretary and his management team, but with Congress as well. If confirmed, I intend to maintain continuous open

dialogue with both the Secretary and the Congress and promote the open exchange of information and ideas. I am able to keep the Secretary currently informed through his weekly "Under Secretary's'" meetings and periodic "Component Head" meetings, and through my bi-weekly meetings with the Deputy Secretary. I plan to continue to share all OIG reports with Congress at the earliest possible stage, before they are made public, and, as needed, provide member and staff briefings on those reports. Also, I intend to strive to keep the appropriate congressional committees advised of the OIG's work by sharing our annual performance plans, as well as our mid-year updates, on a timely basis. Furthermore, as I already do with the department, I plan to solicit input from the appropriate committees of Congress during the development of the OIG's annual performance plan to ensure that congressional concerns, ideas, and suggestions are duly considered.

8. What specifically will you do to keep the Congress, in general, and DHS's oversight committees, in particular, informed of your office's activities and concerns? **Please refer to my response to question 7.**

   Will you commit to providing your oversight committees, at the request of either the Chair or Ranking Member, briefings on pending audits and investigations and copies of completed reports as soon as they are final?

   Yes, we will continue to provide oversight committee status briefings on pending audits and investigations and copies of final reports.

   Please describe the process by which you would decide how to respond to requests by this Committee to undertake audits, inspections or investigations of particular aspects of the Department.

   In addition to planned work that reflects our priorities, as described in the OIG's annual performance plan, the OIG stands ready to initiate special reviews responsive to requests from the Secretary or from congressional committees on short notice. Within this OIG, the Office of Inspections and Special Reviews is specifically structured and staffed to meet exigent deadlines for the conduct of nontraditional examinations into DHS operations. We relish the opportunity to respond to requests for special, urgent, and controversial inquiries. We have aggressively recruited a multi-disciplined and agile workforce to meet such circumstances. The focus of this mission is readiness – to respond to unanticipated requests for an objective review, customized to fit the assignment, and in time to meet the need for a quick response.

9. It is our understanding that upon becoming Acting Inspector General you suspended the Office of Inspector General's (OIG) past practice of notifying the news media of the release of OIG reports. It is further our understanding that with the exception of classified reports, for which special arrangements are needed to transmit them to Congress, OIG does not routinely notify Congress of the release of OIG reports,

although audit and inspection reports are distributed to relevant committees. All 2005 OIG press releases issued during your tenure as Acting Inspector General relate to the status of investigations, and none to audit or inspection activities.

a. Please explain what changes you made in OIG notification policies when you became Acting Inspector General and why you made these changes.

When I became Acting Inspector General, I discontinued my predecessor's practice of notifying the media through e-mails and phone calls of upcoming report postings on the OIG web. I did this for three reasons: (1) many of the media contacts preferred that we contact them directly by telephone because they did not always have access to e-mails. This created a tremendous administrative burden, sometimes requiring our media liaison officer to remain in the office late into the night making phone calls to media contacts; 2) oftentimes, due to technical glitches or for other unforeseen reasons, we were unable to post our reports on the OIG web, as originally planned. Consequently, not only was the OIG inundated with telephone calls and e-mails from complaining reporters, we had to repeat the entire process, again creating added administrative burdens; and (3) the policy not to notify the media when reports are posted on the website is generally consistent with the policy of most OIGs. Instead, it is left to the media to check the OIG websites each day to determine whether any new reports have been posted. While there was some grousing among some of the news media contacts when our policy was first implemented, it appears, based on the coverage our reports are receiving in the media, that the media have now become accustomed to checking the DHS OIG website each day for newly issued reports. Furthermore, I have directed our administrative shop to explore the feasibility of creating a free "subscription" service on our website, similar to the service provided by GAO. This service would automatically notify the subscriber's e-mail account that a new report has been posted on the web. I expect to have the results of that study completed later this summer.

b. Does OIG currently have a formal policy with regard to notification of the news media and Congress regarding the release of OIG reports? If so, please describe that policy. If not, please explain why such a policy does not exist.

It is the OIG policy to post all reports on the DHS-OIG website five work days after the report has been delivered to the appropriate DHS congressional oversight committees. We rely on the news media to check the OIG website each day to determine whether any new reports have been posted.

c. Does OIG currently have a formal policy with regard to notification of the news media and Congress regarding the status of investigative activities? If so, please describe that policy. If not, please explain why such a policy does not exist.

The OIG notifies Congress regarding investigative activities on at least a semi-annual basis via the *Semi-Annual Report to Congress.* Briefings are also provided upon request and written synopses are provided in response to letters of request from members of Congress. No notification is made to the news media on investigative matters, nor have I issued press releases on investigative matters. Whenever the Department of Justice issues a public notice of an indictment or an arrest, I post a copy on the OIG website and provide a copy to the Secretary. Due process for and Privacy Act rights of the individual(s) named in such releases precludes me from making any notifications not authorized by DOJ.

10. How will you impress upon the Secretary of the Department of Homeland Security and other officials the unique role that you have as the Inspector General, and how will you maintain the support of the Secretary? What discussion have you had with the Secretary about this? Will you be included in senior staff meetings of the Department?

In this regard, I am fortunate insofar as both the Secretary and Deputy Secretary have had prior federal government experience, which included working with Inspectors General. In their initial meetings with me, they both stressed that they understood the unique, "independent" role of the Inspector General and the value that the Inspector General could bring to the efficacy of the department's programs and operations. Without doubt, both the Secretary and Deputy Secretary understand that the Inspector General has the independence to determine what reviews to perform; is entitled to all information necessary for the reviews; and has the authority to publish findings and recommendations based on those reviews. Both the Secretary and Deputy Secretary advised me that I, as Acting Inspector General, had their full support and confidence.

Regarding senior staff meetings, yes, as Acting IG, I attend the Secretary's weekly "Under Secretary's Meetings." In addition, I meet privately with the Secretary in his periodic "Component Head Meetings" to exchange information and discuss issues of mutual concern. Furthermore, the Deputy Secretary and I have agreed to meet privately on a bi-weekly basis to exchange information and discuss issues of mutual interest. I plan to continue these meetings if confirmed.

11. What specific goals and objectives do you hope to accomplish as Inspector General?

Essentially, if I am confirmed, I would pursue three strategic goals for the Office of Inspector General:

- **Add value to DHS programs and operations**
- **Ensure the integrity of DHS programs and operations**
- **Deliver quality products and services**

In order to add value to DHS programs and operations, if confirmed, I intend to: (1) build relationships with DHS management, Congress, and other interested parties based on a shared commitment to improving the efficacy of DHS' programs and operations; (2) identify and address the needs and priorities of DHS management, Congress, and other interested parties; and (3) present OIG reports to DHS management, Congress, and other interested parties in a timely manner to satisfy their needs and achieve maximum impact on DHS programs and operations.

In order to ensure the integrity of DHS programs and operations, if confirmed, I intend to: (1) concentrate resources on critical management control systems, financial systems, and information management systems, which have the greatest impact on the integrity of DHS' programs and operations; and (2) focus the OIG's audits and investigations on high risk, vulnerable programs and activities.

Finally, in order to continually deliver quality products and services that are credible, accurate, and complete, if confirmed, I intend to: (1) conduct quality control reviews for all significant projects to ensure that the audit, inspection, or investigation was conducted according to appropriate laws, regulations, and accepted professional standards as appropriate to achieve the assignment objectives; and (2) maintain a skilled, diverse, and motivated staff in a positive work environment that fosters professionalism, creativity, accountability, teamwork, and professional development.

12. If confirmed, do you anticipate making any changes to the current organizational structure within the Office of Inspector General at the Department of Homeland Security? **Not at this time.**

13. In addition to uncovering waste, fraud, and abuse within the executive branch, the Inspectors General have played an important role in helping agencies avoid problems rather than just auditing for mistakes after the fact. Do you believe Inspectors General should take this more pro-active role, which necessarily requires a more collaborative relationship with agency managers, while also serving as the independent watchdogs that expose agency mismanagement?

    There is no question in my mind that the OIG has a very important role to play in helping agencies avoid problems rather than just auditing for mistakes after the fact. To be truly effective and serve as an agent of positive change and continuous improvement, the IG must build and nurture relationships with agency management based on a shared commitment to improving the efficacy and impact of the agency's programs and operations. This cannot be accomplished in a vacuum. The IG must work in a collaborative manner with agency leadership to identify the most important areas for OIG work, and identify the best means of addressing the results of that work, with consideration

of the agency's point of view while maintaining the OIG's statutory independence.

What has been your practice and experience at the Department of Homeland Security and at the other offices of Inspector General where you have served in this regard? How do you believe the nature of your working relationships with agency managers at the Department of Homeland Security affected your ability to help them anticipate and avoid problems, and your ability to serve as an independent watchdog of agency management?

Throughout my career as a manager or executive within the Inspector General community, I have been involved in successful projects of a proactive nature with agency management. For example, at the Department of Commerce, I collaborated with department officials to screen all grants and contracts before their award, to ensure only eligible and deserving projects were funded with federal dollars. While at the Department of State, I collaborated with department officials as they built their internal control systems. At FEMA, I directed staff participation in a wide-range of projects that required the IG to work closely with agency staff as they developed IT systems, disaster relief policies and procedures, and new accounting systems. In each and every case, the OIG's participation on these projects was successful and, more importantly, helped the agencies avoid future problems.

Since arriving at DHS, I have encouraged OIG participation, in an advisory capacity, on DHS oversight boards, action committees, and working groups responsible for the design, development, and implementation of DHS programs, systems, and processes. For example, our Office of Information Technology has adopted a pro-active approach in assisting the department in a number of key areas. For the past two years, IT audit staff have attended the CIO's Information Systems Security Board meetings which are held on a bi-weekly basis. At these meetings, IT auditors have provided their insight on what the department needs to do to improve information security management. Also, we have attended CIO council meetings on a regular basis to keep the CIO informed of our ongoing IT work in support of the annual financial statement audit.

Our Office of Audits has worked collaboratively with the Chief Financial Officer in developing plans for the annual financial statement audit, and in developing remediation plans to address the weaknesses identified in those audits. Similarly, we have collaborated with the Chief Procurement Officer in identifying weaknesses in DHS' procurement functions. Soon, we will be assigning auditors to major DHS acquisition projects, such as the Coast Guard's Deepwater project, both to improve our independent oversight and our ability to help them anticipate and avoid problems.

As part of our outreach efforts in the area of procurement fraud, representatives from our Office of Investigations attend the Chief Acquisition Officer's Council Meetings to promote fraud awareness and prevention. They also plan to: begin meeting with the procurement heads in the various DHS components to solicit their input regarding areas where they feel their programs are most vulnerable to fraud; provide fraud awareness presentations to DHS employees attending Contracting Officer's Technical Representative (COTR) training classes at the Treasury Acquisition Institute; and work with DHS acquisition officers to expand fraud awareness presentations department-wide.

If confirmed, I will continue to look for opportunities to work collaboratively with department officials in a proactive role.

14. Inspectors General are required by law to report their findings to Congress, as well as to executive branch officials. Inspectors General also routinely provide testimony at hearings on key issues of concern. If confirmed, what additional methods, if any, would you take to ensure timely and effective communications with Congress?

    Please refer to my response to question # 7. The opportunity for the OIG to facilitate positive change within the DHS is enhanced when members of the Congress take an interest in the results of our work. For this reason, it is imperative that we seek to understand the expectations of Congress as it develops new programs or designs changes to those that already exist. Accordingly, I plan to reach out to congressional committees with DHS oversight responsibilities, on a continuing and routine basis, to garner an understanding of their concerns, needs, and priorities. By maintaining a continuing dialogue, we will be better positioned to identify substantive issues and participate in candid discussions to identify projects where strong positive change could result from an OIG review.

15. The Homeland Security Act (HSA) and the Inspector General Act (IG Act) provide the DHS IG with significant autonomy to perform his or her duties. Only in very narrow circumstances, specifically enumerated in Section 811 of HSA, is the Secretary granted authority to restrict investigations by the Inspector General. Have you had any discussions with the Secretary regarding the degree of autonomy you will have or regarding any restrictions on the types of investigations or audits you will be expected or allowed to pursue? If so, please describe in detail.

    I do not recall having a conversation with the Secretary with regard to Section 811 of HSA. Nevertheless, as I pointed out in my response to question #10, both the Secretary and Deputy Secretary stressed that they understood and respected the independent role of the Inspector General. Neither has said anything that would remotely suggest that they intended to put any restrictions on the types of investigations or audits that I will be expected or allowed to pursue if confirmed. In contrast, they both said they understood that, as Acting IG, I had the authority to determine independently what audits and investigations to perform.

16. As Inspector General, you would be charged with achieving a balance among conflicting demands on your resources, including fulfilling statutory and other obligations, responding to direct requests from Congress, and furthering your own priorities. How would you strive to achieve the appropriate balance among these competing demands?

Undoubtedly, this is one of the more daunting tasks that our office faces each year. We recognize that we have finite resources, and we will not be able to do all that needs to be done. Accordingly, we try to apply the following criteria to determine where to invest our limited resources and to achieve an appropriate balance among the many competing demands on our time:

- **Statutory and regulatory requirements**
- **Newness, changed conditions, or sensitivity of the organization, program, activity, or function**
- **Current and potential dollar magnitude**
- **Management and congressional needs to be met, including key management decision dates, as developed in consultation with the responsible program officials, senior management, or congressional staff**
- **Prior audit/inspection/investigation experience**
- **Timeliness, reliability, results, and scope of reviews performed by others, such as GAO**
- **Availability of audit resources.**

If confirmed, I plan to continue using these same criteria.

17. Recently, the Committee worked closely with the Office of Inspector General (OIG) on an investigation of FEMA's response to the hurricanes that hit parts of Florida in 2004. The OIG and the Committee shared information and, to some extent, coordinated their respective efforts during the course of the investigation. To heighten public awareness of its findings, the OIG released its report in connection with a hearing of this Committee, at which you testified. Do you view this investigation of FEMA, culminating in the Committee hearing, as a model for how you would plan to work with this Committee?

Yes, I found the Miami-Dade model to be a useful and effective way of dealing with an important issue with wide-ranging implications. This collaborative effort proved to be very successful and can serve as a benchmark for future such initiatives. Most importantly, by working closely with the Committee, we were able to maximize the positive impact that our findings and recommendations had on the improvements needed in FEMA's disaster relief programs, systems, and processes. I look forward to further coordinated efforts with your staff culminating in a Committee hearing.

18. Former Inspector General Ervin has indicated that he had limited access to former Secretary Ridge. IGs are supposed to be independent, but must also be able to communicate concerns and investigative findings to the heads of their agencies and other senior managers. For example, subsection 4(a) of the Inspector General Act requires IGs "to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise . . . . "What level of access have you had thus far, as Acting IG, to Secretary Chertoff? If you are confirmed, what actions will you take to ensure that you have access to the Secretary and other senior managers when necessary? If it develops that such access is not available to you, will you inform this Committee of this situation in a timely manner?

Please refer to my response to question # 7. To date, I have had unfettered access to the Secretary, the Deputy Secretary, and other senior managers. I already have met with the Secretary and Deputy Secretary on multiple occasions and I plan to continue to meet with them on a periodic or as needed basis in the future. Should circumstances change, that is, if such access is not available to me, I would most certainly inform the Committee.

III. Duties and Responsibilities as Deputy Inspector General

19. You became the Deputy Inspector General of the Department of Homeland Security on March 1, 2003, when the Department's Office of Inspector General (OIG) was created. You held this position until December 8, 2004, when you became Acting Inspector General. Please describe in detail your duties and responsibilities as Deputy Inspector General from March 1, 2003 until December 8, 2004 and note whether and when those duties changed over time.

Essentially, I had day-to-day management oversight responsibilities for the entire OIG, except for our Office of General Counsel. I assisted and represented the Inspector General on all aspects of his job, including providing testimony at congressional hearings, and meeting regularly with departmental and congressional staff on a wide range of subjects. During the early months, i.e., between March 1, 2003, and September 30, 2003, I focused most of my efforts on standing–up the OIG. This entailed organizing about 400 employees from four legacy offices (FEMA, Treasury, Justice, and Transportation), and 22 field installations, specializing in various disciplines, into a single coherent organization. This involved the allocation of resources among the OIG's five functional components. It also involved integrating four payroll systems, travel management systems, accounting systems, budget processes, and procurement processes. I also was responsible for co-locating four headquarters offices into a single building, as well as collocating several field installations that had multiple offices in a single city.

After the OIG was successfully stood-up, I became more actively involved in the formulation of the OIG's long term strategic and annual performance plans, as

well as the formulation and execution of the OIG's annual budget and operating plan. I personally directed the development and implementation of the OIG's 2004 and 2005 annual performance plans according to the Government Performance Results Act. The plans not only lay out the OIG's audit and inspection work plans, they define the evaluation methods that are used to measure OIG performance. I worked very closely with each of the OIG's operating divisions (audits, investigations, inspections, IT, and administrative services) to ensure that vacancies were being filled on schedule, funds were allocated on an equitable basis, and expenditures were justifiable. I met regularly on behalf of the IG with the OIG management team and their staffs to discuss problems, explore new ways of doing business, and ensure that all elements of the OIG were compliant with current DHS and OIG policies and procedures. Finally, I performed a quality performance function for the IG by reviewing all published products. This included annual performance plans, audit, inspection, and investigative reports, semi-annual reports to Congress, memoranda, etc. to ensure that they were of the highest quality and complete in substance.

IV. DHS OIG Functions and Operations

Internal Affairs Functions

20. Section 811 of the Homeland Security Act gave the DHS OIG specific responsibility to oversee the internal affairs functions of the Customs Service (now part of Customs and Border Patrol - CBP) and the Secret Service. In addition the OIG has asserted oversight responsibility of this function within the Department.

    a. Describe OIG's responsibilities for internal affairs functions within DHS.

    Several of the organizational elements of DHS, such as Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), Transportation Security Administration (TSA), U.S. Secret Service (USSS), U.S. Coast Guard (USCG), and the Federal Law Enforcement Training Center (FLETC) have internal affairs, inspection or program review components within their respective bureaus. Pursuant to DHS Management Directive (MD 0810.1) and the Memoranda of Understanding (MOU) executed between DHS, OIG, and the various organizational elements with internal affairs functions, the OIG receives all investigative complaints or information involving criminal or serious administrative misconduct on the part of DHS employees and allegations of fraud or corruption committed by contractors, grantees, or other individuals or entities receiving department funds or otherwise engaged in the operation of department programs. Based upon the severity of the offense or allegation, the OIG will determine whether to investigate the matter or refer the allegation to the affected DHS organizational element where the matter may be more appropriately addressed.

When allegations or complaints are referred to an organizational element, the OIG reserves the right to review the results of their investigation or action taken. The above listed organizational elements' internal affairs components provide monthly status reports to the OIG relating to their internal investigations. In addition, the OIG conducts periodic oversight reviews of these internal affairs offices to assess the quality, completeness, and timeliness of their investigations and programs.

b. Several of the legacy agencies that have been merged under the Department of Homeland Security umbrella have Offices of Internal Affairs and/or Offices of Professional Responsibility. Do you believe these offices should be maintained? What kind of relationships and expectations for communication would you establish with these offices? Have you dealt with these offices in your present capacity?

Yes, I believe the various Offices of Internal Affairs should be maintained. Each has an important role to play within the bureaus that they serve and all work well with the OIG. The OIG has Memoranda of Understanding with the following components: the Border and Transportation Security Directorate, which includes TSA's Office of Internal Affairs and Program Review (OIAPR) and ICE's Office of Professional Responsibility; the US Secret Service; the US Coast Guard Investigative Service; the Office of Civil Rights and Civil Liberties; and US Citizenship and Immigration Services. Additionally, all within DHS are bound by the DHS Management Directive signed last year by the Deputy Secretary which gives the OIG "right of first refusal" on allegations of criminal activity or egregious administrative misconduct by DHS employees. We have good relationships with each component and my Office of Investigations conducts liaison on a daily basis through email, faxes, telephone contact, and face-to-face meetings.

21. What do you believe is the appropriate role of the TSA Office of the Ombudsman in addressing workplace complaints and issues involving TSA screeners and other employees? What type of relationship would you establish with the TSA Ombudsman?

To date, our office has had minimal contact with the TSA Ombudsman. As Acting IG, I plan to schedule a meeting with her in the near future to discuss areas of mutual interest or concern. The TSA Ombudsman acts as an impartial mediator or arbiter between TSA management and employees in an attempt to resolve conflicts. The Ombudsman plays a very important role insofar as she can provide a layer of mediation before an employee issue escalates to a formal complaint. The ombudsman has the authority to assign fact finders to look into complaints and recommend solutions to management. The TSA Ombudsman receives complaints from screeners such as alleged discriminatory work assignments, management harassment, hostile work environment, and

management favoritism in employee promotions or transfers. If the Ombudsman could not resolve the issue, she could refer the matter to TSA's Office of Internal Affairs and Program Review, who, in turn, would review the allegation or refer it to TSA's Aviation Operations for appropriate management action. The Ombudsman does not handle allegations of stolen property or misconduct complaints against screeners made by airline passengers. Such allegations generally are handled by the OIG or TSA's OIAPR.

22. As noted above, in addition to the specific statutory responsibilities given OIG to oversee internal affairs activities, the OIG, at least since April 2003, has asserted its responsibilities for internal affairs within DHS. On May 27, 2005, the Office of Special Counsel (OSC) wrote to the President and to this and other Committees of the Congress, that in the Special Counsel's opinion the Department had repeatedly failed to thoroughly investigate specific allegations of fraudulent activity by Border Patrol personnel. In the DHS IG's first Semiannual Report, transmitted on April 30, 2003, OIG recognized a series of legacy reports prepared by IG's from predecessor agencies that were relevant to DHS and, more specifically to the DHS OIG's oversight responsibilities. The transmittal letter stated that "...to the extent there are recommendations from legacy OIGs relating to such challenges, we will undertake to track compliance with them." The DOJ IG's report on Border Patrol fraud is itself specifically identified in the body of the report as just such a legacy report.

    a. What actions has OIG taken during the past two years with respect to the allegations and recommendations contained in the legacy DOJ OIG report - "An Investigation of Travel Reimbursements in Connection with the INS's Operation Safeguard" (December, 2002)?

    The DOJ OIG report was issued in Dec. 2002, prior to the creation of DHS OIG. We did not receive a copy of this report, however, until June 2005. Consequently, we have not yet ascertained what actions resulted from the DOJ recommendations. We began our review of the two investigations last week and upon completion of that review we will be better able to address the appropriateness of the recommendations and whether they were acted upon.

    b. What is your reaction to the OSC's view that allegations concerning fraudulent activities by Border Patrol personnel were not being properly investigated by DHS?

    We have just begun our review of this matter, so I am not in a position to comment at this time. I will be happy to provide you with my assessment at the conclusion of our review.

23. The FY 2005 Annual Performance Plan states that OIG recently conducted a review of the Immigration and Customs Enforcement (ICE) internal affairs function. As described, the review found "...complaints about the disposition of cases where

alleged misconduct had been deemed to be substantiated." As a result of this OIG review of ICE, OIG's original FY2005 Annual Performance Plan included a follow-up inspection of the ICE internal affairs function. However, in May, you issued a revised FY 2005 Annual Performance Plan, which does not include this follow-up review.

a. What is the status of this follow up ICE review?

The review was deferred because the team leader then assigned to direct the review was unavailable and because other projects had arisen that required our office's resources. As we indicated on page 4 of the original performance plan for FY 2005, we anticipate that there will be such changes in our planning. In this case, the review was not abandoned, but was deferred to FY 2006 for a start.

b. What OIG plan, if any, is in place to ensure that DHS internal affairs functions are operating properly?

The OIG's Office of Investigations conducts periodic oversight reviews (approximately every two years) of the internal affairs (IA) and inspection offices of the DHS organizational elements. The OIG oversight reviews determine whether the IA component is managed efficiently and whether their internal investigations are conducted in a thorough and professional manner. In addition to a review of the IA bureau's closed cases, the OIG evaluates the bureau's internal quality controls, structure, case review process, management, workload and adjudication process.

c. Please describe all reviews that have been conducted by OIG of DHS components' internal affairs functions.

Starting in February 2004, the OIG's Office of Investigations has conducted oversight reviews of the following internal affairs offices: USSS, Inspection Division; TSA, Office of Internal Affairs and Program Review; ICE, Office of Professional Review (Tampa, FL, and Fairfax, VA, Resident Offices); FLETC, Special Investigations and Security Division; and USCG, Investigative Service.

24. A group of federal air marshals is suing the Secretary of Homeland Security and the Director of the Federal Air Marshal Service challenging internal rules, including Policy Directive ADM 3700, which they contend forbids them from disclosing waste, fraud, and abuse within the Federal Air Marshals Service (FAMS).

a. Has the OIG looked into the substance of the air marshals' complaint?

We have not examined the lawsuit brought by a group of federal air marshals and express no views on its merit. We did conduct an audit that

discovered that the FAMS and TSA conducted nine investigations of air marshals for allegedly talking to the press or public, but concluded that these investigations were appropriate under the circumstances. We found no evidence that the air marshals were investigated or retaliated against for talking to Congress, or were threatened with or had action taken against them under the authority of the USA PATRIOT Act. A fuller discussion of this matter can be found in our November 2004 report, "Review of Alleged Actions Taken by Transportation Security Administration to Discipline Federal Air Marshals for Talking," a copy of which previously has been provided to the Committee, and which can be found online at http://www.dhs.gov/interweb/assetlibrary/OIG-05-01_Nov04.pdf

b. Does any DHS or FAMS rule, including Policy Directive ADM 3700, forbid air marshals from disclosing waste, fraud, and abuse within the agency to the Office of Inspector General, or to Congress?

We are not aware of any such rule or policy directive. DHS Management Directive 0810.1, "The Office of Inspector General," requires employees to report suspicions of violations of law or policy and to cooperate fully with OIG investigations. Section 7(c) of the IG Act protects employees from retaliation for cooperating with the IG. We have not undertaken a comprehensive review of the FAMS Directives Systems, but have questioned the legal accuracy of one aspect of ADM 3700, which seemed to criminalize all releases of classified information, as mentioned in our audit report.

c. Are you aware of any formal or informal actions, policies or rules which have impeded the ability of an air marshal from disclosing to OIG or to any other DHS official any potential waste, fraud, or abuse within the agency?

No. Please see my responses to questions 24a and 24b.

Performance

25. How many allegations of waste fraud or abuse did the OIG receive for each of the years 2003-2005? For each of the years 2003-2005, how many of those reports did the OIG:

a. Decline to investigate?

b. Investigate itself?

c. Refer back to the component DHS agencies involved?

Total Fraud, Waste or Abuse Complaints Received

Fiscal Year	Total complaints	Declined to investigate[1]	Referred back to the agency[2]	Retained by the IG for investigation
FY03 (3/9/2003 to 9/30/2003)	**4506**	**2738**	**926**	**842**
FY04	**8817**	**6047**	**1497**	**1273**
FY05 (10/1/2004 to 6/8/2005)	**9554**	**4734**	**465**	**892[3]**

1. Declined to investigate includes complaints referred back to the agency without a reply requested.
2. Referred back to the agency includes complaints referred back to the agency with a reply requested.
3. An additional 3463 complaints were opened for preliminary investigation (totaling 4355 retained cases), which required no additional action and were subsequently closed.

26. The Department of Homeland Security Inspector General's FY 2005 Performance Plan indicates, that in FY 2004, the IG completed draft reports of inspections and audits within six months of the project start date only 44% of the time. The performance goal for completion of these reports for FY 2004 was 75%. Why was the IG unable to meet its performance goal in this area for FY 2004? What would you do as Inspector General to make sure that the IG meets the 75% performance goal for FY 2005?

Timeliness is critical if our work is to have maximum impact and usefulness; our goal of completing audits and inspections within six months is one that we are making every effort to attain.

In 2004, we were hindered in our ability to complete audit and inspection projects within six months by a variety of factors. Specifically, we faced significant challenges in standing up OIG operations and consolidating legacy OIGs into a cohesive organization. Thus, more focus was placed on operational concerns rather than project management and reporting. In addition, the department's disparate components were a barrier to conducting audits efficiently and effectively because many of the offices were in a constant state of flux. Finally, we lacked standard report formats and report processing procedures, which are critical to having an efficient operation. Furthermore, the OIG's performance goal, to complete 75 percent of all audits and inspections within six months of the project start date in FY 2004, had not previously been tested or validated. The OIG had no historic workload statistics from which to know whether a 75 percent rate was an achievable goal in FY 2004, our first full year of operation. FY 2004 was also DHS' first real opportunity to learn how to respond to OIG projects. Our initial efforts were slowed by the many changes in DHS operations and organization, and by DHS' unfamiliarity with our role, responsibilities, and need for access. It was a learning year for all participants.

Viewed in this light, as an aspirational goal, the completion of almost half (44 percent) of the OIG's work within this time frame is an accomplishment in itself.

If confirmed, I intend to develop processes that will ensure that the OIG approaches its work in a disciplined, business-like fashion. Since becoming the Acting IG, I have instituted several practices that will help. I have instituted formal reporting on a monthly and biweekly basis, with strict and specific deadlines for completion of projects. I have also required that delays caused by access or response problems are reported promptly to me, and will intervene with the department to prevent them from delaying our work.

In addition, I have converted the annual work plan process, which defines our audit, inspection, and information technology projects, into a semiannual one. Intervening at the mid-year point serves to identify projects with diminished relevance or minimal findings that can be pruned without loss to the agency. The review also serves to reprioritize the OIG's work and emphasize the importance of early completion of our main body of projects.

27. Although OIG has increased the number of investigations that it is closing during each of the past three semiannual reporting periods, the number of investigations initiated and the number of open investigations are increasing at a faster rate. Over the past three reporting periods, the number of investigations initiated by OIG has increased by 258% and the number of open investigations has increased by 209%. The increase in new investigations mirrors an increase in the number of complaints being made to OIG.

    a. What do you believe accounts for the rising number of complaints received by, and the number of investigations being initiated by OIG? Have you done any current trend analyses or assessments of this situation? If so, please describe the results. Have you discussed these trends with DHS management?

    The DHS OIG is still a relatively new agency and many people are continuing to learn of its existence. We have seen the number of complaints rise from our inception in March 2003 to the present as members of the public, to include alien detainees, discover that we are here and that we handle the INS matters previously handled by DOJ OIG, all the complaints previously received by FEMA OIG, and the Treasury OIG complaints that related to the U.S. Customs Service (now ICE), the U.S. Secret Service, and the FLETC. We have distributed thousands of posters advising individuals how and to whom to make Hotline complaints if they have an allegation relating to a DHS employee or program and we have an outreach program that includes briefings by our field office personnel to DHS entities. These measures have increased awareness of our existence and that has led to an increase in the number of complaints that we have received and the number of allegations that we open as full investigations. We have not conducted a formal trend analysis of this situation.

b. What do you believe accounts for the increasing number of open investigations? Is OIG taking longer than in the past to investigate matters, and if so, why?

We have opened an increasing number of cases commensurate with the increased number of allegations coming to the DHS OIG. I believe it is our responsibility to conduct as many investigations as we possibly can that seek to resolve complaints about criminal activity by DHS employees, contractors or grant recipients, as well as complaints that allege serious administrative misconduct by DHS employees. Ensuring the integrity of DHS employees is one of my top priorities. When we accept a matter for investigation, we attempt to resolve it as quickly as we can, while not compromising thoroughness and accuracy. No two allegations are alike and we spend the time necessary to ensure a product that is sufficient and useful to the department for administrative action, if warranted, or appropriate judicial action if the matter is accepted for prosecution.

c. What has been the average number of pending matters being handled by each of the IG's investigators for each of the years 2003-2005?

Average Pending Matters Per IG Investigator

Date Range	Investigations Opened	Investigators Assigned	Average load
3/9/2003 to 9/30/2003	1151	81	14.21
10/1/2003 to 9/30/2004	1273	105	12.12
10/1/2004 to 6/8/2005	1867	116	16.09
TOTAL	4291		

d. OIG has provided information to Committee staff indicating that it is increasing staffing for the Office of Investigations during FY2005 and has requested additional full time Equivalent positions for FY2006. Will the currently proposed staff increases adequately address the investigative workload? What other measures are being taken to address investigative workload needs?

The Office of Investigations began in March 2003 with 141 FTEs. Those FTEs came from the former FEMA OIG, Treasury OIG, and from DOJ OIG. No new hires comprised the initial staff. Subsequently, my predecessor and I determined that additional staff for the Office of

Investigations was mandatory, given the huge numbers of complaints that we were receiving on a daily basis, plus all the legacy investigations that we were committed to completing that were divested to us from the prior agencies. Additionally, we quickly saw that we needed to open offices in locations where our legacy agents did not reside. Therefore, I approved the shifting of unfilled FTEs from other OIG components to the Office of Investigations. I shifted a total of 50 FTEs from other sections of the OIG, primarily the Office of Audits, to the Office of Investigations in FY 2004. The total strength for that Office thus rose from 141 to 191, which is where it remains today. I also authorized the opening of 8 new offices in: Detroit, MI; Seattle, WA; Buffalo, NY; Boston, MA; Yuma, AZ; Laredo, TX; Del Rio, TX; and Washington, DC.

The staff increases I have requested for the Office of Investigations of an additional 31 FTEs is predicated on the increased numbers of allegations and investigations, as previously discussed. This additional staffing is necessary to handle the constantly increasing caseloads of our offices, primarily at border locations. With more resources we would be in a position to take on more cases ourselves without reliance on the internal affairs components.

28. To what degree has the workload for Inspector General staff increased since its creation in 2003?

Our workload has increased significantly since our creation in March 2003. As noted in my response to question #25, the number of requests for investigations has nearly doubled. As noted in my response to question #29, below, the number of mandatory audits has also doubled over the past two years. At the same time, the number of congressional requests for reviews has more than doubled since the first year of our operation.

29. Has the Inspector General been able to complete all its mandatory auditing responsibilities for the years 2003-2005, and if not, why not?

We have addressed or have work under way on all of our mandatory auditing responsibilities for the years 2003-2005. Following is a list of mandatory requirements and report status.

- **Interagency Reviews of the Export Licensing Process – Reports issued in 2004 and 2005.**
- **Annual audits of DHS consolidated financial statements – Reports issued for FY 2003 and 2004; FY 2005 audit underway.**
- **Annual Evaluations of DHS' information security program (FISMA) and FISMA Intelligence Systems –Reports issued for FY 2003 and 2004; FY 2005 audits underway.**

- **Buy America Act Compliance (one-time requirement included in House FY 2005 appropriation conference report, due with submission of President's FY 2006 budget) – Report to be issued June 2005.**
- **Annual reviews of U.S. Coast Guard mission performance – Report issued in FY 2004; FY 2005 work underway.**
- **Implementation report on DHS Plan for Implementing Secure Systems of Transportation (one year after plan submitted to Congress.) – Due 2006**
- **Annual evaluations of cargo inspection targeting system for international intermodal cargo containers – This is a new requirement and the first report will be issued approximately 4 months late.**
- **Annual authentication of drug control accounting – Reports issued in FY 2003 and 2004.**
- **Certification of estimates for National Coast Guard Museum – Estimate not yet submitted to OIG.**
- **Annual reviews of expenditures and obligations for port security – First report scheduled for issuance in January 2006.**
- **Quarterly reports on DHS' intelligence components compliance with E.O. 12333 to the President's Foreign Intelligence Oversight Board. All reports have been issued on schedule.**
- **Review of the vulnerabilities and potential abuses of the L-Visa as provided by section 415 of the Consolidated Appropriations Act of 2005 (PL 108-447). The report is due 180 days after December 8, 2004, the date of enactment. The report will be issued approximately one month late.**

30. The DHS mission covers a variety of complex mission areas, from intelligence analysis and warning to emergency response and recovery. Since its formation, DHS has struggled with performance in many programmatic and management areas. Do you believe the Office of the Inspector General's current audit, inspection, evaluation, and investigation skill sets are adequate to meet its mission across these complex areas and their related issues? Are additional skill sets, personnel, or resources needed for its work in the next several years?

    We were fortunate when we stood up in March 2003 to have inherited an outstanding cadre of auditors, investigators, and inspectors from legacy agencies, particularly in the area of grants management; financial management; information technology; Coast Guard operations; Customs operations; and disaster preparedness, response, and recovery operations. Nevertheless, we identified gaps in our skill sets, which we have set out to correct over the past two years. Specifically, we lacked investigators with immigration experience, intelligence analysts, procurement specialists, and management and program analysts. When we stood up in March 2003, we employed approximately 390 employees. By the end of this fiscal year, we expect to have around 510 employees on board, and by the end of next fiscal year, we expect to have 540 employees on board. Through a very targeted recruitment program, we have been very successful in filling most of the gaps in our skill sets. If confirmed, I will continue to assess the skill sets that we need to fulfill our mission of

providing oversight of departmental programs and operations, and target our hiring accordingly.

31. Over the past year, the OIG has concentrated considerable effort on border and transportation security, specifically on air passenger and baggage screening, terrorist watch lists, federal air marshals, smuggling, and visa programs. To what extent do you see the OIG's focus changing, such as expansion of OIG work in areas such as other transportation modes, science and technology, or emergency response and recovery, or crosscutting areas such as information sharing?

In order to continue to develop strategic plans that focus on the critical issues within the department, meet the expectations of the Secretary and the Congress, and satisfy the intent of the IG Act, it is imperative that we provide coverage of all major department programs, not just one or two or three aspects of the department's operations.

When I assumed the role as Acting Inspector General, I initiated an informal assessment of where we have been, where we are, and where we want to be in the next five years. As a result of that exercise, we (1) reallocated existing positions within the OIG to be more responsive to both department and congressional interests; (2) reorganized our Office of Audits; and (3) defined what additional resources are needed in order to provide coverage of most major department programs on a regular basis.

The audit office reorganization will improve audit planning, report quality, and timeliness by:

- **Developing an organizational structure that covers the entire department and makes it easier to formulate and develop our audit plans and future strategy**
- **Establishing divisions that concentrate on specific programs, missions, or processes, versus agency-wide audits**
- **Creating and building up divisions that are knowledgeable in and responsible for specific issue areas within the department, e.g., infrastructure protection, science and technology, transportation security, etc.**

Additional resources will enable us to:

- **Ensure an adequate audit presence in major DHS procurements such as Deepwater, U.S. VISIT, UNISYS, and ACE; provide necessary resources for both grant program audits and financial audits; allow audits of important operational areas such as maritime security, port security, high interest vessels, and oversight of port security grants; and provide necessary**

resources for audits on transportation security for non-air modes of transportation (rail, highways and bridges, mass transit, and commuter rail).

- **Appropriately staff existing investigative field offices, and establish and staff three new sub-offices in the field, to facilitate the expeditious resolution of the overwhelming number of incoming allegations of criminal conduct or egregious administrative misconduct on the part of DHS employees, contractors, and grantees.**

- **Address the myriad of major information technology (IT) issues facing the department, including the compliance with applicable DHS information and technical security standards and information security requirements.**

- **Initiate a scheduled/recurrent inspection program of DHS intelligence collection and analysis and the effectiveness of applying intelligence information to the screening of people and things entering the country and the credentialing of people seeking positions of trust.**

32. According to DHS, the OIG is currently authorized to have 502 full-time employees in its headquarters and 26 field offices. The OIG is organized in five functional components (administrative services; audits; inspections, evaluations, and special reviews; investigations; and information technology). OIG's current functional organization has now been in place for three years. Do you believe any organizational changes in how functions are structured are appropriate? Why or why not?

    While I do not believe that organizational changes in how functions are structured are necessary at this time, I do believe that some organizational changes within our Office of Audits is appropriate so that we can provide audit oversight of more major departmental programs on a regular basis. Please refer to my response to question # 31 for more details.

33. Do you consider the staffing allocation between headquarters and field offices to be appropriate for the OIG mission? Are the field offices placed in the right location for efficient coverage of DHS programs and assets? Why or why not?

    Yes, given our current staffing levels, I believe the staffing allocation between headquarters and field offices is appropriate for our mission, and, yes, I believe the field offices are placed in the right location for efficient coverage of DHS programs and assets. With the exception of the new investigative field offices that we have opened over the past two years, our current field structure reflects the programs and assets of the legacy agencies that were integrated into DHS. These programs and assets are still active today within DHS.

Information Access

34. During your tenure at DHS, has the OIG experienced:

a. Difficulties in obtaining needed information, including access to documents, data, or witnesses from the Department?

The OIG experienced significant problems in gaining access to needed information for our inspection on the rendition of Mr. Maher Arar to Syria, a project we undertook at the request of Congressman Conyers. The department, facing litigation on that matter, was concerned that sharing information with the OIG could constitute a waiver of its legal privileges. In addition, some of the documents at issue were classified by other federal agencies, and the department felt the need to coordinate with them before sharing with the OIG. Because of the ongoing litigation against the department, we agreed to enter into a written memorandum of understanding to make it clear that sharing the documents with the OIG would not be viewed as a waiver of the department's ability to assert privilege in litigation. While we believe our work was delayed far longer than necessary, we ultimately did get copies of the materials, including the classified documents, that we sought, and our inspection is now back on track.

b. Denial of access to documents, data, or witnesses by the Department? **No**

c. Please describe any such difficulties and how, if at all, they were resolved.

Please see response to 34a. All other such difficulties associated with information access were raised with the employee's supervisor and resolved to our satisfaction.

d. How would you compare the Department's willingness to share information with the Inspector General to that of other departments or agencies in which you have served?

My experiences to date at the Department of Homeland Security are very similar to my experiences at other departments and agencies in which I have served. That is to say, throughout my career, I periodically have had difficulties in obtaining information needed to do my job, generally at the operational level. This was due primarily to individuals who did not have a working knowledge of the Inspector General Act. In all cases, when elevated through the chain of command, the issues were satisfactorily resolved.

35. Among other authorities, Section 6 of the Inspector General Act grants Inspectors General access to agency information and requires agency management to provide access to information requested by the Inspectors General. In this regard, subsection (6)(b)(2) states that "(w)henever information or assistance requested under subsection (a)(1) and (a)(3) is, in the judgement of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay."

    In January 2004, the DHS OIG initiated an investigation into the removal of a naturalized Canadian citizen to Syria - Mr. Maher Arar. It is our understanding that it took well over a year for OIG to obtain access to DHS documents and witnesses in that investigation and that the lack of access severely impeded the investigation.

    a. Did the OIG ever make a subsection 6(b)(2) notification to the Secretary in this matter? If so, when? If not, why not?

    The matter was not reported to the Secretary by the OIG. In the context of events as they unfolded, we did not believe the department was deliberately obstructing our work. Instead, we saw the issue as being addressed by senior officials within the department. There was ongoing civil litigation regarding the same matter we were inspecting, a highly unusual circumstance, and the department expressed concern that sharing documents with the OIG could jeopardize the government's litigation posture. The department consulted with DOJ and ultimately we entered into a MOU in December 2004, a copy of which previously has been provided to the Committee.

    Thereafter, we learned that some documents bore a security classification requiring consultation with the originating entity before further sharing the document. While we did not believe such a designation precluded sharing the document with us, we found little precedence one way or the other within the OIG community. DHS, new to the intelligence community, felt it had to secure permission from the originating authorities before sharing with the OIG. The DHS General Counsel was personally involved, and he met with me to address the matter. Eventually, the documents were provided to the OIG.

    In short, we found a department and personnel who were seemingly unfamiliar with OIG authorities, facing contentious civil litigation, and worried about possible ramifications in the intelligence community. We found the process frustrating, but having worked its way through these issues, the DHS ought to be much more responsive in the future.

    b. Under what circumstances do you believe it is appropriate to invoke the subsection 6(b)(2) notification requirement?

I rely on the plain language of the IG Act: whenever information or assistance is "unreasonably refused or not provided" necessarily depends on the circumstances. For example, organizational entities are required to report allegations of criminal misconduct "immediately upon receipt of the allegation" according to Departmental Management Directive 0810.1, "The Office Of Inspector General." In such circumstances, a delay of even a few hours could constitute an "unreasonable" refusal warranting notification to the Secretary under subsection 6(b)(2).

c. Have there been any cases in which the OIG informed the Secretary under subsection 6(b)(2) that requested information or assistance was being unreasonably refused or not otherwise provided? If so, please identify and describe the circumstances in which this occurred and whether such information or assistance was ever obtained by OIG?

There have been no such circumstances at DHS.

36. Based on your experiences at the Department of Homeland Security, do you have concerns about the Inspector General's ability to access needed information? Do you have concerns about congressional access to DHS information? What changes, if any, do you believe need to be made in order to ensure that the Inspector General, Congress and GAO can obtain information from DHS?

I do not have serious concerns about my ability, if confirmed, to access information. There have been occasions in which particular individuals or units seemed ill informed about the IG's statutory right of access, but once educated, have cooperated fully. DHS' Office of the General Counsel and the Audit Liaison Office have been instrumental in securing OIG access to needed materials and personnel, and we have enjoyed a cooperative working relationship with them. I do fully support statutory reporting requirements to the Congress and intend to provide reports and briefings as frequently as possible to satisfy congressional requests or concerns, consistent with existing legal restrictions. The OIG enjoys a cooperative relationship with GAO and I do not recommend any changes to legal requirements at this time.

37. On page 11 of a recent report, "Audit of FEMA's Individuals and Households Program in Miami-Dade County, Florida, for Hurricane Frances," you state that "[t]he audit work papers include documentation which has not been discussed in the report due to FEMA's assertion that the substance is protected by privilege."

a. What privilege was asserted and by whom? Did you agree that the privilege was properly asserted? What procedures did you use to work through this issue with FEMA?

According to FEMA, the material is protected by presidential communications and deliberative process privileges. Both the DHS General

Counsel and the FEMA Chief Counsel asked OIG to withhold the information from the report. In addition, I understand the Under Secretary for EP&R had written directly to the Committee on the subject at issue. My legal staff reviewed the request and consulted with experts at the Department of Justice and counsel at other Inspector General offices before we decided to honor the request.

b. Do you believe FEMA has the authority to prevent the IG from fulfilling his or her reporting responsibility to Congress by asserting privilege? What responsibility does the IG have to independently evaluate the assertion of privilege?

No. Under section 811 of the Homeland Security Act of 2002, as amended, only the Secretary has authority to limit the scope of OIG activities, and then only under carefully defined procedures. The Inspector General must carefully evaluate any assertions of privilege by DHS to ensure that they are not used simply to hide embarrassing information or to obfuscate facts. The most important point, in my view, is that the IG makes a disclosure to the Congress that there is additional information on the subject that has not been reported, and the reasons why. That is what we did in the FEMA report, and if confirmed, that is what I pledge to do in the unlikely event that such a situation ever should re-occur.

c. Are you aware of any other instances of agencies exercising such purported authority?

Yes, through discussions with the Civil Division at the Department of Justice and other OIGs, my staff learned that several other Inspector General offices have had to balance similar competing interests.

d. How would you handle any similar assertions made in the future?

If confirmed as Inspector General, I will attempt to provide Congress the information it needs while also honoring sound requests to protect sensitive or privileged information.

Protection of Whistleblowers Against Reprisal

38. The legal protection for whistleblowers recognized in the Inspector General Act of 1978 mirrors the merit system principle that employees are to be protected against reprisal for the lawful disclosure of information which the employee reasonably believes is evidence of a violation of law, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. The legal protections exist because legitimate whistleblowers are an invaluable resource for the oversight of government operations. If confirmed, what steps would you take to protect from reprisal or threat of reprisal individuals who bring such evidence to the attention of your office?

During my tenure with the DHS OIG, we have taken every effort possible to ensure that we live up to our statutory, ethical, and moral responsibilities to adequately protect legitimate whistleblowers from reprisal or threat of reprisal. We view whistleblowers and their important information as an invaluable resource in our continuing efforts to protect the integrity of departmental programs and operations. In many cases, whistleblowers have become valued partners in investigations that have identified fraud, waste, and abuse.

All of the DHS employees who contact the OIG to report an allegation that he or she believes is evidence of a violation of law, or mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety is afforded *presumptive* confidentiality. In other words, the OIG will not disclose that employee's identity outside the OIG without first obtaining the employee's consent, unless we determine that disclosure of the employee's identity during the course of the investigation is unavoidable. This policy is outlined in a DHS Management Directive, dated June 10, 2004, entitled *Office of Inspector General.* Our internal policies specify that a determination to disclose an employee's identity without his/her consent may only be made by the Inspector General. During my tenure as Acting Inspector General, I have never authorized such a disclosure.

If confirmed as the IG, I would continue our current "zero tolerance" policy toward whistleblower reprisal by aggressively pursuing those rare cases in which an employee has allegedly retaliated against an employee making a protected disclosure. I also would take every opportunity to reacquaint employees with the special protections afforded to whistleblowers and to reemphasize my continuing commitment to protecting those employees who bring evidence of fraud, waste, and abuse to the attention of my office.

39. Do you believe additional policy guidance is necessary to ensure individuals who report concerns to the Office of Inspector General understand their statutory rights against retaliation for making protected disclosures?

I believe the existing DHS policy guidance as reflected in the Management Directive on the Office of Inspector General is an adequate and appropriate statement of the rights of employees to be free from retaliation for making protected disclosures. However, I do not believe many employees have a sufficient understanding of their rights and responsibilities in this regard. If confirmed, I plan to produce a short pamphlet, written in plain language, on this issue, and I would anticipate full cooperation from the department in conducting outreach programs to all employees. Other OIGs with which I have been affiliated have had such a pamphlet and program and have found them to be very effective in educating employees on their legal rights.

V. Policy Questions

Major DHS Management Challenges

40. What are the critical challenges facing the Department of Homeland Security and how would your Office of Inspector General address them?

In December 2004, we issued our report on Major Management Challenges Facing the Department of Homeland Security. The challenges include:

-Consolidating the Department's components,
-Contract management,
-Grants management,
-Financial management,
-Human capital management,
-Integration of information systems,
-Security of information technology infrastructure,
-Critical infrastructure threat assessment,
-Border security, and
-Transportation security.

These challenges are a major factor in setting our priorities for audits and inspections of DHS programs and operations. Further, audit directors within our Office of Audits have now been assigned specific responsibility for each of these challenges. This will allow us to improve our planning for, knowledge of, and reporting on the department's progress in addressing these challenges. You can be sure that, if confirmed, I will review the list of management challenges annually and ensure that our work plans give appropriate attention to each area.

41. As you know, Secretary Chertoff has initiated a short-term, Department-wide review of major management and policy issues, known as the "Second Stage Review." In addition, we understand there is active review of several possible structural reorganizations within the Department. Please describe the OIG's involvement, if any, in these Departmental reviews.

The OIG did, indeed, participate in the Secretary's " Second Stage Review," or "2SR." The Secretary launched 18 Action Teams to review management and policy issues of the department. The Deputy Secretary and I formed one of those teams to assess the status of all open OIG recommendations made since March 1, 2003, and the impact any of those recommendations may have on the results of the "Second Stage Review." Either my representative or I attended all meetings and briefings on the results of the individual action team reviews. The OIG also was afforded the opportunity to input its views and recommendations to the law enforcement action team relative to the utility of internal affairs operations within the department.

42. If confirmed, what steps would you take to address financial accountability at the Department of Homeland Security?

The OIG has an entire audit division devoted to financial management issues, and, from the very beginning, we have been aggressive in ensuring that financial statement audits are conducted, and that material internal control weaknesses are addressed. But financial accountability goes far beyond the ability of DHS to produce audited financial statements with a clean opinion. DHS needs financial systems capable of producing timely, accurate financial information for managing the department's day-to-day operations, and, if confirmed, I will continue to make this one of my office's top priorities.

Coast Guard

43. The President's FY2006 budget proposes moving the headquarters of the Coast Guard to the West Campus of St. Elizabeths in Washington, DC. To this end, the budget proposal for the General Services Administration (GSA) includes $24.9 million for Coast Guard Consolidation and $13 million for St. Elizabeths West Campus Infrastructure. In 2003, the Committee conducted an investigation into the management of federal real property. The St. Elizabeths West Campus was used as a case study during this investigation and it was highlighted in a Committee hearing held on October 1, 2003. The West Campus of St. Elizabeths contains 182 acres of land, 61 buildings, and 1.1 million square feet of space. It has been designated as a historic landmark. Unfortunately, lack of proper maintenance and management of this large parcel of property has resulted in the advanced decay of the property and, according to GSA estimates in 2003, it would take between $440 and $495 million to restore. It would appear that this effort will incur substantial costs based on the two year old restoration estimates and has obvious potential for cost overruns and delays due to environmental, historic preservation, and restoration expenses.

a. What proactive role will you have if confirmed as Inspector General in analyzing estimates for the renovation, preservation, and construction costs of a new headquarters building for the Coast Guard compared to remaining, or improving, where it is?

The Coast Guard Headquarters relocation is not in our current work plans for audit or inspection. If confirmed as Inspector General, I will ask my assistants to consult with their counterparts in the Office of Inspector General, General Services Administration, to ensure that all aspects of the relocation receive appropriate oversight.

b. Does the Department of Homeland Security have current cost estimates of renovating and preparing the St. Elizabeths property for use by the Coast Guard in comparison to continuing current Coast Guard leases in the District of Columbia and Virginia and improving the buildings they currently occupy? If not, as Inspector General would you support a careful analysis of such an option?

I am not aware of whether the Coast Guard has such cost estimates or what analysis has already been done. If confirmed as Inspector General, I would support the Coast Guard's analysis of alternatives, including continuing current leases, if such analysis has not already been conducted.

c. What role, if any, would the DHS OIG have in navigating the re-use of the property through relevant federal and local environmental and historic preservation laws? What role, if any, would the DHS OIG have in the proper allocation of renovation and construction costs and lease negotiations with GSA on behalf of the Coast Guard?

The Inspector General's role in the Coast Guard's relocation is to promote economy, efficiency, and effectiveness in the implementation of the relocation, and to prevent and detect fraud, waste, and abuse in the relocation activity. The Inspector General does not normally provide operational support to departmental components and as such would not normally be involved in the Coast Guard's initial compliance with relevant laws or represent it in negotiations with GSA.

On June 7, 2005, GSA noticed in the Federal Register its intent to prepare an environmental impact statement for the proposed Master Plan for the redevelopment of the St. Elizabeth's West Campus. The notice announced a public scoping meeting held June 14, 2005. GSA also indicated that it has initiated consultation under Section 106 of the National Historic Preservation Act for the Master Plan.

d. If confirmed, would you be involved as Inspector General in evaluating the impact of this move on the use of local public transportation systems and infrastructure and the impact of the move on affected federal workers?

If confirmed as Inspector General, I would be involved with any aspect of the relocation necessary to prevent fraud, waste, and abuse, working together with the Inspector General of the General Services Administration.

FEMA

44. The Office of Inspector General recently testified before the Committee on its audit of FEMA's Individuals and Households Program (IHP) in the Miami-Dade County area following Hurricane Frances. The report made a number of ecommendations to improve the stewardship of the program. What steps do you plan to take to ensure that FEMA implements needed improvements in the program?

We requested FEMA to respond within 90 days from the issuance of our report on their plans for and progress in addressing our recommendations. Once we receive FEMA's response, we will determine what additional steps, if any, may

be necessary to ensure that FEMA implements needed improvements in the program.

45. As you know, allegations have been raised that Hurricane Isabel claimants were not properly paid for damages insured under the National Flood Insurance Program (NFIP). The OIG determined that problems with Isabel claims were primarily caused by errors and misjudgements of adjusters. OIG concluded that FEMA had acknowledged these problems and had taken action to remedy the claims of the policy holders, including: (1) setting up a task force to review claims; and (2) contracting with a public accounting firm to monitor the post-Isabel claims review process and to conduct an assessment of the overall NFIP claims process and determine needed improvements. OIG reported to Committee staff that OIG had closed its inquiry into the issues surrounding Isabel claims based on this understanding of FEMA's corrective actions.

    FEMA subsequently terminated the outside audit contract. FEMA has stated that it took this action because it did not want to impact litigation brought against private insurance companies involved with the NFIP by private Isabel claimants. FEMA also stated that no fundamental changes were needed to be made to the NFIP to ensure that claims are properly paid because the mistakes made on Isabel claims were not dramatically different from other large scale disasters, and that contrary to OIG's findings, the wrong pricing guidelines had not been used and were not out of date.

    a. When did OIG become aware that FEMA had canceled the outside audit contract? Did OIG examine the reason this audit was terminated?

       We became aware of the cancelled contract as a result of a Washington Post article on October 19, 2004, four days after we issued our letter report. The article said that FEMA "...cancelled the independent review because of a class-action lawsuit against the private insurance companies that administer the flood program for FEMA." We confirmed the facts in the article but did not examine the stated reasons further.

    b. After learning that the audit contract was canceled, did OIG reexamine its conclusion that FEMA's corrective actions were satisfactory? If not, why not?

       We did not reexamine our conclusions primarily because, as stated in our letter report, GAO had initiated a study of the NFIP, including the practices used by FEMA and insurance adjusters in estimating losses incurred during a flood, and the adequacy of payments made to flood victims under flood insurance policies. GAO testified on its ongoing work on April 14, 2005, and expects to complete its study in September 2005.

c. FEMA disputes the OIG conclusions that the wrong guidelines were used for Isabel claims. What is OIG's response to this position? Why wasn't this conflict resolved before OIG closed its review?

We were unaware that FEMA disputes the statements made in our letter regarding guidelines. However, based on the question, there may not be a conflict. We did not say that adjusters used the wrong guidelines. We said that, "... some adjusters ... estimated repair/replacement costs of damaged items using pricing guides that were not updated to reflect prevailing local prices of building materials. This statement was based on discussions with three FEMA officials and two claimants. The FEMA officials said that the war in Iraq caused a short supply of certain building materials, especially plywood, that drove prices up. They believed that pricing guides used by the adjusters were not updated to reflect the pricing changes, which caused some claimants to receive settlement offers that fell short of the cost of necessary repairs. One official also said that the pricing guides are generally updated every 90 days and that adjusters have the flexibility to override the pricing guides to reflect prevailing prices when necessary. We did not ask FEMA to comment on our letter to the two senators.

d. What further actions do you plan on this matter? What will you do to further review the problems in the NFIP?

I plan to examine GAO's detailed findings when they are available and determine at that time what additional actions, if any, are necessary to resolve these issues fully.

46. In June of 2002, the FEMA IG issued a report entitled, "Duplication of Benefits: the National Flood Insurance and the Disaster Housing Program's Minimal Repair Grants." At the time, you were the Deputy IG for FEMA. The report found that: (1) duplication of benefits may have been extensive throughout the programs it reviewed; (2) the process to recover funds is inadequate; and (3) more compatibility is needed between the NFIP and the National Emergency Management Information System (NEMIS). The FEMA IG recommended that FEMA: (1) develop consistent data entry and maintenance standards for NFIP and NEMIS databases; (2) develop an automated interface, data warehouse to query key data elements; (3) perform post-disaster database comparisons; (4) follow up on duplication cases; and (5) enhance the debt collection process under the Disaster Housing program.

a. Are you satisfied that FEMA has taken steps to address the problems identified in the report and has implemented the IG's recommendations?

FEMA agreed with all five recommendations. According to our recommendation follow-up records, FEMA completed action on recommendations 3, 4, and 5; but, as of January 2003, recommendations 1 and 2 were still open. Regarding recommendations 1 and 2, FEMA advised

us that it intended to work with its systems division to improve access to and quality of FEMA's data resources through the systems division's Data Management Program. Two major activities within that program are an enterprise data warehouse and an operational data store, to be implemented in three phases, the last phase scheduled to begin in 2006. My staff will continue to follow up on the status of these system improvements.

b. What steps have been taken by the OIG to ensure that FEMA is implementing these recommendations?

Our recommendation follow-up procedures are designed to track agency actions on our recommendations until the recommendations are closed.

47. In March 2004, DHS OIG issued a report on FEMA's acquisition workforce. The audit determined that because FEMA acquisition workforce files were not maintained pursuant to applicable federal guidelines, FEMA might be at risk for having an unqualified acquisition workforce. The report also concluded that FEMA has not updated its acquisition guidance to reflect current federal guidelines. The report made several recommendations. FEMA agreed to implement the recommendations by December 31, 2004.

a. Has FEMA taken steps to address the problems identified in the report and implement the IG's recommendations?

Yes, although our records show that two of the report's four recommendations are still open.

b. Which, if any, of the report recommendations has FEMA failed to implement, and what steps can you take as DHS IG to ensure that they are addressed?

As of March 2005, FEMA had completed action on two of four recommendations: FEMA updated its acquisition guidance, and ensured that its acquisition policy and policy monitoring function was outside the operational procurement branches. FEMA had not completed action on recommendations to review and update FEMA professionalism and warrant files, and to designate a competition advocate in writing. We are continuing to follow up on both recommendations, and I will take whatever steps are necessary to see that they are addressed. In this regard, I have provided a list of open recommendations to the Deputy Secretary and the organizational elements are in the process of updating the status of those recommendations.

48. Given your previous experience, especially as FEMA's Acting IG, Deputy IG, and Assistant IG for Audits, what do believe to be the most serious problems and challenges facing FEMA? What will your office do to address these problems and challenges?

I believe FEMA's most serious management challenges facing FEMA today are: disaster response and recovery; the National Flood Insurance Program; multi-hazard flood-map modernization; and information technology management.

Disaster Response and Recovery. FEMA's largest spending category is disaster relief. FEMA faces difficulties establishing disaster declaration criteria, reducing disaster response and recovery costs, managing its disaster workforce, ensuring the integrity of its many financial assistance programs, and improving program services. Recent amendments to the Stafford Act increased FEMA's challenges in managing disaster recovery. The amendments change estimating and payment procedures under the Public Assistance Grant Program, FEMA's largest grant program. Disaster grant applicants will be paid based on damage estimates rather than actual damage repair costs. FEMA tested a similar approach, called the Grant Acceleration Program, after the Northridge Earthquake in Southern California. The test results reflected inflated estimates, extreme overpayments, and ineligible work performed at taxpayer expense. Finding solutions to these problems and instituting other changes required by the amendments, such as establishing fixed management cost rates for grantees and subgrantees, will confront managers of FEMA's disaster assistance grants. Furthermore, FEMA's grants management system does not ensure that grantees meet programmatic and fiduciary responsibilities. Our audits of States' management of FEMA disaster grants found an alarming number of recurring problems. For example, States often do not (1) monitor and accurately report on subgrantee performance and financial activities, (2) make payments or close out projects in a timely manner, (3) file accurate or timely financial status reports with FEMA, and (4) maintain adequate documentation to support their share of disaster costs and other financial transactions. These problems indicate that FEMA needs to continue to take the initiative to provide technical assistance and guidance to States to ensure that they have reliable disaster grants management systems to safeguard FEMA funds. Finally, as recently demonstrated in our audit in Miami-Dade County, Florida, after Hurricane Francis, FEMA's Individuals and Households Assistance Program lacks sufficient controls to ensure that funds are awarded to eligible applicants, for eligible purposes. We typically perform 60 audits annually of grantees and subgrantees receiving disaster relief grants, focusing on large dollar grants and issues that are of concern to Congress and FEMA. These audits result in millions of dollars in questioned costs. We plan to continue this effort.

National Flood Insurance Program. The NFIP continues to be the largest single-line property insurer in the nation. Aside from the fiscal enormity of this program, FEMA faces an array of formidable management challenges that include:

- **Increasing numbers of repetitively flooded structures subsidized by the NFIP**
- **Development and uninsured property in special flood-hazard areas**
- **Lack of exposure to mitigation opportunities**

Furthermore, based on recent experiences after Hurricane Isabel, it has become obvious that FEMA needs to pay closer attention to customer service and adjuster issues. FEMA needs to ensure that underwriters have a full working knowledge of the legal limitations of the program. When selling flood insurance underwriters must take the time to fully explain policy coverage exclusions. Likewise, the adjusters must be trained to understand the emotional stress flood victims suffer and the extra time needed with insureds to evaluate the extent of damage. The GAO is currently reviewing these issues.

Multi-Hazard Flood-Map Modernization. Flooding stands out as the single most pervasive hazard facing the nation, causing an estimated $6 billion in property damage annually. Much of the recovery spending could be avoided by efficient, up-front planning using accurate, up-to-date flood maps. Before flood maps can be used effectively, however, they must reflect current hydrological conditions. An aggressive program to update, modernize, and maintain the inventory of flood maps is essential. FEMA plans to spend approximately $1 billion over the next three fiscal years to update its maps. With more than 19,000 communities in the National Flood Insurance Program (NFIP), FEMA faces a daunting challenge in setting priorities for areas to be mapped, keeping maps current, and creating new maps for participating, unmapped communities. We are in the final stages of an audit assessing the agency's management approach; coordination with federal, state, and local entities; and acquisition and use of technology to meet map modernization program objectives.

Information Technology Management. FEMA is heavily dependent on information technology (IT) to accomplish its mission. The agency relies on technology for performing tasks ranging from emergency communications to remote data entry to automated processing of disaster assistance. Because of IT's importance, FEMA must maintain secure systems that help to ensure the integrity, confidentiality, and availability of information that it needs to do its job. We are completing an audit in this area that addresses FEMA's approach to responding to and recovering from terrorist attacks, major disasters, and other domestic emergencies; the effectiveness of guidance and processes to support incident management; existing and proposed systems and other technologies that are essential to FEMA's mission success.

Immigration and Border Security

49. The OIG's FY 2005 Annual Performance Plan identifies Border Security as one of the most serious management challenges facing the Department of Homeland Security. What do you believe to be the most critical challenges facing the Department in the area of border security, and how will your Office of Inspector General address them?

Border Security involves so many critical initiatives to control and screen what and who is allowed to enter the United States, that no one list can do justice to all

the challenges DHS must meet. I suggest several issues that reflect our office's concerns:

- **DHS, whether through the FBI Terrorist Screening Center or otherwise, must have consolidated, accurate watch lists, which encompass both travelers and cargo shippers.**
- **Our best screening system, US-VISIT, extends to only a small proportion of travelers and has no viable exit control functionality, which means DHS has no means to identify overstays.**
- **Most efforts to strengthen border security involve technological solutions. The biometrics of personal identification and watch list checking systems, the examination of cargo, and the accelerated passage for trusted travelers and shippers all depend on the development, acquisition, and deployment of hardware and software that are traditional problems for government agencies.**

If confirmed, I plan to continue to provide oversight in areas, such as these, where the OIG foresees special risks to DHS' operations. I intend to bring to bear the program analysts and auditors necessary to look at these problems through multiple prisms – from perspectives of acquisition strategy, cost accounting, contract management, operational strategy, and business practices – whatever it takes to track the progress of these critical programs.

50. DHS has primary responsibility for administering and enforcing U.S. immigration laws, including the setting of immigration policy. Functions that once belonged to the Immigration and Naturalization Service are now shared between Immigration and Customs Enforcement, Customs and Border Protection, and Citizenship and Immigration Services. What do you believe to be the most significant challenges facing the Department as it carries out this responsibility, and how will your Office of Inspector General address them?

I believe that the most significant challenges the department faces in administering and enforcing U.S. immigration laws include the following:

-Tracking the entrance and exit of foreign visitors,
-Deterring alien smuggling,
-Identifying, locating, detaining, and removing illegal aliens,
-Identifying and deploying advanced border surveillance technology,
-Deploying an integrated IDENT/IAFIS fingerprint system,
-Developing an integrated intelligence data system for border security operations,
-Improving the visa issuance process, including addressing security concerns with the Visa Waiver and Visa Security programs, and
-Reducing the immigration benefit application backlog.

I plan to issue reports this year on the adequacy of detention facilities for illegal aliens, the ICE institutional removal program, treatment of aliens held on immigration charges, the apprehension and detention of juveniles who enter the country illegally, the provision of H-1B non-immigrant temporary worker status, the vulnerabilities and potential abuses in the L-visa program, and CIS alien security checks. Additional efforts will include reviews of DHS' oversight and supervision of the US-VISIT contract, and information security controls implemented for the US-VISIT program.

Also, current priorities of CIS are to implement solutions for improving immigration customer services, eliminate immigration adjudication backlogs, and promote national security. Ensuring effective and efficient use of information technology (IT) to support these priorities will be a challenge for CIS, which typically has relied upon decentralized IT management to help carry out its mission responsibilities. We have recognized the importance of a robust immigration services operation to the department's mission. Toward that end, we are currently reviewing CIS efforts to re-engineer processes and modernize its IT systems. To accomplish our review, we have reviewed IT modernization plans and interviewed a range of senior program and IT officials at CIS headquarters. We have also conducted site visits to six CIS locations to review the various processes and systems currently used to support operations at the various records centers, service centers, district offices, asylum offices, and application support centers.

Finally, critical to the successful implementation of any immigration policy, whatever its permutations, is the coordinative operations of ICE, CBP, and CIS. The separations of legacy INS operations accomplished by the Homeland Security Act left new entities to struggle with substantially revised missions and organizations. As requested by Chairman Collins, we are conducting a study into a major controversy spawned by the Homeland Security Act, the separation of customs and immigration inspection and investigation activities between ICE and CBP and whether they should be merged. At present, we are not prepared to report on the results of that study. I am confident, however, that the report will be delivered as promised, and that it will provide information and insights that will be invaluable to both this Committee and DHS' senior managers.

51. If confirmed, what will be your priorities in the areas of immigration and border security?

If confirmed, immigration and border security will remain among our highest priorities. Every aspect of immigration and border security warrants OIG attention. My first goal is to use our work plan process to design an ordered approach to the many facets of perimeter and people security so that each is addressed, whether by an audit, an inspection, or an information technology assessment according to a structured cycle. We lack the resources to review everything in this or even next year, but we should be able to ensure that major

elements are covered with ordered regularity. That said, I return to the three topics I mentioned earlier: watch lists for people and shippers; screening systems at POEs and border patrol stations; and all the technology needs associated with strengthening border surveillance, i.e., biometric identifications, accelerated commuter lanes, radiation detectors, and the like.

In addition to the immigration-related jobs listed above, our work in border security will include reviews of encounters with suspected terrorists at ports of entry, targeting of oceangoing cargo containers, CBP's agricultural inspection activities, CBP's efforts to deploy radiation portal monitors, and use of remote surveillance technology along U.S. borders.

Homeland Security Grants

52. The DHS OIG has conducted several audits of the State Homeland Security Grant Program, at least one of which was conducted after you became Acting Inspector General. The State Homeland Security Grant Program accounts for less than half of the total homeland security grant program funding for first responders, with a roughly equal portion going to Urban Area Security Initiative program grants (UASI), and smaller amounts going to several other programs.

    a. Why has the DHS OIG not allocated similar resources to auditing other homeland security first responder grant programs as it has to the State Homeland Security Grant Program?

    When DHS OIG was created, we received no auditors from DOJ OIG and had no experience with DOJ's Office for Domestic Preparedness grant programs, for which Congress had just appropriated $3.5 billion. In contrast, UASI grant funding totaled $770 million in FY 2003. DHS grant program funding totaled around $11.8 billion in FY 2003, and my office focused its attention primarily on the State Homeland Security Grant Program (SHSGP) awards, which totaled around $2 billion in FY 2003; and FEMA's disaster grant programs, including the Fire Management Assistance Grant program, which totaled $5.8 billion in FY 2003. However, as the Committee noted, UASI grant funding is now nearly equal to that of SHSGP, and we included an audit of the UASI program in our FY 2005 audit plan. We will be starting that audit this fall.

    b. If confirmed, will you review all homeland security grant programs for first responders, not just the State Homeland Security Grant Program, to determine that expenditures under them are appropriate?

    I have already instituted a robust grant audit program, and reorganized Office of Audits responsibilities, to ensure appropriate oversight of all DHS grant programs. If confirmed, I will continue that effort and will ensure that all grant programs are held accountable.

IV. Relations with Congress

53. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed? **Yes**

54. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed? **Yes**

V. Assistance

55. Are these answers your own? **Yes.** Have you consulted with the Department of Homeland Security or any interested parties? **Yes.** If so, please indicate which entities. **I consulted with my executive staff, and I shared a draft copy of my answers with the Department's Office of Legislative Affairs and Office of General Counsel.**

AFFIDAVIT

I, Richard L. Skinner, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Richard L. Skinner

Subscribed and sworn before me this 20th day of June, 2005.

Subscribed and sworn to before me, in my presence, this 20 day of June 2005, a Notary Public in and for the District of Columbia

Michael Mahoney II,
Notary Public

My commission expires August 14, 2008

Received 5/9/05

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

May 4, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Richard L. Skinner, who has been nominated by President Bush for the position of Inspector General, Department of Homeland Security.

We have reviewed the report and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Skinner is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosure

Post-Hearing Questions Submitted by
Senator Joe Lieberman
For the Nomination of Richard L. Skinner to be
Inspector General, Department of Homeland Security

1. On Feb. 27, 2002, the Transportation Security Administration (TSA) entered into a $104 million contract with NCS Pearson to hire a nationwide screener workforce. Less than a year later, the costs had ballooned to more than $700 million. As early as Sept. 2002, a TSA internal review identified a "complete breakdown of management contracts at NCS."

   During this period, the Department of Transportation Office of Inspector General recommended that TSA retain the Defense Contract Auditing Agency (DCAA) to audit the NCS Pearson contract. TSA did so. During 2003, two members of Congress asked the DHS Office of Inspector General to examine TSA's management of this contract. Your Office of Audit undertook to audit TSA's management and oversight of this contract.

   Nearly two years passed. In early 2005, you issued an Annual Performance Plan for 2005 that referred to the ongoing audit of the NCS Pearson contract as a "carry over" from work planned in 2004. On June 30, 2005, *The Washington Post* published a lengthy article based on the findings of the DCAA audits that were troubling. Since then, the Committee staff has reviewed the DCAA audits, which indicate that the auditors could not complete their work because of restrictions placed on their access to records.

   During a briefing last week, representatives from NCS Pearson stated that they were paid the full amount of this contract, $742 million, after your office gave a "green light" to the settlement negotiated by TSA. In a subsequent staff interview, the Committee learned that before TSA settled with NCS Pearson, the agency reviewed the terms of the settlement with your Office of Audit and that your staff expressed no objection to TSA making a final payment based on those terms.

   a. To your knowledge, did the OIG express any concerns about the proposed settlement? If the OIG did sign off on the settlement, would you explain why the OIG would review and sign off on a troubled contract's final settlement while it still was auditing the contract to determine whether it was mismanaged? Having raised no objection to the final settlement, how can your Office of Audit be expected to render a tough-minded critique of TSA's overall administration of this contract?

      Answer: First, I would like to clarify that Pearson was paid only the amount of the then contract ceiling of $742 million. Pearson had already submitted invoices totaling $867 million through December 23, 2002, and had indicated that an additional invoice was expected for the remainder of

the contract (to December 31). In December 2004, OIG Audits, in conjunction with OIG Investigations and the Justice Department Civil Litigation Division, reviewed the settlement terms of the NCS Pearson contract for consistency with the results of our then on-going audit of TSA's management of the federalization process. The NCS Pearson contract was a time and materials contract, the riskiest type of contract for the Government, in which the Government takes 100% of the risk associated for cost and performance issues. At TSA's request, DCAA had performed a full incurred-cost audit of the NCS Pearson contract to assess the reasonableness, allocability, and allowability of NCS Pearson's invoiced costs ($867 million). The DCAA audit could not fully determine these factors for the invoiced costs and found numerous items of concern that they reported back to TSA. TSA used the DCAA audit as the basis for its negotiated settlement ($742 million). Nothing in the settlement conflicted with the findings of our on-going audit. In addition, we noted in our settlement analysis to TSA that there are on-going criminal and civil investigations regarding the NCS Pearson contract. As the negotiated settlement with NCS Pearson was administrative, it does not preclude further OIG or Justice Department investigation and taking additional financial recourse should those investigations prove fraud or wrong-doing on behalf of NCS Pearson or their subcontractors.

We have recently issued our draft report on TSA's management of the contract to TSA for comment. That report, in our opinion, provides a fair, "tough-minded" critique of TSA's contract and program management issues during the federalization process and the effect of those issues on NCS Pearson's performance and cost under the contract.

b. Please explain whether you were aware of each of the following actions taken by the DHS OIG and if you were aware, please describe the extent of your knowledge and any role you played in such action: (1) the identification of the DOT-IG legacy issues related to the Pearson contract in the first DHS OIG semi-annual report; (2) the planned OIG audits of Pearson that are identified in the DHS OIG 2003, 2005 and revised 2005 annual performance plans; and (3) the DHS OIG review of the settlement.

Answer:

(1) The DOT IG legacy issues were a consideration in our approach to this Congressionally requested audit. Further, we met with DOT OIG staff on the issues to ensure a full understanding of the problems they had identified. I was not personally involved, however, in the development of the first DHS OIG semi-annual report (SAR) to Congress. As the former Acting Inspector General for FEMA, I was responsible for the development of the FEMA OIG SAR for the period 10/1/02-02/28/03.

(2) Each of these annual performance plans identified our on-going work regarding the NCS Pearson contract. The audit's extended duration relates to the time entailed to complete the DCAA audit (May 2004), the lack of TSA records and state of TSA records reviewed to conduct the audit, and early staffing limitations in the OIG.

(3) Yes, the AIGA briefed the former Inspector General and me on the results of the OIG review of the proposed settlement. The settlement review is discussed in response to question a.

Post-Hearing Questions Submitted by
Senator Daniel K. Akaka
For the Nomination of Richard L. Skinner to be
Inspector General, Department of Homeland Security
July 18, 2005

Human Capital Management

1. DHS was given broad flexibility to change its personnel system. However, this system does not apply to the Office of Inspector General (OIG). What are the human capital problems facing the DHS OIG, and how do you plan to address them? Should the DHS OIG be covered by the new DHS personnel system? Are other flexibilities needed by the DHS OIG?

   Answer: DHS OIG currently is not able to participate in the new DHS personnel system because the Inspector General, under the IG Act of 1978, as amended, has personnel authority independent of the Secretary's but subject to certain provisions of Title 5, United States Code. The human capital problems facing the DHS OIG are similar or the same as those that confront all federal government managers, particularly in the area of recruitment. The new DHS personnel system provides personnel flexibilities that, indeed, would be valuable to the OIG. We are working with the President's Council on Integrity and Efficiency to present an OIG-wide proposal to Congress, which would allow the OIGs to opt into the new personnel system.

DHS IG Issues

2. According to a Government Accountability Office (GAO) report issued on Friday, July 15, 2005, 24 major federal agencies have weaknesses in their information security systems. Ironically, DHS — the nation's lead agency on cybersecurity — is one of those agencies. What is your office doing to ensure that DHS networks are secure?

   Answer: Networks, as the data communication links that enable computer systems to communicate with each other, have been recognized as an integral part of the department's critical infrastructure. As such, network security has been identified as a significant risk and therefore has been a focal point in the development of our annual audit plan. We have conducted a number of audits, which have focused on the security of DHS networks. In June 2004, we issued our report, which addressed the security controls over DHS wireless networks. This report identified issues and made recommendations to improve the security measures to protect its wireless networks. In November 2004, we issued our second report that addressed the security over remote access to DHS computer systems and data. This report also identified issues and made recommendations necessary to strengthen network security. Later, in April 2005, we evaluated whether the Homeland Security Data Network, as being implemented, met functional security

requirements. We are concluding our review of network security throughout DHS. This review evaluated network security controls at four of the department's organizational components. This review included vulnerability assessments to evaluate the effectiveness of controls implemented on selected networks. Finally, we are also concluding our review of the department's US-VISIT program. As part of this review, we conducted vulnerability assessments of the DHS networks that support this major application. While most of these efforts have focused on sensitive but unclassified networks, much work has been done on classified intelligence systems. Vulnerability assessments, similar to those performed on SBU networks were conducted on networks supporting DHS intelligence functions. Finally, network security plays heavily in our audit planning for FY06.

3. As you know, GAO has placed two DHS programs and operations on its High-Risk List. They are: establishing appropriate and effective information-sharing mechanisms to improve homeland security and implementing and transforming the Department. If confirmed, what steps will you take to remove these areas from the High-Risk List?

Answer: My office's latest report on Major Management Challenges Facing the Department of Homeland Security, issued December 2004, also identifies these issues. Under the Border Security area, we identified the need to provide timely, accurate, and complete intelligence to support border security operations, and noted that integrating the multiple data systems, including the various terrorist watch list systems, will be a major challenge. We also noted that integrating DHS' many separate components into a single, effective, efficient, and economical department remains one of DHS' biggest challenges. These challenges are a major factor in setting DHS OIG priorities for audits, inspections, and evaluations of DHS programs and operations. For example, we have issued several reports and testimonies covering system and operational integration issues, and our current performance plan includes reviews of DHS systems for (1) sharing intelligence, (2) procurement, (3) information technology, (4) financial management, (5) human capital management, and (6) grants management. We plan to continue to focus our attention on these issues in future years as well. These efforts are designed to focus the department's attention on problems and weaknesses, the correction of which will help facilitate the department's removal from GAO's High-Risk List.

Whistleblower Protections

4. In response to my question on whistleblower protection for DHS employees, you said that you rely on whistleblowers and the Whistleblower Protection Act to do your job. As you know, TSA screeners do not have the same whistleblower protections as other DHS employees, including appeal rights to the Merit System Protection Board. Do you believe TSA screeners should have the same whistleblower protections as other DHS employees, and why?

Answer: While in theory we believe that all government employees should be afforded the same rights and protections as other government employees, we recognize that there were valid reasons for not conveying those rights to TSA screeners when TSA was first created, due to its unique mission and the need for immediate deployment to our nation's airports. We have not had an opportunity to study whether, almost three years later, the Congressionally mandated withholding of those protections and rights from TSA screeners retains its validity.

5. You testified that the Office of Special Investigations at DHS pursues all whistleblower allegations. When was this office created, and how many whistleblower cases have been reviewed by this office for each of the fiscal years it has been in operation?

Answer: The DHS OIG Special Investigations Division (SID) was originated as a Headquarters component in conjunction with the departmental merger on March 1, 2003. To date, SID has reviewed a total of 35 Whistleblower allegations (15 in 2003, 9 in 2004, and 11 in 2005). Of those 35 allegations reviewed, three became full investigations. One is closed and currently there are two open Whistleblower investigations being conducted by SID. The remaining 32 allegations were either returned to the Office of Special Counsel for their action or to the affected DHS component (TSA, ICE OPR, etc.) In general, the reasons for return or referrals of these allegations were the following: WB complaints involving Prohibited Personnel Practices were referred to OSC for review as this is their purview and they have primary investigative responsibility; some complaints were closed or referred back to the DHS component because the WB was anonymous; the complaint was too general or vague; and one complaint was closed because the WB refused to submit to a follow up interview with OIG so that the facts of the allegation could be clarified.

6. In response to the pre-hearing questions, you said you would produce a short pamphlet educating employees of their whistleblower rights and protections. As you know, the Whistleblower Protection Act places restrictions on who may receive disclosures of classified information. There are no restrictions in the statute as to who may receive other types of information. Given the use of classified information, sensitive security information, law enforcement sensitive information, and information for official use only, among others at DHS, will your proposed pamphlet explain the different rules in place for disclosing violations of law, rule, or regulation that involve these various types of information?

Answer: Yes, we intend to make the pamphlet a useful reference for employees. As the question notes, the Whistleblower Protection Act places restrictions on who may receive disclosures of classified information, but does not address whether restrictions can be placed on disclosures of other types of sensitive but unclassified information. We will work closely with the Office of Special Counsel and, as necessary, with the Department of Justice to make sure the pamphlet is accurate and informative.

As there are currently no restrictions in the statute as to who may receive other types of information, such as SSI, law enforcement sensitive, FOUO, etc., our pamphlet will not propose different rules for each of these categories, unless of course DHS has issued rules and then we will reiterate those rules in our pamphlet. It is not our function to specify the application of different disclosure rules for different types of information unless a DHS policy has been issued or unless there is a change in the statute. Our proposed pamphlet will simply say that all OIG agents have security clearances and are able to field allegations involving FOUO, sensitive, classified, and law enforcement sensitive information at the appropriate levels.

The OIG, Office of Investigations is fully capable of receiving, processing, reviewing, and investigating whistleblower information that is classified in nature or law enforcement sensitive. Our Special Agents assigned to our Special Investigations Division are all federal law enforcement officers with top-secret security clearances. The OIG has investigative authority relating to all organizational elements of the Department of Homeland Security (DHS), to include, the U.S. Secret Service, U.S. Coast Guard, Immigration and Customs Enforcement, Customs and Border Protection, Transportation Security Administration, the Office of Science and Technology and other elements. The Whistleblowers could fully present their allegations to the OIG, without the fear of making unauthorized disclosures. Classified investigative reports prepared by the OIG would be provided to the Directors of the DHS, organizational elements who have adequate classification to review and act upon these reports. Other disseminated reports where required would be properly redacted prior to distribution.

7. According to a July 6, 2005, article in Government Executive, DHS is in the process of drafting a list of mandatory removal offenses for its new personnel system. One such offense would be the prohibition on employees disclosing sensitive law enforcement or confidential information. What is your opinion on this provision, and what impact do you believe such a change will have on the willingness of employees to blow the whistle?

Answer: While Federal employees have long been encouraged to "blow the whistle" on illegal or wasteful activities in the Government and offered protection against reprisal for doing so, we do not believe this gives the employee the right to knowingly disclose sensitive law enforcement or confidential information to anyone, including the Congress. I have not examined any such provision and hesitate to offer an opinion in the abstract. Such a provision, if poorly drafted, could present an unconstitutional restriction on free speech. DHS, however, must be able to protect sensitive law enforcement or other sensitive but unclassified information to discharge its mission effectively. Obviously, any such provision must balance these potentially competing considerations. Furthermore, the demarcation between what information is classified, and whose unauthorized disclosure could be criminal, and what information is labeled sensitive, and therefore potentially publicly disclosable by a whistleblower, is not always clear. At the minimum, no employee can be punished for disclosing information, regardless of its sensitivity or

classification level, to the Office of Special Counsel or to the Office of Inspector General, so long as the employee reasonably believes that the information evidences a violation of law, rule or regulation or the other standards set forth in the Whistle Protection Act. DHS must tread very carefully in drafting such a mandatory removal offense lest it cast an unacceptable chill on an employee's willingness to come forward as a whistleblower.

8. Last year, the DHS OIG investigated allegations that Federal Air Marshals (FAMs) inappropriately disclosed sensitive security information (SSI) to the press. According to FAM policy, employees are prohibited from releasing sensitive or classified information unless authorized, and are subject to disciplinary action if they violate the policy. Did the OIG investigation determine if the FAMs are protected by the Whistleblower Protection Act and whether SSI information may be disclosed to the press if it is made while blowing the whistle?

Answer: The DHS OIG received this complaint on 03/02/05. After a thorough review of the complaint, we referred the allegation to the U.S. Immigration and Customs Enforcement, Office of Professional Responsibility, on 03/19/05 with a response requested. To date, no response has been received from ICE OPR. As we did not conduct an investigation, the OIG did not address the issue of whether the FAMs are protected by the Whistleblower Protection Act or whether SSI information may be disclosed to the press if made while blowing the whistle. Also, we performed a review to determine whether FAM employees were retaliated against for talking to the press. We found no evidence of retaliation against FAM employees for talking to the press or otherwise disclosing sensitive information.

Statement of Brian D. Miller
Before the United States Senate
Committee on Homeland Security and Governmental Affairs

Chairman Collins, Senator Lieberman, and Members of the Committee, thank you for the opportunity to appear before you today. It is an extraordinary honor and privilege to be the President's nominee to serve as the Inspector General of the General Services Administration. I would also like to thank Senators Warner and Allen from my home state of Virginia for their kind introductions. I really appreciate their support throughout this nomination process.

If you will permit me, I would like to take a moment to introduce the members of my family. My wife, Mary Frances, and our children, Andrew and Rosemary, are here with me today.

Almost my entire professional life has been dedicated to public service. I have served in a number of senior positions in the United States Department of Justice and elsewhere. For the last three years, I have served as the Counsel to the United States Attorney for the Eastern District of Virginia, who is Paul J. McNulty. As part of the leadership team, I participated in the senior management and major prosecutorial decisions of the office and in the establishment of office initiatives and priorities, such as the recent procurement fraud initiative.

For over a decade, I have served as an Assistant United States Attorney handling many cases, large and small. It was my privilege to have been involved in some of the most important criminal cases of our time, such as *United States v. Moussaoui* and other terrorism cases. Recently, I also assisted in *United States v. Hurwitz,* which is the first major prosecution of a physician illegally distributing oxcycontin. I have also had the privilege of serving as a Special Attorney to the Attorney General in a number of cases.

During the 2001 transition, I was called on to serve as Senior Counsel to the Deputy Attorney General (Robert Mueller and Larry D. Thompson) and the Special Counsel on Health Care Fraud. As Senior Counsel, I advised the Attorney General and Deputy Attorney General on transition issues, regulatory matters, and pending litigation. As Special Counsel on Health Care Fraud, I was charged with the oversight of the United States Department of Justice's health care fraud policy and litigation, both civil and criminal. Additionally, I had the privilege of representing the United States at treaty negotiations in Geneva, Switzerland, on matters relating to health care.

Now, as the President's nominee for Inspector General for the General Services Administration, I look forward to the opportunity to continue serving my country. The role of an inspector general has always been important, but it is even more so while so many of our nation's precious resources – our people as well as our money – are being devoted to winning the global war on terrorism. At this critical time, government agencies must continuously work to do more with less. The General Services

Administration is a key place for this Administration and this Congress to ensure that the taxpayers' money is being well spent and not misused.

I understand that the responsibilities of the position to which I have been nominated are great, and it is clear to me that this will be a challenging assignment. But I believe that the knowledge and experience I have gained in nearly two decades of public service have prepared me for the new challenges I will face if confirmed as Inspector General of the General Services Administration. My experience as a prosecutor and familiarity with United States Attorneys' offices, for example, should be of great assistance in referring cases for prosecution. The ultimate weapon against waste, fraud and abuse is criminal prosecution. Criminal prosecution will deter those tempted to defraud the government. As Benjamin Franklin warned at our Nation's founding: "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the government."

If confirmed, I welcome the challenges of this position at this historic time, and I will work hard every day to carry out my responsibilities. I also look forward to working with you and with other Senators and the Members of Congress to achieve our mutual goals for the operations of the General Services Administration.

Chairman Collins, thank you for allowing me to testify here this afternoon, and I would be happy to answer any questions that you and other members of the Committee may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)
   Response: Brian David Miller

2. **Position to which nominated:**
   Response: Inspector General, General Services Administration

3. **Date of nomination:**
   Response: January 24, 2005

4. **Address:** (List current place of residence and office addresses.)

   (Office) U.S. Attorney's Office
   2100 Jamieson Avenue
   Alexandria, Virginia 22314

5. **Date and place of birth:**
   Response: September 20, 1955, in New York, New York

6. **Marital status:** (Include maiden name of wife or husband's name.)
   Response: Married to Mary Frances Snipas

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
   Response: Hatboro-Horsham High School, 1969-73 (Diploma, 1973); Temple University, 1973-77 (A.B. 1977); Westminster Theological Seminary, 1977-81 (M.A. in Religion & M.Div. 1981); University of Texas School of Law, 1981-83 (J.D. 1983)

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)
   Response:

   Security Guard
   Westminster Security
   Philadelphia, PA
   1978-80

   Legal Intern
   Davis & Davis
   Austin, Texas
   1982-83

   Summer Associate
   Atwood, Malone, Mann & Turner
   Roswell, N.M.
   1983

Associate
Atwood, Malone, Mann & Turner
Roswell, N.M.
1984-86

Associate
Yates, McKee & Frenzel
Orange, California
1986-87

Deputy General Counsel
U.S. Commission on Civil Rights
Washington, D.C.
1987-90

Senior Attorney-Advisor
U.S. Department of Justice
Washington, D.C.
1990-93

Assistant U.S. Attorney
U.S. Attorney's Office
Eastern District of Virginia
Alexandria, Virginia
1993 to date

Senior Counsel to the Deputy Attorney General
U.S. Department of Justice
Washington, D.C.
2001-02

Counsel to the U.S. Attorney
Eastern District of Virginia
Alexandria, Virginia
2002 to date

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.
Response: None.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.
Response: None.

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Response: Member, ABA, 1983-86; Member, Federal Bar Association, 1988-89; Member, State Bar of Virginia, D.C., California, New Mexico; Federal Bar Memberships: District of N.M., Central District of California, Eastern District of Virginia, Fourth, Ninth, and Tenth Circuit Courts of Appeals; Member, Federalist Society, 1992-93; 1998-99; Member, New City Fellowship (Presbyterian Church in America); Member, Home School Legal Defense Association; Member, United States Chess Federation, 1994-2000; Member, Virginia Chess Federation, 1994-2000.

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.
Response: None.

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.
Response: Petition Captain for John Warner for Senate, 2002; Member, Lawyers for Bush/Cheney (participated in one weekend event in 2000); Member, Fredericksburg Republican Committee, 1994-present, and participated in activities of the committee, including election efforts on behalf of Republican candidates.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.
Response: $50 to Victory 2004 (Republican Party of Virginia)

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Response: Awarded 1996 Director's Award from the Executive Office for United States Attorneys for Superior Performance as an Assistant United States Attorney in *U.S. v. ESDI, Inc., et al.*; awarded performance and special act awards at the U.S. Department of Justice and U.S. Attorney's Office; full athletic scholarship, 1973-77.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Response:
United States v. Virginia Psychiatric Company, 45 United States Attorneys' Bulletin 35 (1997).
Co-Author, *Fiddling While Rome Burns: A Response to Dr. Hensler*, 75 Judicature 251 (1992).
Co-Author, *End "Judicialmandered" Redistricting*, Wall Street Journal at 26 (Feb. 12, 1986).
Developing a State Jurisprudence Under Michigan v. Long, 12 Am. J. Crim. L. 99 (1984).
Book Review, *Victims and Offenders*, 11 Am. J. Crim. L. 223 (1983).

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

Response: Provided training to IG agents at the IG training center in Rosslyn, Virginia, (October 23, 2003); Luncheon speaker to the Health Lawyers Fraud and Abuse Practice Group of the American Health Lawyers Association (September 2003); Panelist for the American Hospital Lawyers Association (February 14, 2004); Panelist for the Virginia Health Care Association (February 25, 2004); Made public presentations regarding the USA PATRIOT Act to various community groups on behalf of the United States Attorney; Made presentations on *qui tam* litigation to various groups, including the Federal Bar Association's Healthcare Fraud and Abuse Seminar in San Antonio, Texas, on May 5, 2000.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

Response: I believe I was chosen on the basis of my background, experience, education, and training.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

Response: I believe that my years of experience in supervising audits and investigations of procurement, grant, and healthcare fraud as an Assistant United States Attorney qualifies me for this position. Additionally, my experience in prosecuting criminal and civil cases will provide me with invaluable background for referrals from the office to United States Attorneys' offices and the Department of Justice. My experience assisting in the management of the United States Attorney's office for the Eastern District of Virginia and the Department of Justice (as Senior Counsel to the Deputy Attorney General) provides me with the background to manage the office. My seventeen years of experience in senior positions in the federal government provides me with an extensive knowledge of the federal workplace and government operations. Last, my experience working with offices of other inspectors general provides me with a familiarity of the issues and problems that I may face in this position.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?
Response: Yes

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.
Response: No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?
Response: No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?
Response: No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?
Response: Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.
Response: None

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration

and execution of law or public policy other than while in a federal government capacity.
Response: None

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?
Response: Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.
Response: No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.
Response: No, with the sole exception that I was arrested once as a teenager (18) and released with all charges dropped.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.
Response: Yes, two civil lawsuits. First, in July 2003, a civil action was brought against me as a prosecutor by Calvin Dyess, who is serving a life sentence for leading a drug trafficking conspiracy. The court dismissed the action as frivolous on January 2, 2004. Second, my wife and I filed a civil suit for property damage after the gas company ruptured our sewer line when it installed the gas line. The case settled around 1995.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.
Response: None

AFFIDAVIT

Brian D. Miller being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 26th day of January, 2005

Melissa Vieto
Notary Public
My commission expires Sept. 30, 2005
City of Alexandria
State of Virginia

U.S. Senate Committee on Homeland Security and Governmental Affairs Pre-hearing Questionnaire For the Nomination of Brian David Miller to be Inspector General, General Services Administration

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as Inspector General (IG) of the General Services Administration (GSA)?

   Response: I believe the President nominated me to serve as GSA's Inspector General on the basis of my record of integrity and demonstrated ability as a federal prosecutor and senior official in a variety of federal positions over the last 18 years.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

   Response: No.

3. What specific background and experience affirmatively qualifies you to be Inspector General of GSA?

   Response: For over a decade, I have served as an Assistant United States Attorney and supervised audits and investigations of procurement, grant, and healthcare fraud. By prosecuting criminal and civil cases, I have gained invaluable background for referrals from the Office of the Inspector General (OIG) to United States Attorneys' offices and the Department of Justice. The ultimate weapon against waste, fraud and abuse is criminal prosecution, and by ensuring that more cases are prosecuted, the OIG will have an important deterrent effect throughout the government procurement industry. My experience assisting in the management of the United States Attorney's office for the Eastern District of Virginia (as Counsel to the United States Attorney), the Department of Justice (as Senior Counsel to the Deputy Attorney General) and the Civil Rights Commission (as Deputy General Counsel) provides me with the background to manage the Office of the Inspector General. Eighteen years of experience in senior positions in the federal government have given me extensive knowledge of the federal workplace and government operations. Finally, I have worked with agents from several other OIGs and gained a familiarity with the issues and opportunities that face the IG community in general.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as Inspector General? If so, what are they and to whom have the commitments been made?

Response: No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

Response: I am not aware of any such issues.

II. Role and Responsibilities of Inspector General

6. What is your view of the role of Inspector General of GSA?

Response: Since the Inspector General Act of 1978 established Inspectors General, IGs have played a critical role in identifying misuse of the taxpayers' money and initiating countless successful criminal prosecutions and civil actions. The Inspector General of GSA should perform this critical role by identifying and preventing fraud, waste, and abuse in the agency's programs and operations and to promote economy, efficiency, and effectiveness within GSA. This responsibility is important for every IG, but it is even more important for the GSA IG because so much of what GSA does – from federal buildings to government-wide procurement programs – has an impact across every agency of the government and thus enhances (or detracts) from the ability of the government to serve the people of the United States. The IG, of course, must also keep the GSA Administrator and the Congress informed of problems in GSA programs and operations.

7. In your view, what are the major internal and external challenges facing GSA? What do you plan to do, specifically, to address these challenges?

Response: GSA faces significant challenges, and, if confirmed as IG, I would endeavor to analyze each one. One such challenge is the speed at which new technologies are introduced. Presently, the procurement process for new technologies that would increase productivity, efficiency and responsiveness is too slow. By the time the government introduces some new technologies, they are obsolete – or a decade behind the private sector. This must be addressed in order to bring the government into the 21st Century. Other challenges certainly exist, but at this time I have met less than a handful of GSA officials and have had only a glimpse of those challenges. In general, as Inspector General of GSA, I would work hard to prevent and detect fraud, waste, and abuse in the agency's programs and operations and promote economy, efficiency, and effectiveness within GSA. In fulfilling this mandate, I would conduct and supervise independent and objective audits and investigations relating to GSA programs and operations, and review and make recommendations regarding existing and proposed legislation and regulations that may affect the agency.

8. How do you plan to communicate to the GSA IG staff on efforts to address relevant issues?

Response: Open and effective communication is essential in any organization. If confirmed as IG, I will employ multiple channels of communication with IG staff and keep my door open as much as possible. While by no means small, the GSA OIG is small enough to employ a combination of face-to-face communication as well as less personal methods. I will meet with supervisors regularly, meet with every employee, and communicate directly with the staff in addition to relying on senior staff to communicate my priorities and expectations for the office. One of the most effective ways to communicate priorities is by developing initiatives, as we have done in the United States Attorney's office, and I would do the same at the OIG. I also plan to work closely with the OIG supervisors to keep myself informed of all current matters, including the implementation of written weekly status reports for significant issues and events.

9. What is your experience in assessing financial management controls and systems, and in evaluating the performance of programs and activities?

Response: My cases as an Assistant United States Attorney have involved audits of the financial management controls and systems of universities, hospitals, medical groups, and federal contractors and grantees. In almost every fraud case, an assessment must be made of financial management controls and systems already in place. This assessment enables the investigators and auditors to determine whether the controls and systems were deliberately bypassed, defective or ineffective. At times, a lack of separation of functions permitted the fraud to go undetected. The evaluation of the organization's financial management controls and systems is essential in determining whether there is sufficient evidence of criminal intent, a violation of the civil False Claims Act or to justify administrative action. Often an important component of an effective compliance program is to ensure that proper controls and systems are in place to prevent future fraud. After an assessment of the financial management controls and systems, an evaluation of the performance of the programs and activities often needs to be done to determine what impact the neglect or lack of the financial management controls and systems had on the program and activities of the organization.

On a more personal note, I have evaluated the performance and activities of small, large, and very large federal offices and programs. As Deputy General Counsel of the U.S. Commission on Civil Rights, I evaluated the performance and activities of the Office of General Counsel, which was a small office. As Senior Counsel to the Deputy Attorney General, I participated in the evaluation of the performance and activities of extremely large programs and divisions, such as Civil Division, Tax Division, Environment and Natural Resources Division, and others. As Counsel to the U.S. Attorney for the Eastern District of Virginia, I

participated in the evaluation of the performance and activities of a large organization.

As Senior Counsel to the Deputy Attorney General, I participated in reviewing and evaluating the performance and activities of many divisions of the U.S. Department of Justice and had a role in reviewing budget issues. Additionally, as the Special Counsel to the Deputy Attorney General on healthcare fraud, I assisted in managing the Department of Justice's use of the Health Care Fraud and Abuse Control Account. The Health Insurance Portability and Accountability Act of 1996 established a national Health Care Fraud and Abuse Control Program under the joint direction of the Attorney General and the Secretary of the Department of Health and Human Services (HHS), acting through the Department's Inspector General (HHS/OIG). Congress designed the program to coordinate Federal, state and local law enforcement activities with respect to health care fraud and abuse. The Act appropriates monies from the Medicare Trust Fund to an expenditure account, called the Health Care Fraud and Abuse Control Account, in amounts that the Secretary and Attorney General jointly certify as necessary to finance anti-fraud activities.

III. Policy Questions

General Background

10. As described in your biographical information, you served in the Justice Department on two separate occasions, in the early 1990's and again in 2001 and 2002. You have also been employed in the office of the U.S. Attorney for Eastern Virginia since 1993. Please describe your duties at the U.S. Attorney's office and in the Justice Department and identify and describe major cases and policy issues that you worked on during those assignments.

Response: My responsibilities at the United States Attorney's Office have been general and varied. I personally participated in the motions, hearings, trials, and appeals in a wide variety of matters including major terrorism cases (such as *U.S. v. Moussaoui*), fraud cases, drug prosecutions, Internet-related cases, violent crime as well as a variety of civil cases. I was also appointed a Special Attorney to the Attorney General in *U.S. v. Dyess et al.,* which was a multi-defendant drug conspiracy in which I led a team of three prosecutors appointed by the Department of Justice to represent the United States after the entire local U.S. Attorney's Office was disqualified by court order. In connection with this case, I had to investigate the original investigation.

In *Arar v. Ashcroft et al.*, I represented the former Attorney General in his individual capacity. Mr. Arar, who was removed to Syria for national security reasons, sued the Attorney General and others in the Eastern District of New York, alleging that he was tortured in Syria. I also represented the Attorney

General in his individual capacity in lawsuits filed by individuals detained in connection with the events of September 11, 2001.

Earlier in my tenure at the U.S. Attorney's Office, I handled numerous civil cases covering almost every area of federal practice (employment relations, federal tort claims, constitutional torts, Privacy Act/FOIA, and others). I also participated in the establishment of the affirmative civil enforcement unit and handled a number of successful actions to recover millions of federal dollars to the U.S. Treasury and Medicare Trust Fund. For example, I received the Executive Office for U.S. Attorneys Director's Award in 1996 for *U.S. v. Excel Corp. et al.*, which was an extremely complicated science fraud case. This was one of first and largest recoveries under the innovative research (SBIR) and the technology transfer (STTR) programs funded, in this case, by NSF, ARPA (now DARPA), SDIO (now MDA), Air Force and NASA. I also served as the healthcare fraud coordinator and established and led healthcare and science fraud taskforces. As needed, I served in a variety of other positions, such as the professional responsibility officer.

As Counsel to the U.S. Attorney for the Eastern District of Virginia, I participated in establishing and maintaining district-wide priorities (including the recent procurement fraud initiative), evaluating personnel, establishing units (such as the cybercrime unit), general management and trouble-shooting. Part of my duties included evaluating the performance and effectiveness of specific units, programs and initiatives.

As Senior Counsel to the Deputy Attorney General, I participated in managing divisions such as Civil, Environment and Natural Resources, Tax, Antitrust, and, at times, Office of Legal Counsel and the Office of Legal Policy. I also provided comments on a variety of legislative, regulatory and treaty issues. A large portion of my responsibilities centered on managing complex litigation. I also chaired and participated in multi-agency and multi-division task forces. As Special Counsel for healthcare fraud, I chaired a regular working group (with representatives from the FBI, Criminal Division, Civil Division, and the Executive Office of U.S. Attorneys) to evaluate the department's healthcare fraud efforts.

Management Issues

11. Describe your understanding of the Independence Standards set forth in Government Auditing Standards (known as the Yellow Book) and how these would be upheld in the GSA IG Office.

Response: I am familiar with the Independence Standards and regard them as the floor for conducting audits. Independence is the cornerstone for effective auditing and, if confirmed as IG, I would endeavor to maintain and strengthen the

independence of the auditors and OIG. As a federal prosecutor, I know the importance of independence and am accustomed to maintaining safeguards to preserve that independence.

12. How will you, as IG, determine and address the vulnerabilities and risks facing GSA?

Response: The starting point would be the existing reports of the OIG and the agency. The IG's semiannual reports and written reports note several vulnerabilities and risks facing GSA. The semiannual reports also describe specific audit and investigative activities as well as deficiencies, evaluations and recommendations. After reviewing these reports, the IG should consult those in the agency, the community of IGs and Congress to assist in identifying and eliminating vulnerabilities and risks. If confirmed as IG, I would pursue all of these methods and others to identify and assist the agency in taking steps to eliminate vulnerabilities and risks.

13. How can you identify areas to reduce the cost of GSA programs, offices, and activities in order to lower annual agency budgets?

Response: A high priority for me has always been making sure that the taxpayers are getting their money's worth. As an Assistant United States Attorney, I sought to ensure that the federal government was not being cheated and that the taxpayers were getting the best deal possible. In instances where the problem was waste, abuse or inefficiency, we notified the agency and asked them to remedy the problem. If confirmed as IG, my commitment to reducing costs and eliminating waste will be no less. Indeed, reducing costs at GSA is critical to reducing costs throughout the government because so much of GSA's activities impact the budgets of other agencies.

14. In addition to semiannual reports, how will you keep both GSA officials and the Congress concurrently informed of weaknesses in GSA programs, offices, and activities?

Response: If confirmed as IG, my goal will be to work closely with Congressional members and staff and GSA officials. Open and effective communication is key to keeping GSA officials and Congress informed. I welcome Congress's interest in GSA and its assistance with achieving the agency's goals.

15. How will you respond if you are forced to limit your work or alter your reports due to pressure from GSA officials who disagree with the results of your work?

Response: As a federal prosecutor and an attorney who has represented clients, it has been my professional obligation to give unvarnished, candid and often

unwelcome advice, and I do not believe that the role of IG would require anything less.

16. As IG, would you provide advisory services to GSA managers as well as reports of GSA deficiencies?

Response: As time and resources permit, an IG may provide advisory services as long as the independence of the IG is not threatened. OIG must always guard against being placed in a position in which its independence may be questioned. Nevertheless, under the Inspector General Act of 1978, an IG is to promote economy, efficiency and effectiveness in the administration of programs and operations. Providing advisory services may be one way to perform this duty mandated by the Inspector General Act. If confirmed as IG, I would examine ways of doing this without jeopardizing the OIG's independence.

17. Do you believe that IG participation on GSA task forces, committees, and working groups would impair your independence to audit the results of these organizations?

Response: The statutory independence of the IG is critical to the success of the IG, and anything that endangers that independence should be studiously avoided. As stated above, under the Inspector General Act of 1978, an IG is to promote economy, efficiency and effectiveness in the administration of programs and operations. Actual participation on task forces, committees, and working groups goes beyond providing advisory services and would have to be examined with even greater scrutiny. *See* Yellow Book 3.15. Nonetheless, to the extent presentations to agency groups promote good government within the agency, the OIG should participate in a manner that preserves the OIG's independence.

18. The IG's most recent assessment of significant management challenges at GSA identified management controls, information technology, procurement activities, human capital, aging federal buildings, and protection of federal facilities and personnel as vulnerable areas. Which of these challenges do you believe are the most critical and how will you ensure that GSA addresses needed improvements?

Response: These are all significant challenges at GSA, and it is essential that GSA make improvements in all of these areas. As I have not had any significant contact with GSA officials, I am not currently in a position to make these determinations. If confirmed as IG, I would endeavor to analyze each one. In March 2003, as the Committee is aware, the Federal Protective Service was transferred from GSA to the Department of Homeland Security. To the extent that GSA is still responsible for the protection of the life and safety of employees and public visitors in federal buildings, this would be the most critical.

19. What are the key performance measures that indicate whether GSA is accomplishing its mission?

Response: As stated above, I am not currently in a position to identify these performance measures and to assess whether GSA is achieving them.

20. What are the key performance measures of the GSA IG Office and how should its success be determined?

Response: The Strategic Plan for the OIG, dated October 2002, refers to several quantitative and qualitative performance measures. If confirmed as IG, I will analyze those measures carefully and assess the OIG's progress.

21. What changes would you like to make to the current GSA IG Office and why?

Response: If confirmed as IG, I will have to take inventory of the office to determine what, if any, changes need to be made. I would examine the office's priorities, programs, and operations to see how they are working, search for improvements, and look to build upon existing strengths. It would be premature for me to identify any particular areas.

22. Legislation introduced in the 105th Congress (S. 2167) would have required that all Inspectors General undergo an external review or evaluation of their activities and operations at least every three years.

Do you believe methods such as external review or independent evaluations called for in the legislation would be helpful in evaluating the performance of the Office of the GSA Inspector General?

Response: Oversight and review can be an extremely helpful tool to improving the effectiveness of any office. In that sense, I would welcome any independent or external reviews that would assist me in improving the performance of the office. Certain safeguards would be necessary, however, to ensure the IG's mission, the confidentiality of investigations and audits, and the integrity of prosecutorial decisions. Obviously, much would depend upon the precise nature of the review and details of the proposal.

Whistleblower Protection

23. The legal protection for whistleblowers recognized in the Inspector General Act of 1978 mirrors the merit system principle that employees are to be protected against reprisal for the lawful disclosure of information which the employee reasonably believes is evidence of a violation of law or of mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to

public health or safety. The legal protections exist because legitimate whistleblowers are an invaluable resource for the oversight of government operations.

a. If confirmed, what steps would you take to protect from reprisal or threat of reprisal individuals who bring complaints or information to the attention of your office?

Response: Whistleblowers are an important resource for the oversight of government operations, and they must be protected against retaliation. As your question recognizes, legal protection does exist for whistleblowers and the OIG should do everything possible to ensure that whistleblowers are protected under the law.

b. Do you believe additional policy guidance is necessary to ensure individuals who report concerns to the Office of Inspector General understand their statutory rights against retaliation for making protected disclosures?

Response: Whistleblowers should be protected from reprisals and retaliation, and, if confirmed as IG, I will examine whether further policy guidance is necessary.

Real Property Management

24. On January 25, 2005 the Government Accountability Office (GAO) placed Federal Real Property Management on its High-Risk List for the second time. In doing so, GAO noted that this issue was designated as High-Risk "due to long-standing problems with excess and underutilized property, deteriorating facilities, unreliable real property data, and costly space challenges." GAO further stated that "the underlying conditions that led to the [High Risk] designation continue, and more remains to be done to address these problems and the obstacles that prevent agencies from solving them." As the "landlord for the federal government," this should be a matter of great concern for the General Services Administration.

a. What can be done from an audit and investigation standpoint to improve GSA's management of its real property?

Response: I do not have the information necessary to form a response to this question. If confirmed as IG, I will examine this issue carefully and ensure that appropriate audit and investigatory actions are taken. Obviously, however, the OIG does not have the resources or authority to inspect every building or to fix every problem. But OIG review should

assist GSA in identifying and addressing the most critical property management issues.

b. What do you believe are the main challenges facing the Office of the Inspector General with respect to Federal Real Property Management?

Response: I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully.

c. If confirmed, how do you propose to address these challenges?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully. As a former prosecutor, however, I am accustomed to taking aggressive action against fraud, waste and abuse. More importantly, as a taxpayer, I have a vested interest in addressing these challenges.

25. Section 412 of the Fiscal Year 2005 Consolidated Omnibus Appropriations Act provides GSA with significant flexibility with regards to managing real property. This section states, in part:

> Notwithstanding any other provision of law, the Administrator of General Services may convey, by sale, lease, exchange or otherwise, including through leaseback arrangements, real and related personal property, or interests therein…

Some have maintained that this flexibility is necessary to help address problems of unused or underutilized real property. For example, in 2000, Congress passed the Southeast Federal Center Public-Private Development Act, which provided GSA similar flexibility to re-develop the Southeast Federal Center in Washington, D.C. This 55 acre site sat vacant for nearly 40 years, creating an unnecessary expense for the Federal government and acting as an eye-sore for the local community. Since the Act was enacted in 2000, the site is now being re-developed. Others, however, are concerned that with more flexibility, there may be less accountability of property management. In addition, while the 2000 Southeast Federal Center Act contained strict guidelines to ensure the Federal government would receive "fair compensation" and the best return for the Federal government, Section 412 of the FY2005 Omnibus Act does not seem to contain a similar requirement.

a. Do you believe the flexibilities contained in the Omnibus Act will help to improve GSA's management of Federal real property?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully. As a former prosecutor, however, I am accustomed to taking aggressive action against fraud, waste and abuse.

b. What measures do you believe GSA should put into place to ensure the use of these flexibilities is appropriate and are in the best interests of the Federal government?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully. As a former prosecutor, however, I am accustomed to taking aggressive action against fraud, waste and abuse and would do my best to ensure that the taxpayers are getting their money's worth.

c. If confirmed, what will you do as IG to ensure audit the use of this authority?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully and take appropriate action.

26. The GAO, in an August 2003 report, focused on the problem of vacant and underutilized properties owned by Government agencies, including GSA. GAO indicated that "[u]nneeded assets present significant potential risks to Federal agencies not only for lost dollars because such properties are costly to maintain but also for lost opportunities because the properties could be put to more cost-beneficial uses, exchanged for other needed property, or sold to generate revenue for the Government." (*See* GAO-03-122 and GAO-05-747). Last Congress, Senator Collins introduced the National Women's History Museum Act that would, as proposed by the President's Commission on the Celebrating of Women in American History in 1999, establish a physical location in the nation's capital for the celebration of and education about women's history. On March 3, 2005, Senator Collins re-introduced that Act. As an outgrowth of the Committee investigation on unused and under used properties, the site selected for the proposed Museum was the Annex to the Old Post Office Pavilion on Pennsylvania Avenue.

The Annex has been vacant for more than ten years and is slowly deteriorating. While the structure is owned by GSA, it was built for commercial use and, therefore, no Federal use has been proposed for the site. In 2002, when attempts by the National Women's History Museum, Inc. (NWHM), the non-profit created to establish and run a museum for women's history, failed, a letter signed by all

fourteen women Senators was sent to GSA expressing concerns about the process and proposing that GSA enter into a competition to redevelop the Pavilion Annex. Competition would have allowed the NWHM, and others who may be interested in the structure, to bid.

GSA's response to this letter was that GSA "considers the original [Old Post Office] OPO building and its Pavilion Annex as one structure" and that "[t]aking market responses and other objectives into consideration,... GSA may elect to develop the annex separately, collectively, or *even raze* the current structure." (Emphasis added). In response, Senator Collins introduced the National Women's History Museum Act, which would have directed GSA to enter into an occupancy agreement with the NWHM at fair market rate. Since the bill was first introduced, GSA has continued to resist working with the NWHM. As stated in the letter, GSA has indicated that it would prefer to redevelop the Annex along with the OPO as it considers the two "one structure." However, the OPO is a historic building which still houses Federal agencies, while the Annex has sat unused for more than 10 years. There has been no indication that GSA will obtain the necessary approvals to relocate the Federal tenants or redevelop the OPO. In addition, the two structures are only connected through an underground tunnel and can be physically severed.

What role can the IG play in ensuring any future plans for the site are in accordance with proper management of Federal real property and the best deal for taxpayers?

Response: GSA must maintain the proper management of federal real property and get the best deal for the taxpayers. Improper management should be remedied, and improvements and aggressive action should be taken. On the specifics, I do not have the information necessary to form a response to this question. If confirmed as IG, I will examine this issue carefully and ensure that appropriate audit and investigatory actions are taken. As a general principle, however, I agree that our nation's building resources should not sit idle and unproductive when good use can be made of them.

27. The proposed FY2006 budget for GSA includes $24.9 million for Coast Guard Consolidation and $13 million for St. Elizabeths West Campus Infrastructure. The St. Elizabeths West Campus was a case study highlighted in a Committee hearing held on October 1, 2003 relating to a Federal real property management investigation. West Campus contains 182 acres of land, 61 buildings, and 1.1 million square feet of space. It is also historic property. The Committee investigation demonstrated the advanced decay of the property and, according to GSA estimates, it would take between $440 and $495 million to restore.

a. Will the plans to locate the Coast Guard headquarters to St. Elizabeths include use of the entire West Campus facility? If not, what other uses are being considered for the site?

Response: I do not currently have this information.

b. What are GSA's plans to ensure there is no further deterioration of the property and historic buildings as the renovation plans proceed?

Response: As stated above, I am not currently in a position to have this information.

c. What has GSA determined to be the current costs of renovating and preparing the property for federal use?

Response: As stated above, I am not currently in a position to have this information.

d. Given the fact that the site contains not only historic buildings, but other historic features such as a civil war cemetery and historic vistas, are there plans to try and reopen parts of the West Campus to public use? If not, why not?

Response: As stated above, I am not currently in a position to have this information.

e. What will you do as IG, if confirmed, to ensure proper management of this historic site and that the process of Coast Guard consolidation is managed properly?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully. As a former prosecutor, however, I am accustomed to taking aggressive action against fraud, waste and abuse and would do my best to ensure that the taxpayers are getting their money's worth and the best use of their properties.

28. Title V of the McKinney-Vento Homeless Assistance Act directs federal departments and agencies to make surplus property available at no cost to nonprofit organizations or government agencies that intend to serve the homeless. State and local government and nonprofit organizations use surplus federal property to provide services to thousands of homeless people throughout the

country each year. Such services include shelter, transitional and permanent housing, case management, food pantries, job training, mental health and substance abuse treatment, and childcare.

Nonprofit and public homeless service providers have reported to Committee staff that they have encountered significant problems when attempting to acquire surplus federal real property. They report that often federal agency outreach to providers notifying them of available property is inadequate, or non-existent. According to the providers, agencies also attempt to take more desirable property out of Title V consideration through special legislation or by leading H.U.D., which screens the property, to believe that the property is unsuitable to serve the homeless. Additionally, they report that the process of applying for property under Title V is unnecessarily laborious for providers and federal agencies alike. In addition, once these applications are approved by HHS and sent to GSA to be completed, it can often take over two years to finally transfer the property to the organization completely. This serves as a deterrent and disincentive for homeless focused non-profits to acquire facilities and to provide their services, at a time when rates of family homelessness are growing.

a. If confirmed, what steps will you take to ensure that the process of notifying and transferring surplus properties to homeless service organizations is efficient and timely?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully and take appropriate action.

b. What recommendations would you support to eliminate lag time in this process?

Response: As stated above, I am not currently in a position to make this assessment. If confirmed as IG, I will examine this issue carefully.

Procurement Questions

29. In December 2004, the GSA Office of the Inspector General (OIG) released a Compendium of Audits of the Federal Technology Services' Regional Client Support Centers. In this and previous reports, the GSA OIG identified a number of deficiencies in Federal Technology Service procurement operations for FY2003 and FY2004, including improper contracting actions, inadequate competition, and insufficient documentation of price reasonableness.

a. On December 17, 2004, GSA Deputy Administrator David Bibb stated in response to the release of the audits that "since the initial shortcomings

were found in the first group of audits in 2003, GSA management has aggressively taken action to ensure that prior contracting irregularities—and the circumstances that allowed them to occur—are being remedied. Improvements are already evident in all regions, and we fully expect that all contracting operations moving forward will soon be compliant with the entire spectrum of rules and regulations." Do you agree with Deputy Administrator Bibb's assessment of GSA's response?

Response: It is critical that GSA maintain the integrity of the Federal Technology Service procurement operations. Improper contracting actions, inadequate competition, and insufficient documentation of price reasonableness should be remedied. Improvements and aggressive action should be taken, as the Deputy Administrator's comments indicate. At this time, however, I am not privy to the information that would form the basis of any assessment of Deputy Administrator Bibb's statement. If confirmed as IG, I look forward to taking appropriate action to obtain that information and to assist in the process of ensuring the integrity of GSA's procurement operations.

b. GSA's response to the problems associated with procurement operations at the Federal Technology Service has included the "Get It Right" plan, GSA's agency-wide integrated approach to improving acquisition management. How would you assess the progress of this initiative in overcoming the deficiencies identified in GSA's procurement programs?

Response: Again, it is critical that GSA maintains the integrity of its procurement programs. This is a serious issue and the "Get It Right" plan appears to be a serious effort to improve acquisition management. At this time, however, I do not have adequate information upon which to make an assessment of the progress of GSA's "Get It Right" plan. If confirmed as IG, I look forward to taking appropriate action to assess this initiative.

30. During the last year, the GSA Inspector General issued reports criticizing the GSA Federal Technology Service. In particular, numerous reports found that orders for goods and services were outside the scope of the underlying contract. The GSA IG played a key role in surfacing this problem. As Inspector General, how do you plan to help GSA management address these problems and other procurement activities and contract management issues?

Response: Under the Inspector General Act of 1978, an IG is to promote economy, efficiency and effectiveness in the administration of programs and operations. Providing advisory services may be one way to perform this duty mandated by the Inspector General Act. If confirmed as IG, I would examine ways of assisting in this important area this without jeopardizing any independence.

31. One of GSA's large programs—the multiple award schedules program—has grown tremendously with sales increasing from about $11.4 billion in fiscal year 1999 to about $32.5 billion in fiscal year 2004. While the multiple award schedules program enables federal buyers to acquire goods and services quickly and efficiently, concerns have emerged that supply schedule prices are higher than the volume-discounted prices available to other large-scale buyers in the marketplace. Concurrent with the growth in sales, we understand that the number of pre-award and post-award audits of price negotiation information—tools formerly used by the GSA IG to help ensure that GSA receives most favored customer prices—has decreased dramatically. What role do you believe the IG should play in overseeing multiple award schedules price negotiations?

Response: At this critical time in America's history, it is essential that the precious resources of the federal government not be lost to fraud, waste and abuse. Independent audits are critical to this mission. Obviously, this is a highly charged issue, and an important one. It would be premature for me to opine on this critical issue without becoming immersed in the details of this issue. If confirmed as IG, this is an issue to which I would devote due attention.

32. With regard to the multiple award schedules program, GSA management and IG officials collaboratively selected about 55 schedule contracts for pre-award audit during fiscal year 2004. The Federal Supply Service, which is responsible for the schedules program, provided the IG with $2 million to hire additional auditors to increase the number of audits completed. What is your position on using program funds to obtain resources for IG efforts? Given the growth in the schedules program, do you believe you have sufficient resources and authority to provide adequate oversight?

Response: If the appropriation for the GSA OIG is insufficient to provide adequate oversight of the programs for which that office is responsible, creative methods of funding additional audit activities should be welcomed as long as there are no strings attached. The independence of the OIG auditors must be preserved, and the quality of the audits must be above reproach. At this time, however, I am not in a position to determine whether the OIG has sufficient resources or authority to provide adequate oversight of the multiple award schedules program.

33. We understand that concern about interagency contracting is not limited to the federal supply schedule program, but applies equally as well to government wide acquisition contracts and other interagency vehicles. Additionally, in its report, *A Progress Report to the President, Fiscal Year 2003,* the inspectors general identified procurement and grant management as a major management challenge

at 20 of 31 agencies reviewed. How will you work with other oversight agencies, such as the Government Accountability Office and other inspector generals, to identify ways to improve procurement processes more generally, and in particular, those that cross organizational boundaries?

Response: Marshalling all of the resources of the government to improve procurement and grant management is essential, as is concentrating the investigative and audit resources of the federal government to detect, prevent and prosecute procurement fraud. As the point person on United States Attorney Paul J. McNulty's procurement fraud initiative, I am already working with other IG offices and agencies in procurement matters. As Senior Counsel to the Deputy Attorney General, I chaired and participated in interagency taskforces. I am not threatened by crossing organizational boundaries and welcome the opportunity to work with other agencies.

34. The adequacy of the government's acquisition workforce, both in size and skill mix, has frequently been cited as a serious problem in government procurement. What is your view on this issue and do you believe GSA has an adequate acquisition workforce? As the Inspector General, how would you focus audit resources on this issue?

Response: This is a highly charged issue, and an important one. It would be premature for me to opine on this critical issue without becoming immersed in the details of the issue. If confirmed as IG, this is an issue to which I would devote due attention.

IV. Relations with Congress

35. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Response: Yes.

36. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Response: Yes.

V. Assistance

37. Are these answers your own? Have you consulted with GSA or any interested parties? If so, please indicate which entities.

Response: These answers are my own. I have not consulted with anyone from GSA or any interested parties.

AFFIDAVIT

I, BRIAN DAVID MILLER, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 23rd day of March, 2005.

Notary Public

My commission expires on January 31, 2008

Alexandria, Virginia

October 21, 2004

The Honorable Susan M. Collins
Chair
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Brian D. Miller, who has been nominated by President Bush for the position of Inspector General, General Services Administration.

We have reviewed the report and have also obtained advice from the General Services Administration concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Miller is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Marilyn L. Glynn
Acting Director

Enclosure

Post-Hearing Questions Submitted by
Senator Daniel K. Akaka
For the Nomination of Brian Miller to be
Inspector General, General Services Administration
July 18, 2005

Human Capital Management

1. The GSA Office of Inspector General's (OIG) 2006 budget justification states that the OIG has had a difficult time hiring at mid-level positions and replacing and retaining qualified staff. Salaries, federal hiring requirements and constraints, and stiff competition from the private sector and other government agencies have impacted our ability to hire people with the necessary skills. If confirmed, what steps would you take to address this problem?

   Response: These are serious issues that affect hiring throughout the federal government. In the United States Attorney's Office, we faced similar constraints in hiring Assistant United States Attorneys. To offset the inability to pay higher salaries, we cultivated a sense of pride, accomplishment and mission in the office and its initiatives, which made others want to join and stay with the office. If confirmed, I would likewise attempt to emphasize the extraordinary sense of mission and accomplishment that already exists in GSA OIG and find ways to keep qualified staff motivated. I would explore establishing new initiatives that would re-energize long-time staff members. The reputation of the office is a significant recruiting factor, and I would emphasize that in hiring as well. My goals would be to maintain and improve workplace morale, increase recruitment and retention, staff development and training, recognition of staff accomplishments, and quality of life. Of course, I will seek cost savings wherever possible to ensure adequate funds to compensate and retain highly effective staff members. Ultimately, however, it may become necessary to seek additional funds to increase salaries.

2. On February 16, 2005, Government Executive reported that GSA envisions hiring from 12 to more than 100 contract employees to provide acquisition and contract administration support for GSA's 11 regional offices. Specific tasks to be handled by these contract employees will be recommending acquisition strategies, evaluating contractor proposals, and awarding contracts — basic duties traditionally performed by federal employees. This new nationwide support contract appears to be a significant move for the government's central procurement office. If confirmed, what steps will you take to ensure that conflict of interest concerns are addressed satisfactorily and taxpayer interests upheld with respect to GSA's use of contractors to supervise other contractors?

   Response: This is a serious issue that merits careful evaluation. I am not currently in a position to evaluate the proposal or to outline a particular course of action. If confirmed,

I would examine carefully this initiative, especially the written conflict of interest contracts (which I understand will be required) and, with the assistance of OIG staff, develop an audit strategy to assess how well conflicts of interests are being handled. As the article to which you refer notes, the OIG has been involved in the assessment of related issues in the past, and I would certainly expect that to continue.

GSA IG Issues

3. As you know, the Government Accountability Office (GAO) provides the Congress with a list of federal programs and operations that are especially vulnerable to waste, fraud, abuse, and mismanagement. Interagency contracting is one high-risk area within GSA's responsibility that is of particular concern to me. The volume of interagency contracting by GSA is approaching $32 billion per year. One of the types of purchasing is for information technology through the Federal Technology Service. The OIG has audited FTS contacting and has found that due to weak management controls, the government is not always getting the best value. Meanwhile, FTS's revenue from client agencies was $5.4 billion in 2004. If confirmed, what steps will you take to address this high risk area?

   Response: If confirmed, I would continue to audit FTS contracting and would evaluate GSA's senior management's corrective measures, which, according the most recent Semiannual Report to Congress, "were beginning to take hold." (Foreword by former Inspector General Daniel R. Levinson). I am not currently in a position to outline all of the steps the OIG would take but would work with OIG staff to develop a strategy to evaluate this program and to assist GSA in correcting deficiencies.

4. Bank of America recently lost five computer backup tapes containing personal information on an estimated 1.6 million federal employees, which was collected by Bank of America under a GSA purchase card program. Given the magnitude of this loss, what oversight do you believe the GSA OIG should have to ensure the protection of employee privacy rights in GSA-sponsored programs that involve personal information?

   Response: It is imperative that personal information of federal employees be protected. If confirmed, I would work with OIG staff to develop investigative audit strategies to provide appropriate oversight. Additionally, I would work with other Inspectors General and law enforcement agencies to develop a more effective method of reviewing these contracts and the performance of contractors who hold significant amounts of personal information of federal employees. It may also be appropriate to consider contract provisions or legislation that would impose heavy penalties on government contractors for the mishandling of private information. Such penalties would provide an appropriate incentive for the contractors to avoid such incidents in the future.

Whistleblower Protections

5. What role do you believe the Inspector General has in educating employees of their whistleblower rights and protections, and if confirmed, what steps will you take to execute this role?

   Response: Whistleblowers are an important resource for the oversight of government operations and must be protected from retaliation. As I mentioned yesterday, some of the most significant fraud cases that I worked on as an Assistant United States Attorney and as Special Counsel on Healthcare Fraud for the Department of Justice began with information provided by a whistleblower. Educating employees about whistleblower rights and protections is critical to the success of many investigations. I am not currently in a position to evaluate precisely what needs to be done, but, if confirmed, I would work with OIG staff, and perhaps the Office of Civil Rights in GSA, to ensure that the OIG is taking the proper steps to educate employees of whistleblower rights and protections. If confirmed, I would explore what could be done to incorporate more about whistleblower protections into the FraudNet hotline to make it even more visible so that every GSA employee and contractor is aware of the ways to report fraud, waste and abuse and that such reports will not result in adverse consequences.

6. In response to the Committee's pre-hearing questions, you said that the OIG should do everything possible to ensure that whistleblowers are protected under law. Please elaborate on this statement and explain how you believe the OIG should handle whistleblower retaliation cases.

   Response: As stated above, whistleblowers are in important resource for the oversight of government operations and must be protected from retaliation. I am not currently in a position to outline specifics, but, if confirmed, I would work with OIG staff, and if appropriate the Office of Special Counsel, to ensure that whistleblowers are protected under the law.

7. How do you differentiate the role of the IG with that of the Office of Special Counsel with respect to whistleblower retaliation claims?

   Response: The Office of Special Counsel appears to have primary jurisdiction over whistleblower retaliation claims. If confirmed, I would work with the Office of Special Counsel to ensure that lines of authority and jurisdiction are clearly understood, and I would explore adding a link to the Office of Special Counsel's website. As stated above, it is imperative that we protect GSA whistleblowers.

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