

**SELECT COMMITTEE ON
INTELLIGENCE**

UNITED STATES SENATE



**Additional Pre-Hearing Questions for
Robert P. Storch upon his nomination to be Inspector General of the National
Security Agency**

Duties of the Inspector General

QUESTION 1: What is your understanding of the scope of the programs and activities within the responsibility and authority of the Inspector General of the National Security Agency (NSA)?

The Inspector General has the responsibility under the Inspector General Act to conduct and supervise audits and operations relating to the programs and operations of the National Security Agency (NSA), to provide leadership and coordination and recommend policies to promote the economy, efficiency, and effectiveness in the NSA's programs and operations and to prevent and detect fraud and abuse in those programs and operations, and to keep both the head of the establishment and Congress fully and currently informed about problems and deficiencies and the necessity for and progress of corrective action to address such issues. As a practical matter, OIGs accomplish these functions through audits, inspections, reviews, and investigations that provide impactful findings and recommendations and address the full range of the agency's operations and the activities of its personnel and programs, and through ongoing communications with the head of the agency and the Congress related thereto.

QUESTION 2: To what extent do you believe that the timeliness and responsiveness of reporting is an element of the effectiveness of an Inspector General?

Timeliness and responsiveness of reporting are both absolutely critical to the effectiveness of an Inspector General. In my time as Deputy Inspector General at the Department of Justice Office of the Inspector General (DOJ OIG), I have learned that for a review to be truly useful in providing relevant information to the leadership of the agency and to Congress and impactful in helping to ensure that appropriate actions are taken to improve the integrity and efficiency of agency operations, the review must be conducted and issued in a timeframe that makes the results relevant and actionable. Investigations of misconduct by agency personnel or in connection with its programs and operations must be completed and reported to the agency in a timely fashion so that appropriate actions can be taken as a result both to address past misconduct and to enable the agency to take steps to address any related issues going forward. As the Deputy Inspector General at the DOJ OIG, I developed and put in place a tracking mechanism whereby our Divisions set milestones for completion of different stages of the report process and I am able to monitor their progress and have discussions with Division leadership as appropriate to help keep our work moving toward a timely completion. If confirmed for this position, I would similarly expect to work with the personnel at NSA OIG to make every effort ensure that we are completing our important work in a timely and, therefore, useful manner.

QUESTION 3: Do you intend to comply with the president's executive order on ethics? Will you promptly notify the committee if any waivers are granted?

I intend to comply with the President's Executive Order on ethics, and will promptly notify the Committee if any waivers are granted.

Protection of Whistleblowers

QUESTION 4: Do you believe employees and contractors at the NSA are adequately protected by current whistleblower rules and regulations?

Whistleblowers perform an invaluable service to their agency and the public when they come forward with information that they reasonably believe evidences wrongdoing, and they should never suffer reprisal for doing so. I have worked over the past five years to advance this fundamental principle, both as the OIG Whistleblower Ombudsperson at DOJ and in serving as the Chair of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Whistleblower Ombudsman Working Group. I have not had the opportunity in either of those capacities to examine in detail the protections afforded employees and contractors at the NSA or within the Intelligence Community more generally. Having said that, I believe that making sure that whistleblowers feel and are appropriately protected when they come forward with what they reasonably believe to be evidence of wrongdoing is a key function for OIGs. In my current position, I have welcomed the opportunity to work with the Members and Staff of the bipartisan Senate and House Whistleblower Caucuses on these issues and, if I am confirmed for this position, I would be pleased to work with the Committee going forward to address any issues impacting employees and contractors at the NSA.

QUESTION 5: If confirmed, what additional policies and processes will you establish or recommend to protect whistleblowers?

I have learned since initially being nominated for this position that the NSA OIG operates a Whistleblower Protection Program through its Investigations Division. I have not had an opportunity to study that program, much less to develop any additional policies or processes to enhance those efforts. However, I do feel strongly that education is critical in this area and, for example, at DOJ OIG, I developed an educational video, which is publicly available on a Whistleblower Protection page that we created with additional information and links to brochures and other resources for employees and contractors, all of which is readily available on our website at <https://oig.justice.gov/hotline/whistleblower-protection.htm>. I also prepared and worked with the Department to have posted at all DOJ facilities posters about whistleblowing and whistleblower protection, and prepared and had disseminated a brochure with specific information for Department contractors, subcontractors, grantees, and others. Should I be confirmed, I would anticipate making every effort to ensure that the OIG is providing information to employees and contractors regarding their rights and protections so that they can feel comfortable and assured in coming forward with information.

Additionally, the studies I have reviewed and discussions with experts in the field in which I have participated emphasize the importance of keeping whistleblowers informed to the greatest extent possible, and that such a sense of what is referred to as “institutional justice” is critical in demonstrating to potential whistleblowers that their disclosures are valued and that they will be handled appropriately. To further this effort at DOJ OIG, for example, I developed and put in

place a tracking system that informs me, as our OIG Whistleblower Ombudsperson, when we have responded to whistleblowers at different stages so that I am able to work with our staff to ensure that we are doing so in a timely fashion as appropriate. If confirmed for this position, I would anticipate working to ensure that measures are in place to ensure that whistleblowers are appropriately informed both generally and with regard to specific disclosures.

Access to Information

QUESTION 6: Please describe how you would resolve, including what remedies you would pursue, if a situation involves an NSA employee or contractor who refuses to provide access to records, reports, audits, reviews, documents, papers, recommendations or other materials requested by the NSA IG.

OIGs must have timely and independent access to all relevant books and records of the agency in order to carry out their functions in a thorough and credible way. If the agency over which we have oversight responsibility has the discretion to decide what information or records to give an OIG in carrying out our functions, or delays in providing us documents necessary to do our work, the OIG's reviews and investigations necessarily will be hampered and confidence in our work undermined. The recent action of Congress in passing the IG Empowerment Act affirmed the importance of this fundamental principle by clearly stating in Section 6(a) that each Inspector General is authorized to have timely access to all necessary records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the establishment which relate to the programs and operations with respect to which the Inspector General has responsibilities under the Act, except pursuant to any law that expressly refers to the IG and limits the right of access of the IG. Under Section 8G(d)(2) of the Inspector General Act, the Secretary of Defense, in consultation with the Director of National Intelligence, can prohibit the IG from accessing information available to an element of the IC, specifically including the NSA, based on a determination, communicated to the Senate and House Intelligence and Armed Services committees and with an opportunity for response from the IG, that such a prohibition is necessary to protect vital national security interests of the United States. Absent such an invocation under Section 8G, I believe that the OIG is entitled to the records and other materials necessary to do its work, and should agency leadership not promptly and satisfactorily resolve any refusal or undue delay in providing such records or other materials, I would notify Congress.

QUESTION 7: What is your view of the appropriate use of the NSA IG's subpoena authority?

I believe that subpoena authority is a fundamental tool for IGs to obtain documents on those occasions when compulsory process is necessary, consistent with Section 6(a)(4) of the Inspector General Act. This authority may not need to be used extensively, but it is important that it be available to IGs in order to ensure that they obtain all relevant records necessary to carry out their oversight functions.

Sources of Complaints

QUESTION 8: If confirmed, what steps would you take to inform individuals, within or outside of the U.S. Government, including contractors, of their opportunity to provide such complaints or information to the Inspector General?

I do not believe that an OIG can carry out its oversight responsibilities without receiving information from individuals, within and outside government, regarding the operations of the agency. We have recognized this at DOJ OIG, where under the leadership of our IG we have put in place a robust effort to notify people regarding the opportunity and means of providing complaints or information to the OIG, including detailed information available on our website, fraud awareness briefings conducted with Department contractors and components, brochures and other educational materials, and public appearances discussing the OIG's role and the importance of providing information to the office. We also worked with the Department to have posters regarding how to make disclosures posted in all DOJ facilities, and we have used social media to inform people more broadly about the efforts of the OIG and how to submit information to our office. If confirmed, I would explore with the current OIG staff the organization's efforts in this regard and work with them to implement any needed expansion of those efforts to ensure that we are making every effort to inform individuals, within or outside of the agency, including contractors, of their opportunity to provide such complaints or information to the OIG and the various available means of doing so.

Relationship to Other Inspectors General

QUESTION 9: Please describe your understanding, if confirmed, concerning NSA OIG's participation in the work of the Intelligence Community Inspectors General Forum and any measures you would recommend to improve its functions.

As Deputy Inspector General at the DOJ OIG, I have participated in the Deputies meetings of the Intelligence Community Inspectors General Forum (IC IG Forum), and attended the annual IC IG Conferences. These activities have given me an opportunity to participate in and observe some of the operations of the Forum, which among other things provides valuable information on cross-cutting issues, recognizes outstanding work by the OIGs within the IC, and facilitates detail opportunities across the IC community. One area where I understand there has been some work that I think may be a fertile source for future growth is in facilitating multi-OIG reviews in areas with issues or equities that extend across IC components. We have had recent experience with such joint reviews at DOJ OIG in our participation with three other OIGs (including two from IC components) in the review of the sharing of intelligence leading up to the Boston Marathon bombing and, more recently, in the joint review of the post-incident responses by the Drug Enforcement Administration and the Department of State following several fatal shootings in Honduras. I believe that facilitating such collaborative efforts where appropriate could further the work of the OIGs in this area and, if confirmed, will work to explore avenues to fully exploit the potential of the IC IG Forum.

Government Accountability Office

Pursuant to Section 348 of the Intelligence Authorization Act for Fiscal Year 2010, the Director of National Intelligence has issued a directive on the access of the Comptroller General to information in the possession of an element of the Intelligence Community.

QUESTION 10: Please describe your understanding of the role of the Government Accountability Office (GAO) in assisting Congress in oversight that relates to such information.

During my time at the DOJ OIG, I have learned that the Government Accountability Office (GAO) plays a critical role in providing information and analysis to assist Congress in performing its constitutional functions and ensuring the accountability of federal government agencies and that the taxpayer dollars that Congress appropriates are spent efficiently and wisely.

QUESTION 11: Please also describe your views on whether consultation or coordination by NSA OIG with the GAO presently occurs and, if not, what coordination would be desirable to assure full coverage of oversight requirements while avoiding any conflict or duplication of effort.

My understanding is that there has been consultation and coordination between NSA OIG and the GAO. I believe that the missions of GAO and the OIG are complimentary, and that both benefit from the greatest possible level of consultation and coordination, both to assure full coverage of oversight requirements and to avoid any conflict or duplication of effort. At DOJ OIG, we have cooperated to the greatest extent possible with GAO reviews and meet on a periodic basis with GAO to coordinate with regard to our relevant work, and we also have utilized the results of GAO reviews as a valuable source of information in our own work. With the wide range of potential work facing OIGs and the limited staffing and other resources with which to accomplish it, such coordination is particularly important in ensuring that unnecessary overlapping efforts are avoided, thereby ensuring that we are using our time and resources as effectively as possible.

Independence

QUESTION 12: If confirmed, please describe what actions you would take if a senior NSA or IC official sought to prevent you from initiating, carrying out, or completing any audit or investigation within the jurisdiction of the NSA OIG?

Consistent with Section 2 of the Inspector General Act, the OIG is established as an independent and objective unit with the responsibility of conducting and supervising audits and investigations relating to the programs and operations of the agency. The only basis of which I am aware for

preventing the NSA OIG from initiating, carrying out, or completing an audit or investigation within its jurisdiction would be for the Secretary of Defense, in consultation with the Director of National Intelligence, to invoke Section 8G(d)(2) of the Inspector General Act, which provides a mechanism for the Secretary to so act based on a determination, communicated to the Senate and House Intelligence and Armed Services committees and with an opportunity for response from the IG, that such a prohibition is necessary to protect vital national security interests of the United States. Absent such an invocation under Section 8G, if a senior NSA or IC official sought to prevent the OIG from initiating, carrying out, or completing any audit or investigation within its investigation, I would, if confirmed, immediately report the matter to the head of the agency and, if that did not resolve it promptly and satisfactorily, to Congress.

QUESTION 13: The NSA has dual reporting chains (DoD and IC); you are a political appointee; and you have statutory reporting obligations. How will you balance these competing equities and reporting obligations?

A principle that is sacrosanct for OIGs is that they report exactly what they find and make appropriate recommendations based thereon. This, of course, is entirely consistent with my many years as a federal prosecutor, where I followed the evidence where it led and brought charges accordingly. If confirmed as the NSA IG, I would report fully and accurately to the head of the establishment and to Congress, consistent with the reporting structure established in the Inspector General Act. IGs are chosen without regard to partisan affiliation as set forth in Section 3(a) of the Inspector General Act, and my own status therefore would not be relevant to the important responsibilities placed on the OIG. For their work to be credible and, therefore, useful, IGs must be, and must appear to be, completely non-partisan, and our work uninfluenced by politics in any way.

Inspector General Work Plan

QUESTION 14: If confirmed, how will you determine the investigations and audits that are necessary or desirable to complete each year? How will you engage this Committee to solicit topics for consideration?

I believe that most or all OIGs undergo a process whereby they determine their work plans based on assessments of risks, emerging events or issues, and input from the agency over which they have oversight, Congress, and other sources. If confirmed, I would welcome the opportunity to meet with Members and Staff of the Committee on an ongoing basis to discuss areas of interest and to facilitate a continuing dialogue as to areas of potential work for the OIG.

Referrals to the Department of Justice

QUESTION 15: Please describe your understanding of the authority and responsibility of the NSA OIG to refer matters to the Department of Justice concerning possible criminal conduct, including the conduct of current or former officials.

Pursuant to Section 4(d) of the Inspector General Act, each Inspector General is required to expeditiously report to the Attorney General whenever the IG has reasonable grounds to believe there has been a violation of Federal law. This is consistent with the general requirement set forth in Title 28, United States Code, Section 535(b), as well as Executive Order 12333 dealing with United States Intelligence Activities. I believe that it is standard and appropriate for OIGs to refer information regarding possible criminal conduct to DOJ for consideration of prosecution.

Consultations about Reports

QUESTION 16: Under what circumstances, if any, do you believe it would be appropriate for the NSA OIG to consult with officials in the NSA, or other officials of an IC element outside an office of an Inspector General, before issuing a report, regarding the findings and recommendations in the report?

I believe that, consistent with what I believe to be common practice across the OIG community, it is appropriate to provide the agency a draft copy of a report to ensure factual accuracy before the report is finalized. Additionally, I believe it is common and appropriate to provide the report to the agency in final form with recommendations a short time before issuance for purposes of classification and to allow the agency an opportunity to prepare a written response, which would be attached to the report and analyzed by the OIG as appropriate. Importantly, the decision regarding what changes, if any, should be made in response to factual accuracy or other substantive comments is and must be solely that of the OIG. OIGs also issue what are referred to as Management Advisory Memoranda to the agency when, during the course of audits, inspections, reviews, or investigations, they discover circumstances requiring the immediate attention of the agency or prompt corrective action.

QUESTION 17: Under what circumstances, if any, do you believe it would be appropriate for senior NSA officials to request that the NSA OIG not investigate or review a particular matter?

It is, I believe, appropriate and helpful to have good lines of communication with senior agency leadership, including the ability for the latter to raise any concerns or issues regarding the timing, usefulness, or impact of any proposed investigation or review. However, the ultimate decision as to whether or when to initiate any investigation or review must rest solely with the OIG consistent with its independent oversight role as provided in the Inspector General Act. As discussed in response to Question 12, to my knowledge, the only basis for preventing the NSA

OIG from initiating, carrying out, or completing an audit or investigation within its jurisdiction would be for the Secretary of Defense, in consultation with the Director of National Intelligence, to invoke Section 8G of the Inspector General Act, based upon a determination that such a prohibition is necessary to protect vital national security interests of the United States.

QUESTION 18: Under what circumstances, if any, do you believe it would be appropriate for senior NSA officials to request that the NSA OIG not issue a report on a particular matter?

As discussed in response to Questions 12 and 17, Section 8G of the Inspector General Act provides the only mechanism of which I am aware to prevent the NSA OIG from issuing a report, based upon a determination by the Secretary of Defense, in consultation with the Director of National Intelligence, that such action is required to protect vital national security interests of the United States.

QUESTION 19: Under what circumstances, if any, do you believe it would be appropriate for senior officials to request that the NSA OIG change findings, recommendations, or other pertinent material in a report on a particular matter?

As stated in response to Question 16, I believe that, consistent with what I understand to be common practice across the OIG community, it is appropriate to provide the agency a draft copy of a report to ensure factual accuracy before the report is finalized. Additionally, I believe it is common and appropriate to provide the report in final form with recommendations a short time before issuance for purposes of classification and to allow the agency an opportunity to prepare a response, which would be attached to the report and analyzed as appropriate. However, the decision as to what changes, if any, are appropriate to findings, recommendations, or other pertinent material in a report rests solely with the Inspector General.

QUESTION 20: Please describe your views on the appropriate relationship between the NSA OIG and the NSA Office of Congressional Affairs when communicating with the Congress.

Consistent with its direct reporting requirement to Congress, the OIG should have direct communications with Congress. While it may be appropriate for the OIG to inform the agency regarding such communications, that is a decision that would rest solely with the OIG.

QUESTION 21: What is your position on the role of the NSA OIG to monitor NSA adherence to Congressional intent and direction?

I believe that the OIG is responsible for conducting independent oversight over all of the operations of the NSA, including its adherence to Congressional intent and direction in carrying out its broad functions and mission.

QUESTION 22: Please describe your views on the appropriate relationship between the NSA OIG and the NSA Office of General Counsel when those communications involve legal issues.

An important provision under Section 3(g) the Inspector General Act is that each IG has access to legal advice from a counsel either reporting directly to the IG or another IG. While there may be circumstances under which it is appropriate for the NSA OIG's Counsel to consult with the NSA's Office of General Counsel regarding legal matters of mutual interest, it is important for the independence of the OIG that the IG is able to obtain independent legal advice regarding the operations of the OIG without relying on agency counsel for that purpose.

Major Challenges, Problems, and Priorities

QUESTION 23: In your view, what are the major challenges facing the NSA OIG?

I am not aware of any specific major challenges that currently are facing the NSA OIG. Of course, the NSA will be transitioning to being an entity with a Presidentially appointed Senate confirmed IG, which I believe presents significant opportunities for development of the OIG's independent oversight activities with the goal of improving the integrity and efficiency of the agency's operations with appropriate responsiveness to Congress. Also, as discussed in response to prior questions, I believe that it is important that the OIG, and indeed all OIGs, demonstrate through words and actions that they recognize the importance of whistleblowers to their work, and provide an atmosphere in which such individuals feel comfortable coming forward with information, and in which reprisal for doing so is not tolerated. It seems to me that this would be particularly important given the nature of much of the information that is dealt with at the NSA and within the IC.

Personnel and Budgetary Resources of the NRO OIG

QUESTION 24: If confirmed, what changes, if any, would you expect to consider or make in the present OIG with regard to organization, staff qualifications, training, budget, or other features relevant to the effective performance of the duties of the new statutory office?

I do not currently have sufficient information to assess what changes, if any, I would expect to consider or make if confirmed, regarding the organization or other features of the OIG, apart from taking whatever steps are necessary to ensure that the office is handling matters consistent with the principles set forth in the Inspector General Act and outlined in my responses to the Committee's questions. As is the case when entering any office, I would expect there to be a period in which I learn in detail about the operations of the organization and the issues it has faced, and that I would work with the team there on an ongoing basis to make revisions and improvements as necessary to ensure the quality and timeliness of our work. In order to inform

this process, and to encourage communications within the OIG, I would anticipate that, if confirmed, I would meet early on with personnel across the OIG to obtain their perspectives on the office and areas for potential improvement. This is something that I do with the IG on a regular basis at DOJ OIG, and have found to be extremely valuable in helping him to lead change within the organization.

I also firmly believe that there is nothing more important for an organization than attracting, training, and developing the best possible talent. For example, at DOJ OIG, I worked with the IG to create a new Director of Training and Development to enhance our training and development efforts across the organization. I am not now in a position to know whether or what changes in this area might be appropriate at NSA OIG, but I do believe that such efforts are essential for developing and maintaining the capacity to produce high quality impactful work.

Finally, I believe strongly in planning ahead, and looking forward as an organization so that investments in infrastructure, information technology, and other areas are made strategically, as opposed to being largely reactive. At DOJ OIG, we recently created and hired a Chief Innovation Officer, who reports directly to the IG and me, to look ahead to where we need to be in such mission critical areas and to provide expert advice to ensure that we are spending our resources wisely to get there.

QUESTION 25: Under what circumstances, if any, do you believe that the use of contractors to perform such functions is appropriate?

I believe that it is a common practice for OIGs to use contractors to perform financial statement and related audits, and also audits pursuant to the Federal Information Security Modernization Act (FISMA), both overseen and reviewed by OIG auditors. Additionally, there may be some technical support functions that can be performed by contractors, depending on the relative merits of using government employees or contractors for such work. Finally, there may be rare situations where particular expertise available in the private sector is not present within the OIG or the IG community, in which case it might be appropriate to consider utilization of a contractor to provide such services. However, as a general matter, I believe it is important that the core auditing, inspections, review, and investigations functions be performed by OIG employees.

QUESTION 26: In your view, are there any barriers or disincentives, including any created by personnel policies, that impede the recruitment or retention of qualified IG personnel? If so, please describe.

I do not have sufficient information to assess whether there currently are any barriers or disincentives in this area specific to the NSA OIG. Across the OIG community, I do believe that uncertainty in budgets makes planning difficult, including for personnel costs that constitute the greatest share of an OIG's budget. I believe that OIGs do important and interesting work, but consistent with my response to Question 24, it is important for the OIG to provide training and other opportunities for professional growth and development, and to encourage employee engagement across the board in order to create an environment that is attractive to the personnel

necessary to accomplish our mission, and I believe that this would be particularly important in conducting oversight at an agency with complex and sophisticated operations like the NSA.

QUESTION 27: Please describe how you will handle recusals for incoming OIG staff. Will you maintain the minimum floor established by OIG Management Directive 1-2?

It is important that OIG personnel uphold the highest ethical standards. If confirmed, I will work with the OIG Counsel and others to ensure that all appropriate recusals are effected, and at least the minimum floor established by OIG Management Directive 1-2 is maintained.

QUESTION 28: Please describe your views on the NSA OIG's role to oversee NSA support provided to the military commands.

I understand that support to the military commands is a critical part of the NSA's mission. The OIG has responsibility to conduct rigorous independent oversight over all of the NSA's operations in the performance of its mission.