

EMPOWERING AGENCY OVERSIGHT: VIEWS FROM THE INSPECTORS GENERAL COMMUNITY

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

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CONTENTS

Hearing held on January 15, 2014	Page 1
WITNESSES	
The Hon. Peggy E. Gustafson, Inspector General, Small Business Administration, Chair, Cigie Legislative Committee	
Oral Statement	5
Written Statement	8
The Hon. Michael E. Horowitz, Inspector General, U.S. Department of Justice, Member, Cigie Legislative Committee	
Oral Statement	13
Written Statement	15
Ms. Kathy A. Buller, Inspector General, Peace Corps, Member, Cigie Legislative Committee	
Oral Statement	19
Written Statement	21

EMPOWERING AGENCY OVERSIGHT: VIEWS FROM THE INSPECTORS GENERAL COMMU- NITY

Wednesday, January 15, 2014,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:33 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, DesJarlais, Gowdy, Woodall, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Tierney, Lynch, Cooper, Connolly, Speier, Duckworth, Davis, Horsford, Lujan Grisham, and Kelly.

Staff Present: Molly Boyd, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; David Brewer, Majority Senior Counsel; Ashley H. Callen, Majority Deputy Chief Counsel for Investigations; Sharon Casey, Majority Senior Assistant Clerk; John Cuaderes, Majority Deputy Staff Director; Jessica L. Donlon, Majority Senior Counsel; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Senior Professional Staff Member; Christopher Hixon, Majority Chief Counsel for Oversight; Caroline Ingram, Majority Professional Staff Member; Mark D. Marin, Majority Deputy Staff Director for Oversight; Ashok M. Pinto, Majority Deputy Chief Counsel, Investigations; Laura L. Rush, Majority Deputy Chief Clerk; Jonathan J. Skladany, Majority General Counsel; Peter Warren, Majority Legislative Policy Director; Jedd Bellman, Minority Counsel; Beverly Britton Fraser, Minority Counsel; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director; Elisa LaNier, Minority Director of Operations; Lucinda Lessley, Minority Policy Director; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; and Mark Stephenson, Minority Director of Legislation.

Chairman ISSA. Good morning. The committee will now come to order.

The Oversight Committee's mission statement simply is that we exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our sol-

emn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. Our job is to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

We are holding this hearing today to learn from leaders in the inspector generals community about the challenges they face and to learn the way that Congress can use legislation to support their work.

In our mission statement we talk about citizen watchdogs. It is a short mission statement, but it leaves out the 12,000 or so men and women of the inspectors general core, if you will. No greater source of sunlight on the Federal bureaucracy exists than those men and women who toil under the existing laws in which they must be independent, but they get their budget from the very people they must inspect.

They must be independent, but they often are not appointed and confirmed, but acting. They must be independent, but they cannot look beyond the agency they represent. They must be independent and effective, but they can only interview people who will voluntarily come before them or who are current employees of that agency.

These are some of the areas that Government Oversight wants to look at real reform in.

IGs play such a key role in improving Government efficiency and providing sunlight that this hearing is not just an opportunity for the committee to hear directly from men and women on the front lines, but in fact a real opportunity to begin shaping a legislative change that will build on the original IG Act.

IGs have proven to be one of Congress's best investments. In the last fiscal year, the IG community used their \$2.7 billion budget to identify potential savings to taxpayers, totaling \$46.3 billion. That means for every dollar in the IGs' budget, they have identified approximately \$17 in savings. That would be more than enough to justify a green eye shade accountant.

But IGs are more than green eye shade accountants. They are in fact a criminal investigation team within every agency. Often what they find cannot be quantified in dollars, but more often is quantified in the trust of the American people.

This committee, on a bipartisan basis, almost always says, in every hearing, waste, fraud, and abuse. People understand waste. They kind of understand fraud. They often miss that the abuse is an abuse of power; it is an abuse of the discretion that people are given behind the scenes. IGs are often looking at exactly that, abuse of Federal employees, abuse of the public, and the like. And this is not in dollars.

So today we are going to hear from three widely and highly respected IGs who have spent years examining programs at the Small Business Administration, the Justice Department, and the Peace Corps. I might note that these IGs do not oversee the largest budgets, but they oversee important agencies that are well understood by the public as having to have the trust of the American people. All these IGs have served on the legislative committees for the Council of Inspectors General on Integrity and Efficiency, an

agency that today serves more as a coordination and not as a leadership committee.

It is my goal, and I have shared this with members on both sides of the aisle, that CIGIE should in fact become a much more central and much more respected organization by the Executive Branch, one that we would hope the President would look to as a key place to ask questions about transparency and integrity in his or her administration.

On behalf of CIGIE and their representative agencies, our witnesses today will share their ideas and suggestions on how to improve the Inspector General Act, and I hope Congress can provide the IGs and their staffs with new tools for rooting out waste, fraud, and, once again, abuse.

One example, as part of this committee's jurisdiction and initiatives, is the bipartisan Data Act. The Data Act is not just about efficiency; it is about transparency and it is about providing tools throughout government that would allow inspectors general to find the kinds of waste and the kinds of cross-cabinet programs that often are overlooked. Many of them we have seen is the result of the Recovery and Accountability Transparency Board, often called the RAT Board, which tracks money not in one agency, but throughout all of the monies disbursed under the stimulus bill.

I often note that I did not vote, and was not given the opportunity to vote, for the stimulus in a positive way. But one of my predecessors ensured that the RAT Board, the IGs, and Government itself had monies in order to be accountable; and one of the great successes of the stimulus, or the Recovery Act, if you will, was in fact the Rock Center.

My ranking member and I continue to support the fact that that is not just a pilot experiment that showed promise once, but in reality something that any agency would say should exist. The only question is will it be a single cross-agency watchdog or will there be, once again, duplications of dozens or hundreds of these centers. Certainly, when we look at how to make it work best for CIGIE, how to make it work best for congressional accountability, and, in the long run, how to make it work best for the Office of Management and Budget, I hope that the tool will be in fact a central tool bought into by the President and by future administrations.

Congress can do more, though. During the 113th Congress, the committee has investigated several instances in which agency leadership undermined the effectiveness of the inspector general. This is not to say that the Obama Administration did it, because they simply happened to be those in charge today. In several cases agencies restricted the IGs' access to documents and witnesses. Yes, it is this current administration, but this is something that has to be changed not because of a particular cabinet officer, a particular officer, but because it is a growing trend that we need to reverse. If we are to have good oversight, we need our allies in the inspector general's office to be there for us.

I want to again thank the inspectors general for being here today. Thank you for agreeing to help us in the reform that we seek today. I look forward to a robust dialogue and I look forward to hearing the ranking member's opening statement, and I yield to the gentleman.

Mr. CUMMINGS. Thank you, Mr. Chairman, for calling this very important bipartisan hearing today.

Our 72 inspectors general are critical to ensuring that Federal agencies and programs are providing the very best possible value to the American taxpayer. Our committee, this Congress, and our Nation depend on the audits and investigations IGs conduct to ensure that funds are spent effectively and efficiently, to identify issues requiring additional oversight, and to craft legislation to strengthen the operations of our Government.

It is critical that inspectors general and their professional staffs have the statutory authorities they need to cast critical eyes over agencies and their programs. It is our committee's responsibility to review existing authorities, as we are doing today, to determine whether they enable the IGs to do the jobs we have entrusted them to do.

In 2008, our committee passed the Inspector General Reform Act, authored by Congressman Jim Cooper, to ensure that inspectors general are appointed solely on the basis of their professional qualifications without regard to party affiliation. The legislation also eliminated bonuses for inspectors general and adjusted compensation accordingly. That legislation also required the President's annual budget submission to identify the budget request for each inspector general office as a separate line item and it created in statute the Council of Inspectors General on Integrity and Efficiency. The Act was signed into law by President Bush in October of 2008.

Today we will hear testimony from inspectors general at the Department of Justice, the Peace Corps, and the Small Business Administration. Each presents thoughtful recommendations to strengthen the authorities available to IGs' Government-wide efforts. Each also addresses unique issues encountered in their interactions with the agencies they oversee.

I strongly support several recommendations we will hear today. In fact, H.R. 2146, the Digital Accountability and Transparency Act, which Chairman Issa authored and I cosponsored, passed the House in the last Congress and included provisions to exempt IGs from the Paperwork Reduction Act and the Computer Matching and Privacy Act. These are the kinds of bipartisan steps we should be taking to strengthen our IGs.

I have concerns, however, with some proposals that they have raised. In particular, I do not support granting our inspectors general unfettered power to subpoena individuals to compel them to provide testimony. This would give the IGs power that even the FBI does not have, and the use of that authority could, in some instances, impede criminal investigations and raise significant civil liberty concerns. To me, the single most important thing we can do is to support the IGs. To support them is to provide them with the resources necessary to carry out the authority they have.

I am deeply concerned about the impact of the budget cuts on all of our inspectors general. I am sure we will hear something about that this morning. The Small Business Administration's inspector general, for example, has a double digit vacancy rate and an ongoing hiring freeze. The Department of Justice's inspector general testified before the Senate last year that budget shortfalls had caused him to eliminate approximately 40 positions from his staff.

I look forward to hearing from our witnesses on ways to improve the IGs' authorities, as well as the impact that ongoing resource constraints have on their ability to conduct thorough investigations. I am also interested in knowing how they prioritize, under these circumstances, who they investigate and how they investigate.

I look forward to working with the chairman and all of our committee members to support the critical work of our IGs and, Mr. Chairman, with that I yield back.

Chairman ISSA. I thank the gentleman.

All members will have seven days to submit opening statements for the record.

We now welcome our distinguished panel of witnesses: the Honorable Peggy Gustafson is Inspector General for the Small Business Administration and Chair of the CIGIE Legislative Committee; a returning, often returning guest, the Honorable Michael Horowitz, is Inspector General for the Department of Justice and a member of the CIGIE Legislative Committee; and last, and definitely not least, Ms. Kathy Buller is the Inspector General for the Peace Corps and a member of CIGIE's Legislative Committee.

This is a little bit like what you would do on the other side. We, pursuant to the committee, would ask that you all rise and take the oath.

Do you solemnly swear or affirm that the testimony you will give here today will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Please be seated.

Let the record reflect that witnesses all answered in the affirmative.

My script always says in order to allow time, make sure you stay within five minutes. You are all pros; you are all good at it. Your entire opening statements are placed in the record. Try to stay close to the five minutes, because I know we have a lot of questions and we would like to have an active dialogue. But nobody is going to do a big bell if you run a little over.

Ms. Gustafson.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE PEGGY E. GUSTAFSON

Ms. GUSTAFSON. Thank you and good morning, Chairman Issa, Ranking Member Cummings, and the members of the committee. On behalf of the chair of the Council of Inspectors General on Integrity and Efficiency, CIGIE, I am honored to represent the federal inspector general community this morning and discuss opportunities to strengthen agency oversight through the community of inspectors general. As noted, I currently serve as the chair of the Legislation Committee of CIGIE.

Let me begin by thanking this committee on behalf of the entire IG community for your continuing support of our mission and your interest in our work. The support of this committee has been longstanding and bipartisan, and we are truly grateful for all of your support through the years.

CIGIE serves a leadership role and is the core of the IG community. Together, the work of the IG community has resulted in significant improvements to the economy and efficiency of programs Government-wide, with potential savings totaling approximately \$46.3 billion in fiscal year 2012. With our aggregate budget being approximately \$2.7 billion, as noted by the chairman, these potential savings represent about a \$17 return on every dollar invested in offices of inspector general.

Notwithstanding these results, offices of inspector general do face certain challenges. Our principal challenges pertain to independence concerns and to timely access to information. In recent years, CIGIE has been advocating for additional tools to alleviate these challenges and enhance our ability to do our jobs for the taxpayers.

The following are among the IG community's legislative proposals that we have been supportive of and sought through the years: relief from the Computer Matching and Privacy Protection Act, relief from the Paperwork Reduction Act, a limited FOIA exemption to protect sensitive information security data, and some technical amendments to the IG Reform Act of 2008.

CIGIE feels very strongly that offices of inspector general should be exempted from the Computer Matching and Privacy Protection Act and the Paperwork Reduction Act. These exemptions would enhance the independence of IGs and remove lengthy processes that are more aligned with the role of Government interactions with the public, rather than the oversight of the Government entity by the Office of Inspector General.

Since the Supreme Court's 2011 decision in *Milner v. Department of Navy*, IGs across the Federal Government have raised serious concerns about information related to Federal agencies' information security that may be unprotected from disclosure under FOIA. Although other FOIA exemptions apply to classified information on documents compiled for law enforcement purposes, right now no single exemption currently covers the extremely important category of documents that analyze, audit, and discuss in detail the information security vulnerabilities of the Federal Government, so we are proposing a very narrow exception to covering this information.

Finally, we do propose some technical amendments to the Act, Representative Cooper's bill of 2008, just some very specific technical amendments. As IG, I am grateful that IGs across the Government has a voice through CIGIE and have access to training and other resources that did not exist prior to the IG Reform Act. Through the Reform Act, IGs have an unprecedented degree of transparency in our annual budget requests, which help gratefully in assuring our independence.

That said, the IG community has been hit especially hard by uncertainty in the budget process and cuts to operating budgets. In general, all of an IG's budget is personnel, salary and expenses. So when you are under sequestration, when you are under a straight line that causes the type of personnel issues, as noted in your opening statements, where many of us have a hiring freeze and, as noted, Representative Cummings, I, right now, have a 17 percent vacancy rate in my office just to stay under the limits that I have been operating under in the last few years.

Even with these strains on our resources, the IG community has identified and addressed a number of issues that transcend individual agencies. CIGIE has reports on cybersecurity, suspension and debarment, the use of new media, hotline operations, and error; and all of these cross-cutting projects are always available on CIGIE's website.

Again, CIGIE's training and professional development mission has been addressed through our training institute, and in fiscal year 2012 alone this institute has delivered 55 training courses to 1677 students among the IG community, representing a 17 percent increase in students from the previous year.

This concludes my verbal statement. Thank you again so much for inviting me to talk about the issues in the IG community, and I look forward to your questions.

[Prepared statement of Ms. Gustafson follows:]



STATEMENT FOR THE RECORD OF

PEGGY E. GUSTAFSON
INSPECTOR GENERAL, U.S. SMALL BUSINESS ADMINISTRATION
CHAIR, LEGISLATION COMMITTEE, COUNCIL OF THE INSPECTORS GENERAL FOR
INTEGRITY AND EFFICIENCY

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

"EMPOWERING AGENCY OVERSIGHT:
VIEWS FROM THE INSPECTORS GENERAL COMMUNITY"

JANUARY 15, 2014

Good morning, Chairman Issa, Ranking Member Cummings, and Members of the Committee. On behalf of the Chair of the Council of the Inspectors General on Integrity and Efficiency's (CIGIE), I am honored to represent the Federal Inspector General (IG) community this morning and to discuss opportunities to strengthen agency oversight through the community of Inspectors General. I currently serve as the Chair of CIGIE's Legislation Committee.

Let me begin by thanking this Committee, on behalf of the IG community, for your continuing support of our mission and your interest in our work. This support is longstanding and bipartisan, and we are truly grateful.

I am pleased to report to this Committee that the Inspector General Reform Act of 2008 (or IG Reform Act) is working as intended. CIGIE serves a leadership role and is the core of the IG community. Together, the work of the IG community resulted in significant improvements to the economy and efficiency of programs Government-wide, with potential savings totaling approximately \$46.3 billion. With the IG community's aggregate FY 2012 budget of approximately \$2.7 billion, these potential savings represent about a \$17 return on every dollar invested in the OIGs.

Notwithstanding these results, OIGs do face certain challenges as they work to improve the efficiency and effectiveness of government programs. Our principal challenges pertain to independence concerns and to timely access to information. In recent years, CIGIE has been

advocating for additional tools to alleviate these challenges and enhance our ability to do our jobs for the taxpayers:

Computer Matching and Privacy Protection Act

CIGIE feels strongly that OIGs should be exempted from the Computer Matching and Privacy Protection Act relative to using electronic means to identify those who improperly receive Federal assistance and/or payments and subsequently, seek removal from the program and/or recoveries after verification and applicable due process. This would improve program efficiency and enables the Government to focus resources on eligible applicants.

The Computer Matching and Privacy Protection Act requires a protracted review and approval process before computer matching can be performed to identify improper or fraudulent disaster or other assistance payments. This approval process involves concurrence by program officials within the agency subject of the review, presenting significant independence concerns for the Office of Inspector General. The timely use of computer matching to identify those who improperly received Federal assistance, and subsequently removing them from the program after verification, improves program efficiency and enables the government to focus resources on eligible applicants. Moreover, timely computer matching can under optimum conditions prevent improper payments from occurring in the first instance and, even following payments, usually leads to enhanced recovery of improper payments.

Paperwork Reduction Act

Similarly, CIGIE has recommended that the Paperwork Reduction Act (PRA) be amended to exempt Federal IG offices from its requirements. The PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. While the 1995 PRA Amendments specifically exempted independent regulatory agencies from these requirements, and continues to exempt the Government Accountability Office [44 USC 3502(1)(A)], they were silent on the question of application to IGs. These exemptions would enhance the independence of IGs and remove lengthy processes that are better aligned with the role of Government interactions with the public, than oversight of the Government entity by the OIG.

The PRA requires a lengthy and burdensome approval process for the collection of information by a Federal agency. The IG Community has advocated for a change to the Paperwork Reduction Act in order to facilitate the independent reviews of IGs at least since 2000. In July 2000, the Honorable Gaston L. Gianni, Jr., who was then-Vice Chair, President's Council on Integrity and Efficiency, testified before the then-U.S. Senate's Committee on Government Affairs. IG Gianni testified that many IGs believe that being subject to the review process requirements of the PRA conflicts with their statutory mission to be independent and nonpartisan. He asserted that these requirements affect IG's ability to carry out audits and evaluations required by members of Congress, through law or by requests, in a timely and effective manner. CIGIE continues to share the perspective of its predecessor organization-the PCIE.

While agency heads may generally supervise IGs, they are not to "prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation." Yet the PRA requires that information collections, such as OIG surveys, be subject to approval from a "senior official" of the agency and then from OMB. We recognize OMB's wealth of knowledge in the formulation and conduct of surveys. Indeed, our community may wish to informally seek its advice in the areas of survey formats, techniques, and methodologies. However, application of the PRA to OIGs has both process and substance implications.

Congress increasingly requires IGs, through law or by formal request, to conduct specific audits of agency programs in a very short time. Part of the audit process may involve gathering information or other data from surveys of agency contractors, grantees, those entities subject to agency regulation, or the public. Subjecting such surveys to the review and approval process could impact our ability to provide an accurate and professional product under the tight deadlines required by Congress. The substantive issue is whether Congress intended that either departmental officials or OMB have authority over OIG information collection efforts that are key to the performance of a successful audit. We believe the statutory independence, mission, and dual reporting responsibility of IGs warrants similar relief for our Community as afforded to the GAO.

5 USC § 552(b)(3) Exemption to Protect Sensitive Information Security Data

Since the Supreme Court's 2011 decision in *Milner v. Department of the Navy*, 131 S. Ct. 1259 (2011), OIGs across the federal government have raised serious concerns that information related to federal agencies' information security may be unprotected from disclosure under the Freedom of Information Act (FOIA). Prior to *Milner*, a number of federal agencies, including OIGs, used the "high 2" form of FOIA's Exemption 2 to protect this sensitive information, including audit workpapers and agency records related to agency information security vulnerabilities. After *Milner*, this exemption is no longer available. Although other FOIA exemptions apply to classified information and documents compiled for law enforcement purposes, no single exemption currently covers the extremely large area of documents that analyze, audit, and discuss in detail the information security vulnerabilities of the federal government.

CIGIE is proposing a narrow exemption covering information that "could reasonably be expected to lead to or result in unauthorized access, use, disclosure, disruption, modification, or destruction of an agency's information system or the information that system controls, processes, stores, or transmits." This language tracks with existing Federal Information Security Management Act language found in 44 USC § 354(a)(2)(A), and it is suggested that this intention be included in any legislative history that may be developed.

Technical Amendments to the Inspector General Reform Act of 2008

The CIGIE has proposed certain amendments to the IG Reform Act. The proposed amendments were included in H.R. 2146, Digital Accountability and Transparency Act of 2011, in the 112th Congress and sought to accomplish the following:

- Codify the following provisions from the Reform Act in the Inspector General Act of 1978: (a) the designated Federal entity inspector general pay provisions set forth in section 4(b) of the Reform Act; (b) pay provisions for career Senior Executive Service personnel that become inspectors general set forth in section 4(c) of the Reform Act; and (c) the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counselor Deputy Special Counsel provided in section 7(b) of the Reform Act.
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language "department, agency, or entity of the executive branch" does not include certain designated Federal entities).
- Replace "agency" with "Federal agency, establishment or designated Federal entity" so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints.
- Clarify that reports that OIGs must post on their web-sites includes audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements.
- Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites.
- Amend Section 11(d) of the IG Act to designate the Special Counsel and the Director of the Office of Government Ethics, or their designees, as members of the Integrity Committee.
- Correct various typographical errors.

As an IG, I am grateful that IGs across the Government have a voice through CIGIE and have access to training and other resources that did not exist prior to the IG Reform Act. The IG Reform Act established CIGIE to serve as a unified council of statutory Federal IGs, to carry out two key missions:

- address integrity, economy, and effectiveness issues that transcend individual Government agencies; and
- increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General.

CIGIE's members currently include 72 IGs from the executive and legislative branches of Government, as well as 6 senior administration officials with related portfolios and responsibilities. Our community has been hit especially hard by the uncertainty in the budget process and cuts to operating budgets. OIGs by nature are comprised principally of personnel, and their budgets are dedicated to funding the same. A recent survey of the IG community by the Association of Government Accountants found that more than two-thirds of the IGs

interviewed identified budget resources as a top challenge. Many offices reported undertaking hiring restrictions and limiting new investments to operate under current budget levels. To highlight this finding, in my office, we have an approximate 17 percent vacancy rate due to an ongoing hiring freeze.

Nonetheless, in accordance with CIGIE's primary mission, over the past several years the IG community has identified and addressed a number of issues that transcend individual agencies. CIGIE has issued reports on such topics as cybersecurity, suspension and debarment, the use of new media, the effectiveness of the Chief Financial Officers Act of 1990, disaster preparedness programs, international trade and competitiveness, IG hotline operations and whistleblower protections, the Federal Audit Clearinghouse, and IG oversight of the American Recovery and Reinvestment Act of 2009. These reports and others are available on CIGIE's website at www.ignet.gov.

CIGIE's training and professional development mission is addressed through our Training Institute, which offers training to OIG audit, investigative, inspection and evaluation, leadership, and mission support personnel. Though the institute is still in a developmental phase, in FY 2012, the institute delivered 55 specialized training courses to 1,677 students, representing a 17 percent increase of students from the previous year.

CIGIE's standing committees are active bodies that are responsible for, among other things, developing professional standards that apply to overall OIG operations, as well as OIG audits, investigations, inspections, and evaluations. CIGIE, through its committees, also manages a peer review program of IG audit and investigation operations that evaluates OIG adherence to the professional standards. In FY 2012, CIGIE initiated a pilot program to peer review OIG inspection and evaluation activities on a voluntary basis. These programs play a critical role in advancing the professionalism of OIG operations and enhancing confidence in the quality of OIG products.

This concludes my testimony. Thank you again for inviting me to testify today before the Committee about the role of CIGIE and opportunities to strengthen agency oversight through the community of Inspectors General. I would be pleased to address any questions you may have.

Chairman ISSA. Thank you.
Mr. Horowitz.

STATEMENT OF THE HONORABLE MICHAEL E. HOROWITZ

Mr. HOROWITZ. Thank you, Chairman Issa, Congressman Cummings, members of the committee. Thank you for inviting me to testify at today's very important hearing.

The need for strong and effective independent oversight has never been more important, and while the Inspector General Act provides IGs with many of the tools that we need, I would like to highlight for you today two areas where my office's oversight abilities could be strengthened.

To conduct effective oversight, an OIG must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its review. This is the important principle codified in Section 6(a) of the Inspector General Act. Restricting or delaying an OIG's access to documents may lead to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from correcting serious problems and doing so in a timely manner.

Most of our audits and reviews are conducted with full and timely cooperation from the Department's components. However, there have been occasions when our office has had issues arise due to the Department's view that our access was limited by other laws. For example, as this committee is aware, in the course of our Operation Fast and Furious review, issues arose regarding our access to grand jury and wiretap information that was directly relevant to that review. Similar issues arose during our ongoing review of the Department's use of material witness warrants.

Ultimately, in each instance, the attorney general or the deputy attorney general provided us with the permission to receive the materials because they concluded that the assistance was of assistance to them, and the attorney general and the deputy attorney general have made it clear that they will continue to provide us with that necessary authorization in future reviews. However, requiring an inspector general to obtain permission in order to receive critical documents in an agency's possession impairs an IG's independence and conflicts with the core principles of the IG Act. Simply stated, the IG Act provides, and effective independent oversight requires, that an IG be given prompt access to all relevant documents within the possession of the agency it is overseeing.

Let me briefly turn to an issue that is unique to my office. Unlike inspector generals throughout the IG community and throughout the Federal Government, our office doesn't have authority to investigate all allegations of misconduct within the agency we oversee. While we have jurisdiction to review alleged misconduct by non-lawyers in the Department, under Section 8E of the IG Act, we do not have the same jurisdiction over alleged misconduct by Department attorneys when they act in their capacity as lawyers. In such instances, the IG Act grants exclusive investigative authority to the Department's Office of Professional Responsibility. As a result, these allegations, including those that may be made against the Department's most senior lawyers, are handled differently than

misconduct allegations against law enforcement agents and other Department personnel.

This jurisdictional limitation is a vestige of the fact that OPR preexisted the creation by Congress of our office in 1988. Since that time, the Department has taken the position that OPR has specialized expertise that should result in its handling of professional misconduct allegations. Whatever merit such an argument may have had in 1988, it is shortly long-outdated.

A similar assertion was made years ago by those who tried to forestall my office's oversight of alleged misconduct by FBI agents. That argument was rejected. And as we have demonstrated through our many investigations over the years, we have the means and the expertise to handle the most sophisticated legal and factual issues. Moreover, inspectors general across the Federal Government have the authority that I am talking about, to handle misconduct allegations against lawyers acting as such within their agencies, and they have demonstrated that they are fully capable of dealing with such matters.

Additionally, the OIG statutory and operational independence ensures that our investigations occur through a transparent and publicly accountable process. Unlike the head of OPR, the inspector general is a Senate-confirmed appointee who can only be removed by the President after notification to Congress, and the inspector general has reporting obligations both to the attorney general and to the Congress. Enabling my office to exercise jurisdiction in attorney misconduct cases, just as we do in matters involving non-attorneys, would enhance the public's confidence in the outcomes of these important investigations and provide our office with the same authority as other inspectors general. This has been a bipartisan issue over the years and I hope the committee would take a close look at that.

Thank you again for my have being invited today. I am looking forward to any questions that you may have.

[Prepared statement of Mr. Horowitz follows:]

Chairman Issa, Congressman Cummings, and Members of the Committee:

Thank you for inviting me to testify at today's hearing. The need for strong and effective independent oversight over agency operations has never been more important. The taxpayers rightly expect much from Inspectors General, and it is important that we have the necessary tools to allow us to conduct our significant oversight responsibilities. The Inspector General Act provides us with many of those tools. However, I and my colleagues in the Inspector General community have identified several areas where our ability to conduct effective and independent oversight can be strengthened. I would like to highlight for you today two of those areas that directly impact the work of the Office of the Inspector General at the Department of Justice.

Access to Documents Relevant to OIG Reviews

For any OIG to conduct effective oversight, it must have complete and timely access to all records in the agency's possession that the OIG deems relevant to its review. This is the principle codified in Section 6(a) of the Inspector General Act, which authorizes Inspectors General "to have access to all records, reports, audits, reviews, documents, papers, recommendations or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." This principle is both simple and important, because refusing, restricting, or delaying an OIG's access to documents may lead to incomplete, inaccurate, or significantly delayed findings or recommendations, which in turn may prevent the agency from correcting serious problems in a timely manner.

Most of our audits and reviews are conducted with full and complete cooperation from Department components and with timely production of material. However, there have been occasions when our office has had issues arise with timely access to certain records due to the Department's view that access was limited by other laws. For example, as this Committee is aware, issues arose in the course of our review of Operation Fast and Furious regarding access to grand jury and wiretap information that was directly relevant to our review. Similar issues arose during our ongoing review of the Department's use of Material Witness Warrants, which we will be reporting on in the coming months. Ultimately, in each instance, the Attorney General or the Deputy Attorney General provided the OIG with permission to receive the materials because they concluded that the two reviews were of assistance to them. And the Attorney General and Deputy Attorney General have made it clear that they will continue to provide the OIG with the necessary authorizations to enable us to obtain records in future reviews. However, requiring an Inspector General to obtain permission from Department leadership in order to be allowed to review critical documents in the

Department's possession impairs the Inspector General's independence and conflicts with the core principles of the Inspector General Act.

We have had similar issues raised regarding our access to some other categories of documents, including FISA information, which is obviously critical for us to review in connection with our national security reviews. And I understand that several Inspectors General at other federal agencies have had similar issues regarding access to records within their agencies. Although our office has not yet had an instance where materials were ultimately withheld from us that were necessary to complete a review, we remain concerned about the legal questions that have been raised and the potential impact of these issues on our future reviews. Moreover, issues such as these have, at times, significantly delayed our access to documents that were essential to conducting our reviews, thereby substantially impacting the time required to complete the reviews.

My view, and I believe the view of my colleagues in the Inspector General community, is straightforward and follows from what is explicitly stated in the Inspector General Act: An Inspector General should be given prompt access to all relevant documents within the possession of the agency it is overseeing. For a review to be truly independent, an Inspector General should not be required to obtain the permission or authorization of the leadership of the agency in order to gain access to certain agency records, and the determination about what records are relevant and necessary to a review should be made by the Inspector General and not by the component head or agency leadership. Such complete access to information is a cornerstone of effective independent oversight.

Limitations on the DOJ OIG's Jurisdiction

Let me briefly turn to an oversight limitation that is unique to my office: Unlike Inspectors General throughout the federal government, our office does not have authority to investigate all allegations of misconduct within the agency we oversee. While we have jurisdiction to review alleged misconduct by non-lawyers in the Department, under Section 8E of the Inspector General Act, we do not have the same jurisdiction over alleged misconduct committed by Department attorneys when they act in their capacity as lawyers – namely, when they are litigating, investigating, or providing legal advice. In those instances, the Inspector General Act grants exclusive investigative authority to the Department's Office of Professional Responsibility (OPR). As a result, these types of misconduct allegations against Department lawyers, including those that may be made against the most senior Department lawyers (including those in leadership positions) are handled differently than misconduct allegations made against law enforcement agents or other Department employees. My office has long questioned this distinction between the treatment of misconduct by attorneys acting in their legal capacity and misconduct by other Department

employees, and such a system cannot help but have a detrimental effect on the public's confidence in the Department's ability to review misconduct by its own attorneys.

This jurisdictional limitation on our office is a vestige of the fact that OPR pre-existed the creation by Congress in 1988 of the Office of the Inspector General for the Department of Justice, resulting in the statutory carve-out on our jurisdiction. The Department has consistently taken the position that because OPR has specialized expertise in examining professional conduct issues involving Department lawyers, OPR should handle professional misconduct allegations against Department attorneys. Whatever merit such an argument may have had in 1988 when the OIG was established by Congress, it is surely long outdated.

Over the past 25 years, our Office has shown itself to be capable of fair and independent oversight of the Department, including investigating misconduct allegations against its law enforcement agents. Indeed, a similar argument was made many years ago by those who tried to forestall our Office's oversight of alleged misconduct by FBI agents. This argument against Inspector General oversight of the FBI was rejected, and we have demonstrated through the numerous investigations and reviews involving Department law enforcement matters since then, including our recent Operation Fast and Furious review, that our office has the means and expertise to handle the most sophisticated legal and factual issues thoroughly, effectively, and fairly. Moreover, Inspectors General across the federal government have the authority to handle misconduct allegations against lawyers acting as such within their agencies, and they have demonstrated that they are fully capable of dealing with such matters. Seen in this context, the carve-out for OPR from our Office's oversight jurisdiction is best understood as an unnecessary historical artifact.

Eliminating the jurisdictional exception for OPR in the Inspector General Act would ensure the ability of our Office to fully review and, when appropriate, investigate allegations of misconduct of all Department employees. Moreover, even with such a jurisdiction change, the Department's OPR would almost certainly remain in place to handle "routine" misconduct allegations that do not require independent outside review by an OIG, much as the internal affairs offices at the FBI and the Department's other law enforcement components remain in place today even though the OIG's jurisdiction was expanded years ago to include those components. The current system with the law enforcement components works well, particularly given the OIG's limited resources. Each day, the OIG reviews new allegations of misconduct involving law enforcement personnel and determines which ones warrant investigation by an independent OIG, such as those that involve high-level personnel, those that involve potential crimes and other serious misconduct, and those that involve significant issues related to conduct by management. Those that we

determine do not meet these standards are returned to the law enforcement component's internal affairs unit for handling, although the OIG frequently requires the internal affairs unit to report back to the OIG on the outcome of its investigation or review.

Our Office's statutory and operational independence from the Department ensures that our investigations of alleged misconduct by Department employees occur through a transparent and publicly accountable process. Unlike the head of OPR, who is appointed by the Attorney General and can be removed by the Attorney General, the Inspector General is a Senate confirmed appointee who can only be removed by the President after notification to Congress, and the Inspector General has reporting obligations to both the Attorney General and Congress. Additionally, the OIG's strong record of transparency is vital to ensuring the Department's accountability and enhancing public confidence in the Department's operations. Giving the OIG the ability to exercise jurisdiction in all attorney misconduct cases, just as it does in matters involving non-attorneys throughout the Department, would enhance the public's confidence in the outcomes of these important investigations and provide our office with the same authority as other Inspectors General.

This concludes my prepared statement, and I would be pleased to answer any questions that you may have.

Chairman ISSA. Thank you for your many good points.
Ms. Buller?

STATEMENT OF KATHY A. BULLER

Ms. BULLER. Chairman Issa, Ranking Member Cummings, distinguished members of the committee, thank you for inviting me today and allowing me to summarize my prepared statements on the Peace Corps' refusal to give OIG information required by the Kate Puzey Volunteer Protection Act of 2011.

This year marks the 25th anniversary of the creation of Peace Corps inspector general. My office is small, it is 26. I have evaluators, auditors, investigators, legal counsel, and support staff. The mission of my office is to provide oversight to Peace Corps' program, which consists of 7200 volunteers located in 65 countries around the world.

Given the nature of Peace Corps' program, if the agency is not efficient and effective, the result can be tragic for both volunteers and their families. For example, in our 2010 review of the death of a volunteer in Morocco, we found significant findings that both provided closure for the victim's family and led to an overall re-vamp of the agency's volunteer medical care program.

An effective IG must have prompt access to all relevant documents within the possession of the agency it oversees. This access is explicitly stated in Section 6 of the IG Act. We have encountered some access issues in the past that have been resolved through discussions with agency senior management. Unfortunately, we have currently reached an impasse with the agency concerning OIG's right to access information found in certain reports made by volunteers who are victims of sexual assault. The agency's policy to deny OIG access is based on the agency general counsel's interpretation of the Kate Puzey Act.

Congress enacted the Kate Puzey Act following reports that volunteer victims of sexual assaults were being ignored, blamed for their assaults, and that their cases were being mismanaged. The Kate Puzey Act mandates extensive changes to the way Peace Corps responds to victims of sexual assault. This includes the creation of a restricted reporting mechanism allowing volunteer victims of sexual assault to confidentially disclose the details of their assault to specified individuals, receive services without the dissemination of their PII, and without automatically triggering an official investigation.

The Kate Puzey Act mandates that the OIG oversee the agency's implementation of the changes required by the Kate Puzey Act as well as sexual assault mismanagement allegations. We are required to conduct a case review of a significant number of sexual assault cases, including specific incidents. We are also required to evaluate whether the agency response was effective and implemented in accordance with law and its policies.

The general counsel's legal position is that restricted reporting provisions in the Kate Puzey Act override any obligation that Peace Corps may have under the IG Act to provide OIG with agency records. This is despite the fact that the law provides for exceptions for disclosure of restricted reported information, including one that would permit disclosure if required by a Federal or State statute.

Let me emphasize that restricted reports are not a narrow subset of allegations. All reports are restricted, regardless of to whom they are made, unless a volunteer changes his or her report to unrestricted. Further, agency policy unnecessarily expands the Kate Puzey Act definition of PII to include any details of a sexual assault incident. As implemented, the policy has created a blackout of information concerning restricted reports from the OIG.

It defies common sense to imagine that Congress intended to increase OIG's oversight duties over the Peace Corps' response to sexual assaults, while simultaneously curtailing its ability to access the information it needs to fulfill those duties. OIG's longstanding experience protecting confidentiality about victims and information about victims makes the agency's denial of OIG access even more indefensible.

As Congress considers laws protecting the privacy and confidentiality of individuals with regard to information held by Federal agencies, it should consider any impact on the ability of OIGs to perform the type of oversight that Congress expects and the American people expect. I would recommend that the committee make clear through legislation that OIG access to all agency documents and information is required under the IG Act, regardless of provisions contained in other laws unless specifically stated otherwise. Hearings like this send an important message to Federal agencies that OIG oversight and unfettered access to agency information is essential.

Thank you again for inviting me to testify before you today, and I stand ready to answer any questions you may have.

[Prepared statement of Ms. Buller follows:]

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
JANUARY 15, 2014, 9:30AM
STRENGTHENING AGENCY OVERSIGHT: EMPOWERING THE INSPECTORS
GENERAL COMMUNITY
TESTIMONY OF KATHY A. BULLER
PEACE CORPS INSPECTOR GENERAL

Chairman Issa, Ranking Member Cummings, and distinguished Members of the Committee:

I thank you for inviting me to appear before you today to discuss opportunities to strengthen inspector general oversight. My testimony will provide a brief overview of the Peace Corps Office of Inspector General (OIG) and its impact on the Peace Corps, and will focus on ensuring effective OIG oversight of agency programs and operations. I will also address challenges we face when seeking access to agency information and tools that could enhance our oversight capabilities.

The Peace Corps is a unique agency. Its three goals are: to help the people of interested countries in meeting their needs for trained men and women; to help promote a better understanding of Americans on the part of the peoples served; and to help promote a better understanding of other peoples on the part of Americans. The Peace Corps achieves these goals through volunteers, who serve abroad and are the agency's sole program. The majority of volunteers serve at the grassroots level in rural communities, often in remote areas far from large cities or the Peace Corps office.

The success and well-being of its volunteers depends in part on how effectively the Peace Corps supports their health, safety, and security needs. Everything from applicant selection, training, site selection, housing, and budget allocation has a direct impact on volunteers. The Peace Corps supports more than 7,200 volunteers in 65 countries. The volunteers and their programs are supported by 896 American direct-hire staff and approximately 2,000 locally hired personnel.

OIG and Its Impact on the Peace Corps

OIG's purview includes all agency personnel, contractors, and volunteers. This year marks the 25th anniversary of the establishment of OIG, which was created in 1989 after Congress amended the Inspector General Act of 1978 (IG Act) to include smaller agencies. I was appointed Inspector General (IG) on May 25, 2008, and in my role as IG, I direct a small office of 26 auditors, evaluators, criminal investigators, legal counsel, and support staff.

Our mission is the same as all other federal offices of inspectors general: to provide independent oversight of agency programs and operations in support of the agency mission and goals, while making the best use of taxpayer dollars. As such, OIG promotes effectiveness and efficiency of agency programs and operations and prevents and detects fraud, waste, abuse, and mismanagement.

I am very proud of what my office has been able to accomplish given its global responsibilities and few resources. Since the beginning of my tenure in 2008, we have issued 117 final audit and evaluation reports, management advisory or implication reports, and other reviews. Seven OIG work products have been awarded prestigious Awards for Excellence by the Council of the Inspectors General on Integrity and Efficiency. Many of these awards were given for work that identified substantial weakness in agency processes that significantly affected the support, health, and safety of volunteers.

In that same period of time, OIG investigations of criminal wrongdoing and administrative misconduct have resulted in 21 criminal convictions, 53 administrative separations of staff and volunteers, and 11 suspensions and debarment referrals. Increased visibility from our work and a robust OIG outreach effort has yielded more demand for our services. From fiscal year 2011 to fiscal year 2013 there has been a 159 percent increase in the number of allegations and complaints our office has received annually from staff, volunteers, and others. The activities we are engaged in everyday help ensure the safety and well-being of our volunteers and staff and routinely produce measureable benefits for the taxpayer.

Examples of Recent OIG Oversight

During my tenure, one of OIG's strategic priority areas has been to target critical volunteer support systems. Critical volunteer support systems, such as safety and security and healthcare, form the pillars of the volunteer program. Without efficient and effective support services, volunteers may be put in jeopardy and resources could be misdirected. Some of the more salient work we have done in this area includes:

- In 2008 and 2010, we conducted important reviews of the volunteer safety and security program. Our country program evaluations had identified a number of weaknesses in processes that the agency had in place to ensure volunteer safety at the post-level. The number and frequency of our findings indicated some systemic problems. Our reports highlighted significant inconsistencies in the safety and security program's implementation, and identified areas lacking management oversight and standard processes. As a result, the agency strengthened its program, improved the training and professionalism of its safety and security staff, and entered into the first ever Memorandum of Understanding with the Department of State Office of Diplomatic Security.
- In 2010, we conducted a review of the death of a volunteer in Morocco and made significant findings that both provided closure for the victim's family and pointed to the need to substantially improve clinical oversight of Peace Corps medical officers. The review led to an overhaul of the agency's volunteer medical care program.
- In 2012, we issued an evaluation report reviewing existing agency guidelines for responding to sexual assault. Among other areas for improvement, we recommended the agency create a case management system to manage how the agency responds to sexual assaults and provides services to victims.

- In 2013, we issued three legislatively mandated reports, two evaluations and one audit, addressing critical volunteer support areas mandated by the Kate Puzey Volunteer Protection Act of 2011 (Kate Puzey Act).¹
- In October 2013, an OIG investigation conducted in collaboration with the Department of Homeland Security, Department of State, and host country law enforcement led to the conviction of a former volunteer for abusing children in South Africa. He was sentenced in October 2013 to 15 years in federal prison.
- In November 2013, OIG investigators working with U.S. and host country law enforcement solved a 15-year-old homicide of a Peace Corps volunteer in Gabon.

Challenges to OIG's Oversight

Access to Agency Documents and Information

Because of the Peace Corps' unique mission, if an agency program is not effective and/or efficient the result can be tragic for volunteers and their families. An effective IG must have prompt access to all relevant documents within the possession of the agency it oversees. This access is explicitly stated in section 6 of the IG Act.² However, in a number of instances the agency has denied or delayed access to information OIG has requested. OIG has resolved these access issues through discussions with agency senior management. Unfortunately, the Peace Corps is impeding OIG's right of access by creating policies and procedures that deny OIG information found in certain reports made by volunteers who are the victims of sexual assault. The agency's general counsel bases his authority to deny OIG access on his interpretation of the Kate Puzey Act.

The Kate Puzey Volunteer Protection Act of 2011

Congress enacted the Kate Puzey Act following reports that volunteer victims of sexual assaults were being ignored, blamed for their assaults, and that their cases were being mismanaged. These allegations came to light after the ABC network's 20/20 show aired a story on how the agency mishandled sexual assault complaints by former volunteers, as well as an allegation by former Peace Corps volunteer Kate Puzey, who was murdered in Benin in 2009 after a staff member allegedly failed to keep her complaint confidential. Even before the 20/20 broadcast, OIG had conducted two agency-wide reviews focused on the volunteer safety and security program. One of them was specifically prompted by the circumstances surrounding the Peace Corps' handling of the Kate Puzey case.

Among other things, the Kate Puzey Act mandates an extensive oversight role to OIG and the creation of a restricted reporting mechanism that allows volunteer victims of sexual assault to confidentially disclose the details of their assault to specified individuals and receive services without the dissemination of their personally identifying information (PII) or triggering an official investigation.³ The general counsel argues that the restricted reporting provisions in the

¹ Kate Puzey Volunteer Protection Act of 2011, Pub. L. No. 112-57.

² 5 U.S.C. app. § 6(a)(1).

³ Pub. L. No. 112-57 §§ 8A(e)(f), 8E(d).

Kate Puzey Act override any general obligation that the Peace Corps may have under the IG Act to provide OIG with agency records.

Agency's Refusal to Give OIG Information Required by the Kate Puzey Act

Congress created four exceptions to the restricted reporting requirement, including an exception in cases where state or federal courts order disclosure, or if disclosure is required by federal or state statute. Despite the exception for statutorily mandated disclosures, the Peace Corps' general counsel has authored a legal opinion asserting that the exception does not apply to section 6 of the IG Act. OIG is mindful of the sensitive nature of the information and the need to protect the privacy and confidentiality of victims. OIG is committed to following the law and is ready to cooperate with the agency so that if the PII of the victim is disclosed pursuant to an exception, the victim is notified in accordance with the Kate Puzey Act. However, OIG does not accept that a legal opinion issued by the agency's general counsel can result in the preemptive denial of access to information we require to meet our mission.

The denial of access is all the more troubling considering the law provides OIG a central role in improving the Peace Corps' response to sexual assault victims. In particular, the law requires OIG oversee sexual assault mismanagement allegations and conduct a case review of a statistically significant number of sexual assault cases. It defies common sense to imagine that Congress intended to increase OIG's oversight duties over the Peace Corps' response to sexual assaults, while simultaneously curtailing its ability to access the information it needs to fulfill those new duties.⁴

Further frustrating our mission is the legal opinion's overly broad interpretation of PII and the resulting agency policy defining PII as including "...any details of the sexual assault incident" regardless of whether the details are tied to individually identifying information of the victim. The agency's interpretation of PII is broader than the definition stated in the Kate Puzey Act and definitions widely used in the federal government, resulting in a complete information blackout on restricted reports. I would like to thank you, Mr. Chairman, for the letter of inquiry you submitted to the agency in September expressing your concern on this matter. As a result of your letter, the agency began providing three data points from restricted reports that the agency previously classified as PII.⁵ The data is neither tied to the identity of a victim of sexual assault nor to an incident date and is not covered by the prohibition on dissemination of information in section 8A(f) of the Kate Puzey Act.

Under the logic of the general counsel's legal position Peace Corps country directors would not have been authorized to receive these three data points. Yet, agency policy provided the country directors access while simultaneously denying it to OIG. In a letter dated September 16, 2013, acting Director Hessler-Radelet reversed the position of the agency and began providing the information to OIG on a weekly basis.⁶ However, the letter reserved the right of the agency to

⁴ To understand the importance of OIG's oversight role in this area it is appropriate to consider that the Kate Puzey Act was passed on the heels of two Congressional hearings where sexual assault victims testified that their allegations were not taken seriously by Peace Corps managers, that in many cases they were blamed for the assaults, and that they were not provided with adequate services.

⁵ The three data points are limited to the country where the incident took place, the type of incident (rape, aggravated sexual assault, sexual assault), and the location type (transportation, residence, etc.).

⁶ The policy was changed on December 2, 2013. OIG began receiving the information on October 31, 2013.

withhold the information from OIG in the future if it becomes “clear” that the information is PII as asserted in the general counsel opinion.

It is important to note that restricted reports are not a narrow subset of allegations. In fact, new agency policy establishes that all reports are restricted, regardless of to whom they are made, until such time as a volunteer affirmatively changes his or her report to unrestricted; thus making restricted reporting the default reporting avenue for all sexual assault allegations. Lack of access to such information impedes my office’s ability to comply with the law, provide proper oversight, and makes the agency’s response to sexual assault allegations susceptible to mismanagement and impunity.

Moreover, we have offered to work with the agency to minimize the information needed to conduct our work; for example, by redacting names of victims and using identifying numbers. But because of the overly broad definition of PII contained in the general counsel’s legal opinion it is impossible to get the information necessary to provide meaningful oversight. One practical obstacle is the lack of an agency sexual assault case management system, a finding we made in 2012. Although we understand the agency has made progress in developing such a system, the recommendation remains open.

Under the leadership of acting Director Hessler-Radelet and former Director Williams, the agency has taken substantial measure to improve the way it handles sexual assaults. The Peace Corps has spent the last two years focusing on implementing the Kate Puzey Act; though not all of its requirements are in place. Future OIG work will focus on the effectiveness and implementation of the sexual assault risk-reduction measures that have been established. Continued independent oversight by my office is essential to ensure that the agency does not undo improvements it has previously made while it fully implements the remaining requirements of the Kate Puzey Act.

Enhancing OIG’s Oversight

Access to information about a sexual assault is not only necessary to meet the reporting requirements of the Kate Puzey Act, it is critical for providing the type of effective oversight that IGs are required to perform. OIG may require access to this information for a variety of reasons. For example in a 2008 review, we found that data included in the agency system to categorize and track crime incidents, including sexual assaults, was unreliable. Denial of access to restricted reports would prohibit a follow-up to such a review. In other cases OIG would be unable to review complaints from volunteers other than the victim, or employee whistleblowers that an allegation of sexual assault was mismanaged or ignored altogether. We are unable to predict all the potential future requirements for access, and it is clear that denying this information will prohibit OIG from performing key oversight functions. The denial of access is all the more remarkable considering OIG personnel has longstanding experience in protecting confidentiality and dealing with sensitive information, including information about victims.

We have experienced other recent access to information problems unrelated to restricted reporting, however they have been resolved.⁷ Nonetheless, IGs should not have to seek the intervention of the head of the agency to access information they already have the authority to obtain under the IG Act. IGs must independently determine whether a request for access to documents is relevant or appropriate. Independence is critical to effective oversight. If agency management or senior officials seek to approve the IG's access to information and documents, this compromises the IG's independence. Agency staff will receive the wrong messages about cooperation with OIG. Even if information is not denied it might be delayed, which has an impact on our operations. My office relies on Peace Corps staff's cooperation to fulfill its mission. Without its help, we cannot do our jobs. In this regard, I would like to acknowledge that prior to this hearing the acting Director Hessler-Radelet sent an email message to all Peace Corps staff encouraging it to cooperate with OIG and reminding staff of its obligation to report fraud, waste, and abuse.

As Congress considers laws protecting the privacy and confidentiality of individuals vis-à-vis information held by federal agencies, it should consider any impact on the ability of OIGs to perform the type of oversight that is expected by Congress and the American people. Perhaps the committee can look at what could be done legislatively to make absolutely clear that OIG access to all agency documents and information is required under the IG Act regardless of provisions contained in other laws unless specifically stated otherwise. Hearings like this one send an important message to federal agencies that OIG oversight and unfettered access to agency information is essential.

Paperwork Reduction Act

I would like to highlight challenges we have faced in complying with the Paperwork Reduction Act of 1995⁸ (PRA) and the Computer Matching and Privacy Protection Act of 1988 (Computer Matching Act).⁹ We recognize the need to minimize the paperwork burden on the public that results from the collection of information by or for the federal government. However, as applied, the PRA restricts OIG's ability to ask questions of more than nine non-federal entities without participating in a collection review process and obtaining the approval of the Office of Management and Budget.¹⁰ This process can often take up to a year or more. By that time, the

⁷ In one case OIG personnel requested continued access to the unrestricted portion of the agency's Consolidated Incident Reporting System database (CIRS), a crime incident database for all crimes committed against volunteers. OIG had always had access to CIRS, but prior to launching its restricted reporting system on September 1, 2013, the agency modified CIRS limiting OIG's access to the standard CIRS system. The limitation to standard unrestricted crime data had no relationship with the Kate Puzey Act and was incompatible with both the Kate Puzey Act and the IG Act. On September 30, I sent a letter to the acting Director making her aware of this impediment and asking her assistance pursuant to the IG Act. Thanks to her intervention, we now have access to this critical information. In another recent incident, OIG investigators requested access to a volunteer applicant database. The agency's general counsel suggested that the Privacy Act of 1974, Pub. L. No. 93-579, prohibited access unless OIG could provide a need to know. We discovered, however, this standard had not been applied to other users of the system. In fact there are hundreds of registered users in our relatively small agency have access to that database. When we presented these facts, the agency immediately committed to provide information on specific applicants when requested by my office.

⁸ Pub. L. No. 104-13.

⁹ Pub. L. No. 100-503.

¹⁰ There is a limited exception for Inspectors General "during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals." 44 U.S.C. § 3518(c)(1)(B)(ii).

program being evaluated may have changed and the proposed survey may need to be modified. Rather than going through this process, many IGs opt to interview nine or fewer entities. As a result, stakeholders such as agency management or Congress may not be getting the most effective recommendations and reports may not, for example, include all the best practices agencies could implement to become better stewards of taxpayers' funds.

Computer Matching Act

Changes to the Computer Matching Act so that offices of inspectors general can more easily detect and prevent fraud would also facilitate our work. Generally, the Computer Matching Act places restrictions on cross referencing information found in separate computer databases of different agencies. In the case of our office, we review staff and volunteer Federal Employee Compensation Act claims for possible fraud. Being able to cross reference such claims with other government benefit databases would likely save taxpayer dollars as certain fraudulent benefits would be reduced.

Conclusion

In conclusion, I want to thank the Committee for the opportunity to testify on the challenges facing my office. We have a proven track record of making meaningful findings and recommendations that improve agency effectiveness and support volunteers. To continue to provide effective oversight we need unfettered access to agency documents and information. As the committee considers legislation to support the work of IGs I ask that you consider further strengthening or clarifying IG Act access provisions as well as supporting OIG's in developing some of the oversight tools that I have outlined above.

Chairman ISSA. Thank you.

Thank you, one and all. I have a few brief questions, followed up by thousands of additional ones before we make law.

But, Ms. Buller, I will take you, sort of go back in this order. To your knowledge, within the 72 IGs, in most, if not all, other cases, is sexual assault access for IGs handled differently? In other words, from what you know from your participation in CIGIE, are you different than other agencies on how you are handled?

Ms. BULLER. We are somewhat different because of the legislation that was passed. In addition, my agency—

Chairman ISSA. But, theoretically, the legislation should give you more access, not less.

Ms. BULLER. Exactly. As far as the IG Act is concerned, we are the same as all other IGs.

Chairman ISSA. Okay. And with the other two IGs, your agencies, if I understand correctly, have less trouble investigating misconduct, including sexual assault, or the same?

Mr. HOROWITZ. Well, interesting that you should ask that, and having seen IG Buller's statement, in misconduct reviews we would normally get that information, but we have an ongoing review growing out of the Cartagena matter, where we are looking at more systemic issues, not an investigation; and we had questions arise about access to PII and access to this information, which ironically, to the extent they existed, was sitting in our investigators' files because they get it in misconduct cases.

So this is a problem we have faced as well.

Chairman ISSA. Well, let me summarize the question. Currently, CIGIE does not have the authority to either come to Congress or to the Administration and reconcile differences of interpretation of access, is that correct?

Ms. GUSTAFSON. That is correct. As you noted, Chairman Issa, it is more a coordination role, it is a very small—

Chairman ISSA. Right. They help you know what is possible, but they don't have the ability to de-conflict various interpretations of various bosses.

Ms. GUSTAFSON. No, they do not.

Chairman ISSA. And, one and all, is that something that would make your job—because some of you will spend an entire career in one agency, but often you are going to move from agency to agency, and the level of transparency, the level of access changes, is that correct? And that shouldn't be, obviously.

Mr. HOROWITZ. That shouldn't be. And I would just say, Mr. Chairman, that I think what IG Buller said is the fix here is the fix that should happen, which is Congress simply restates what it meant, I think, in Section 6(a) of the IG Act, which is notwithstanding an express provision that says an IG shouldn't get something, the presumption is if the document is in the agency's file, we have access to it, period.

Chairman ISSA. Now, Mr. Horowitz, you gave me something that I wanted to bring up. This committee looked at the misconduct, the unethical behavior of the general counsel of the Security Exchange Commission not that long ago, ultimately leading to his resignation for essentially self-dealing in the Madoff case, if you recall. If that had been your agency, as I understand it, you would have had to

go to that very person, or the head of the agency who handpicked that person, in order to essentially get authority. Isn't that inherently cumbersome if in some cases you must investigate the very top of the agency?

Mr. HOROWITZ. That is correct and, indeed, there would be a serious question as to whether we even had jurisdiction pursuant to the IG Act to do that. It might go to the head of OPR, appointed by the attorney general, to do that review. We might not have any jurisdiction to do that work, even with permission.

Chairman ISSA. So clearly as Congress considers changes to both how CIGIE's authority is elevated, which I have made clear I intend to do, but also in the question of where you have to go individually, either somebody else has to be charged with investigating the top people in each of your agencies or you have to be able to investigate, coordinating perhaps with FBI or other agencies, you have to be able to investigate without going to the target, isn't that correct?

Mr. HOROWITZ. That is correct.

Chairman ISSA. You can't do that right now.

Mr. HOROWITZ. Right.

Chairman ISSA. Ms. Buller, if I got the numbers correct, your staff is about one-third of one percent of the people, not the total staff, but just the volunteers alone, that you oversee spread over, did you say, 62 countries?

Ms. BULLER. Sixty-five.

Chairman ISSA. Sixty-five. So currently you have one of the smallest staffs with one of the greatest disbursement, if you will, of people in far-flung places that may be, as we know, sadly, we have had Peace Corps volunteers raped, we have had Peace Corps volunteers kidnapped, we have had all these things that all fall under your requirement to see whether or not the care and custody questions were resolved. How do you do it with just 26 people?

Ms. BULLER. We target things very strategically. Since I arrived there, we have taken more of a systematic approach to dealing with the issues that we find. When we would go and do post audits and evaluations and we would find the same issues over and over and over again, it had to be a problem in headquarters, it wasn't just the post.

Chairman ISSA. Well, I have more questions, but no more time, so I go to the ranking member, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. CONNOLLY. Mr. Cummings, could I just interrupt and ask Ms. Buller if you are going to answer questions, would you mind putting—thank you.

Thank you, Mr. Chairman.

Mr. CUMMINGS. Mr. Horowitz, I just want to just go back for a moment to some of your concerns with regard to the investigation of higher-up attorneys. I assume that you are talking about the appearance of it, in other words, that you are not able to do in your office and the Office of Professional Responsibility—is that the name of it?

Mr. HOROWITZ. Correct.

Mr. CUMMINGS.—would have to do it. Are you talking about the way it appears? Are you complaining about cases that you have

seen that you felt like you didn't have the authority to investigate or that something went awry that somebody was not properly investigated that you thought should have been? Because I think we have to be kind of careful here, because what happens a lot of times is that a picture is painted of our Federal employees, particularly people in this instance who are sworn to uphold the law, and they come in and they are very independent no matter what the situation is and they do their job. But appearance is one thing; an actual problem is another. So would you comment?

Mr. HOROWITZ. Yes. And to be clear, I am not talking about any specific outcome or finding of an OPR report; I am talking about two things. One is the intent of the IG Act. And I refer back to a 1994 GAO report to then Chairman Brooks in the Judiciary Committee which laid this out as well, which is it creates an organizational structure lacking the full measure of centralized control, independence, and accountability of Congress that was envisioned by the IG Act, number one. Number two, in some examples of not where I am suggesting anything improper was done, but where this issue has arisen, for example, was in connection with the U.S. attorney firings that occurred several years ago.

Mr. CUMMINGS. Let me ask you does your office review the conduct of lawyers acting as lawyers at the FBI or any other component of the DOJ?

Mr. HOROWITZ. We would not have jurisdiction to do that if they are acting as a lawyer.

Mr. CUMMINGS. All right.

Mr. HOROWITZ. If they were stealing money or doing something outside their legal authority, we would, but if they were making legal decisions, we do not have authority.

Mr. CUMMINGS. Now, you also wrote inspectors general across the Federal Government have the authority to handle misconduct allegations against the lawyers acting as such within their agencies. Which IGs review the conduct of lawyers acting as lawyers?

Mr. HOROWITZ. My understanding is every other IG has that authority to do that. That is my understanding pursuant to the IG Act. We are the only ones with the carve-out in Section 8E, because that is specific to my office.

Mr. CUMMINGS. Now, Ms. Gustafson, you represent the Council of Inspectors General on Integrity and Efficiency, is that right?

Ms. GUSTAFSON. Yes, I am the chair of their Legislation Committee, sir.

Mr. CUMMINGS. How long have you held that position?

Ms. GUSTAFSON. I think I have been chair for three years now.

Mr. CUMMINGS. Are you term limited?

[Laughter.]

Ms. GUSTAFSON. I haven't looked at the——

Chairman ISSA. I would take that personally.

[Laughter.]

Ms. GUSTAFSON. I hope you are not unhappy with anything I have done.

Mr. CUMMINGS. No, no, no, no, no. It just came to my mind, that's all.

Chairman ISSA. He is always thinking about my term, to be honest.

[Laughter.]

Mr. CUMMINGS. I just wanted to ask you a question about one legislative proposal, which is to give inspectors general authority to compel testimony by subpoena. Testimonial subpoena authority is a very powerful investigative tool, would you agree?

Ms. GUSTAFSON. I would agree that that is a powerful tool. I would note that that is not on our list of legislative proposals. I want to be clear that the Council IGs right now is not advocating as a council that authority. We have in the past. That is not on our list, quite frankly.

Mr. CUMMINGS. And might I ask why it is not on your list? It is something that has always been raised.

Ms. GUSTAFSON. Right.

Mr. CUMMINGS. So I am just curious, if you don't mind.

Ms. GUSTAFSON. Well, the short answer is there is, I think, a general acknowledgment that there is a problem among our access, which is to say there are times when we cannot make people talk to us, as noted. If you are a former Federal employee, there is nothing we can do to "make you talk to us." There is not a consensus right now among IGs about what tool we should have in order to try to fill that gap. It is kind of like herding cats anyway, but there is not enough of a consensus that we, as an organization, are right now advocating for it because there is a difference among some of us on what the tool should be, and that is why we are not advocating.

Mr. CUMMINGS. So there are some IGs, based upon what you just said, who are not anxious to have that kind of authority?

Ms. GUSTAFSON. Apparently there are some IGs who are not anxious to have that authority, that is right. When we discussed it as a group, there were some IGs who were not convinced that that was the authority that was needed, and we try to always act as a group and with a consensus, and we just felt like we didn't have a consensus.

Mr. CUMMINGS. Now, I know you have to walk a very thin line here, I got that; you are the president. So can you just tell us, it seems like it would be logical that they would want the authority. You follow what I am saying? So I am trying to figure out what are the arguments of saying, well, maybe we don't want it. I mean, that is kind of unusual.

And then I will end with that, Mr. Chairman. I am just curious.

Ms. GUSTAFSON. It is unusual, and, honestly, because personally I support it, but as the chair of the Legislation Committee, I am not speaking on behalf—

Mr. CUMMINGS. I understand.

Ms. GUSTAFSON. I think the objections that were raised were similar, Mr. Cummings, to the objections that you noted, which is not every law enforcement agency has this; the FBI doesn't have this, things of that nature, that it is a powerful authority and some people felt unsure on whether it was the tool to need. But again I do want to emphasize that I think it is an issue that I am very glad is being discussed, because right now I think it has become a very real issue. There are IGs who have had problems doing either audits or investigations when people have refused to speak to them. Now, what that tool is, we are happy to work with this com-

mittee and figure out what it is, but I do hope it is a problem that we can solve.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Chairman ISSA. Thank you. Mr. Cummings, I think if we had asked any of these witnesses if they are frustrated when somebody chooses, perhaps after they have done something very egregious, to retire and then no longer be willing to fall under the IGs, how frustrating that is when it may not rise to an FBI investigation and yet they have slipped away from it. So I agree with all of them that we have to find a solution that they are comfortable with in addition to the problem we understand exists.

Mr. CUMMINGS. Mr. Chairman, let me say this. I think it is important that the IGs have the authority they need to do their job, no doubt about it. I think the question is how do we bring a balance to all of that. And certainly just as they have differing opinions, and it may be good, by the way, for us to have access to some of—you know, maybe some of your members, and this is up to the chairman, can submit so we can hear both sides of it that would help us to come to some kind of reasonable solution to the problem, because obviously there are differing opinions.

Chairman ISSA. I agree, and I am certainly willing to take 72 briefs.

I would ask the indulgence of all the members for a moment that are not on judiciary for something that Mr. Horowitz said that I know you didn't mean to cut him off, but IG Horowitz alluded to the situation in the Harriet Miers case when obviously you were investigating and Chairman Conyers was also going forward. If there is anything you didn't say on that that you think would be illustrative of that situation, I think it is important, because that led to precedent setting from a standpoint of this and other committees and a recognition of an unusual situation. I lived, you lived, many of the older members here lived through the U.S. attorney dismissal and the inability to get good answers, both here in Congress and the IG. So if you have anything, I would love to hear it.

Mr. HOROWITZ. I was just going to point out in terms of two concrete examples where this has played out. One was the U.S. attorney firings, where the initial decision in the Department by the attorney general was to assign it to OPR, even though these were high level presidential appointees. We appealed to the attorney general; the decision was made to have it be done jointly with OPR.

The second example I had just wanted to mention was the Brandon Mayfield incident involving the lawyer in Oregon who was imprisoned after mismatched fingerprints after the bombing in Spain. That resulted in an investigation, two separate investigations. We investigated the FBI issue; OPR investigated the attorney misconduct allegations. You have our report; our report is public. OPR's report is not public, to this day. And that is an example, I think, of the institutional issue that I think has played out.

I am not suggesting anybody's conduct in conducting those was improper; I am just pointing out the structural issue.

Chairman ISSA. Thank you.

Mr. Mica.

Mr. MICA. Thank you.

You all have different amounts of time being either inspectors general or being in the investigation and oversight business. What is your experience, Ms. Gustafson?

Ms. GUSTAFSON. I am a lawyer, like so many people. I was an assistant prosecutor many years ago. I spent eight years as a general counsel to the State auditor.

Mr. MICA. But on the Federal level?

Ms. GUSTAFSON. On the Federal level I was confirmed in October of 2009, and that has been my experience.

Mr. MICA. But before that you did not have Federal?

Ms. GUSTAFSON. No.

Mr. MICA. Mr. Horowitz?

Mr. HOROWITZ. I was confirmed as IG about 20 months ago. From 1991 to 2003 I was seven years in the U.S. Attorney's Office of the Southern District of New York, helped run their public corruption unit.

Mr. MICA. So you have done Federal. Okay.

Ms. Buller?

Ms. BULLER. I have been in the IG community since 1986. I started as an attorney and then was deputy legal counsel.

Mr. MICA. So you have been around a long time.

Ms. BULLER. Yes, I have.

[Laughter.]

Chairman ISSA. You know, this is the kind of probing that we often get criticized for, John.

Mr. MICA. I was actually looking for Mr. Duncan, because I was going to say I have been on the committee, this is my twenty-second year, and Mr. Duncan, who sits over here, although he looks older and more distinguished than me, I am senior to him. My point being that for 22 years on this committee I have been through all the investigations; Waco, I think we did Whitewater and we did Travelgate. I mean, the list goes on and on. You see all the chairmen up here listed. Almost all of them but one, I think, I served under.

My point here is that never in my experience have I seen such difficulty in getting information from an Administration. We impeached President Clinton, we went through all kinds of very difficult investigations, quite frankly, but this Administration has sort of fine-tuned the art of slow-rolling us.

Have you had similar difficulties, Mr. Horowitz? You have only been on for a short time, a little bit longer Ms. Gustafson and Ms. Buller. We will go that order.

Mr. HOROWITZ. To be clear, the issue I raised is not necessarily specific to this attorney general, this deputy attorney general; it is an issue that my predecessors have had to deal with in terms of getting components——

Mr. MICA. But it is difficult. You don't have that long-term——

Mr. HOROWITZ. I don't have the long-term.

Mr. MICA. Okay.

Ms. Gustafson?

Ms. GUSTAFSON. This is the only Administration I have served under. I will tell you that in the auditor's office we were slow-rolled all the time, and in the IG's office we get slow-rolled as well. I

mean, I do think it is something that must be common to anybody who is an overseer. But whether there is a trend, I can't say.

Mr. MICA. We have the same role except from a legislative standpoint, investigations and oversight.

Ms. GUSTAFSON. Exactly.

Mr. MICA. Ms. Buller?

Ms. BULLER. I would say it has been something that I have experienced pretty much all my career, at least as far as having to go back and explain time and time again why it is we had access to information. I think at Peace Corps it is a little different and it is more exacerbated because Peace Corps has five-year term limits, so we have people coming in all the time who have no Federal experience.

Mr. MICA. Well, again, I can only relay my experience from the dais here, but it has been very difficult. Now we are dealing with an attorney general that you serve with, Mr. Horowitz, who we held in contempt over trying to get documents from Fast and Furious, which I think we had every right to get all of those documents. Were there restrictions or limitations on your ability to access documents during your investigation into Fast and Furious?

Mr. HOROWITZ. I came onboard in the middle of the investigation, but my predecessor did have issues with regard to getting grand jury and Title 3 materials until the attorney general and deputy attorney general intervened and wrote us a letter permitting us to get that. But it took, my understanding is, many months, and I understand that we briefed the committee staff about the problems that we were having when they were occurring.

Mr. MICA. I heard you say something, too. You said that you also report back to the attorney general on these cases. So if there is an instance with attorneys within the Department of Justice and general counsel's office, or as high as it gets, including the attorney general, where does the line stop? Is he taken out of the mix if, for example, he is a target?

Mr. HOROWITZ. Just to give you an example, when I came onboard and as we were—we meet monthly with the deputy attorney general, separately monthly with the attorney general. Other than informing them of timing about our Fast and Furious review, we did not, I did not, we did not give them updates on what we were learning as we were doing it. As I think the chairman is aware, the first they saw it was when our draft report went for comment.

Mr. MICA. Well, my time has expired, but I am very supportive of giving you the tools you need to get your investigations and oversight completed.

Thank you. I yield back, Mr. Chairman.

Chairman ISSA. Just to make sure the record is clear, in Fast and Furious you didn't have authority for the many other joint agencies that were involved in Fast and Furious, ones that were outside of Justice.

Mr. HOROWITZ. Correct. So the issues that arose in DHS through ICE and others that are in our report, we would not have had authority to get those.

Chairman ISSA. This is another part of the reform that we were talking about.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank the ranking member, as well, for holding this hearing and I want to thank our witnesses for your good work.

Mr. Horowitz, I know that the inspector general's office within the Department of Justice has been at the forefront of investigating the FBI's use of confidential informants. This committee, under Chairman Waxman, under Chairman Davis, and under Chairman Burton, were intimately involved, extensively involved with the, I would call it the partnership between the Boston office of the FBI and organized crime that resulted in up to 19 homicides in Boston. We had a number of FBI agents that were charged with taking gifts from organized crime. One eventually went to jail and is still there.

And I want to say that I think that your report back in 2005 was instrumental in getting those guidelines updated; however, I have read one of your most recent reports that indicated, and I will quote from your report: "We found significant problems in the FBI's compliance with the guideline provisions regarding the use of confidential informants. These violations occurred mainly in suitability reviews," whether an informant is suitable as a confidential informant because of violent activities and drug use, things like that. And I quoting again, it says, "In total, we found one or more guideline compliance errors in 87 percent of the informant files that we examined." So this continues to be a problem.

I have asked several times to have hearings on this issue. We have more problems in Boston. We have an individual named Mark Rossetti who has been charged with—he is in a State prosecution currently, but he has been operating a far-flung criminal enterprise while under the protection of the FBI. We have a situation down in New York with a similar crime family operation operating under the protection of the FBI. I have a case down in Atlanta where one of the FBI informants was instrumental in the murder of a young man, a young rapper down there, and there are accusations that that FBI informant actually obstructed the prosecution of the confidential informant once that his involvement was discovered.

So we have a huge problem. When you talk about waste, fraud, and abuse, this is a walking advertisement. A lot of these confidential informants, and there are thousands of them, thousands of confidential informants being operated by the Department of Justice Bureau of FBI. They committed about 6,000 crimes last year. They are required to report the number of crimes, but no details. And this whole system has just run amuck and it is criminal on our part to allow it to continue, and I want to know from you what else we can do to get at this. They have been slow-walking us. Senator Grassley and myself have been involved with the FBI, trying to get information, but I think you are our best hope at getting to the bottom of this. It is a disgrace that innocent U.S. citizens should be murdered by criminal actors who are operating under the protection of the FBI. That is a goddamned disgrace.

I have written three letters to the current chairman to see if we can get a hearing on this, but I got nothing. We seem to have a lot of time for other things that are political in nature, but we don't have time to go after this, and I am fairly disgusted with the lack of response of Congress on this issue. I am wondering if you can

suggest to us ways that, since we are not going to do anything, since we are going to sit on our hands while this goes on and focus on other political stuff, while we are sitting on our hands doing nothing, is there anything we can do to help you actually do some good work on this issue?

Mr. HOROWITZ. Well, first of all, we are going to continue to do the oversight we are doing. As you have indicated, we have issued numerous follow-up reports, because the last thing we want to do is issue a report and then leave it be. So we are going to continue to do that, and I think your continued support and members' continued support, both to us and to alert the FBI and the leadership of the Department on the importance of these issues, the importance of follow-up is critical, as I have learned. And I am more than happy to meet with you, congressman, to talk about the issue further, because it is something that is core to what we do.

Mr. LYNCH. Thank you very much. I appreciate you being here. And to all of you, I appreciate your good work. Thank you.

I yield back.

Mr. JORDAN. [Presiding.] I thank the gentleman. I too appreciate each of you for being here today and your service.

Mr. Horowitz, I actually did look at your bio; I didn't look at each of your bios, but I looked at yours. Impressive record and career, and we appreciate all that.

Now, you worked at the Justice Department for 12 years, is that correct?

Mr. HOROWITZ. That is correct.

Mr. JORDAN. So you worked for Bush, Clinton, Bush.

Mr. HOROWITZ. Correct.

Mr. JORDAN. Okay. And that entire time was in the Criminal Division?

Mr. HOROWITZ. Southern District of New York and then Criminal Division.

Mr. JORDAN. Okay. And you actually headed up the Criminal Division at main Justice at one point.

Mr. HOROWITZ. I was the chief of staff.

Mr. JORDAN. Chief of staff. All right. So in that 12 years experience in the Criminal Division, you guys dealt with investigations dealing with the tax law.

Mr. HOROWITZ. Correct.

Mr. JORDAN. Probably a fair amount of time, right?

Mr. HOROWITZ. Certainly we did.

Mr. JORDAN. And in that 12 year experience at the Justice Department, do you ever recall the Civil Rights Division investigating tax law matters?

Mr. HOROWITZ. I don't recall that during my—

Mr. JORDAN. You don't recall that ever happening in the 12 years you spent at the Justice Department for three different administrations?

Mr. HOROWITZ. I don't recall learning of that.

Mr. JORDAN. Okay. Now, I assume, Mr. Horowitz, that you are abreast of certain stories in the press that deal with the Justice Department. You stay abreast and you read those things.

Mr. HOROWITZ. I read clips.

Mr. JORDAN. Okay. Are you familiar with the name Barbara Bosserman?

Mr. HOROWITZ. From the press.

Mr. JORDAN. From the press, right? And Barbara Bosserman is in fact a lawyer in the Justice Department?

Mr. HOROWITZ. Based on what I have read in the press.

Mr. JORDAN. And based on what you have read in the press, she is in the Civil Rights Division?

Mr. HOROWITZ. That is correct.

Mr. JORDAN. And based also on what you have read in the press, although we checked this out, she is a contributor to the Obama campaign to the tune of \$6,750, both the Obama campaign and the Democrat National Committee?

Mr. HOROWITZ. I only know what I have read in the press.

Mr. JORDAN. Have you also read in the press that she and Mr. Tom Perez, who was acting director at the time of the Civil Rights Division, visited the White House for a bill signing with the President?

Mr. HOROWITZ. I have no idea about that.

Mr. JORDAN. You have not seen that one in the press? But all the other stuff you read in the press.

Mr. HOROWITZ. I don't remember seeing that.

Mr. JORDAN. Okay. And you are also familiar with the fact that she is heading up, according to the press again, she is heading up the investigation into the IRS scandal?

Mr. HOROWITZ. That is what I have read about her involvement.

Mr. JORDAN. Got it. Mr. Horowitz, there are a few lawyers in the Justice Department?

Mr. HOROWITZ. Yes.

Mr. JORDAN. Can you hazard a guess how many lawyers in the Justice Department around the Country and here at main Justice?

Mr. HOROWITZ. At least 10,000.

Mr. JORDAN. Ten thousand lawyers. Okay.

Mr. HOROWITZ. I don't know the number precisely.

Mr. JORDAN. Ten thousand lawyers, and the one who is selected just happens to be a major contributor to the Obama campaign, also happens to be in the Civil Rights Division, not the Criminal Division, where most of the time tax matters are handled. Do you find that a little unusual?

Mr. HOROWITZ. You know, not knowing anything about the case, congressman, other than what I have read in the press, I cannot give an opinion on that.

Mr. JORDAN. Okay, let me just read something to you. Again, just to get your reaction. This is from the Code of Federal Regulations for Department of Justice Employees. It says an employee's participation in a criminal investigation should not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution. Are you familiar with that statement, Mr. Horowitz?

Mr. HOROWITZ. I am.

Mr. JORDAN. I assume very familiar with it. And again, based on your experience at Justice in that 12-year time frame, does it appear that maybe there could be a perception that Ms. Bosserman may have a conflict of interest?

Mr. HOROWITZ. Without knowing the facts more specifically, other than through the press, I think I would defer to answer.

Mr. JORDAN. Let me ask it this way. Do you think maybe a typical American who understands this fact pattern could reach that conclusion? Not saying what you would reach, but do you think Americans could reach that conclusion?

Mr. HOROWITZ. I guess I would ask to defer on that. I think we try to speak to what we have done and worked on.

Mr. JORDAN. I understand. And I appreciate that. Again, you have a stellar, impressive, nonpartisan record, calling balls and strikes and doing exceptional work.

I would just say for the committee we need to remember what took place in this whole ordeal. Last Spring Lois Lerner goes to a Bar Association speech and, with a planted question, breaks the story of the scandal at the IRS three days before the inspector general is going to issue his report. So they jumped ahead of the inspector general's report, which should concern all of you. It certainly concerned us.

A few days later the attorney general says we are going to get to the bottom of this, launches a criminal investigation. Four weeks into that investigation we had the opportunity to have then Director Muller in front of the Judiciary Committee and I happened to ask him three simple questions: Who is the lead agent? How many agents have been assigned to the case? And have you interviewed any of the victims? And four weeks into a criminal investigation the FBI director said, I don't know, I don't know, I don't know. Not exactly inspiring confidence that they are getting to the bottom of this. And then we asked the FBI to brief us. They have refused to do that. And now we learn, now we learn the person heading up the case is not from the Criminal Division, where they should deal with tax matters and where Mr. Horowitz spent 12 years and dealt with lots of tax matters, but instead the most political division in Justice, the Civil Rights Divisions. And just to add a little more to the story, she is a maxed out contributor to the Obama campaign.

So what I am asking, I guess for unanimous consent of the committee, is to enter this document into the record and actually present it to Mr. Horowitz.

Mr. CONNOLLY. Mr. Chairman?

Mr. JORDAN. Yes.

Mr. CONNOLLY. Reserving my right to object, and I will not, I would ask equally that we enter into the record at this point my letter to Russell George, the IG you are referring to, demanding explanations for inconsistencies in his testimony before this committee.

Mr. JORDAN. Without objection on Mr. Connolly's, so done.

Mr. CONNOLLY. I thank the chair.

Mr. JORDAN. And without objection we will enter this into the record.

Mr. JORDAN. But, Mr. Horowitz, just to finish, because my time has expired, this is a letter from the chairman and I requesting that you do an investigation into the circumstances surrounding Ms. Bosserman's selection as the person heading up the IRS investigation at the Department of Justice.

Mr. CUMMINGS. Mr. Chairman?

Mr. JORDAN. Recognize the ranking member.

Mr. CUMMINGS. Just very briefly on the submittal. It is my understanding that there is law which basically says that the party affiliation of these attorneys, there are certain things that cannot be done. Is that right? Are you familiar with that?

Mr. HOROWITZ. I am generally familiar, but I would not venture, frankly, to give an opinion.

Mr. CUMMINGS. I just want to make sure that when it comes to, Mr. Chairman, party affiliation, that we are careful that we are not stepping on the toes of people who are honorable people, but then their reputation gets damaged because they may have made a contribution here or there. I don't even know your affiliation. I am not going to ask you because it is not any of my business, but I am sure you probably made a contribution here and there yourself. So I just want us to be careful, because behind these statements, Mr. Chairman, are human beings who have families, and I am concerned about, when all the dust settles here, are they still standing.

Mr. JORDAN. I would just point out to the ranking member I am not questioning Ms. Bosserman's honor, but I do think the American people may question her loyalty. When you give \$6,750 to the very individual who heads the Administration and you are investigating cases where that Administration targeted people with differing political views, that is a real concern, especially—and I would ask unanimous consent to enter into the record, again, the Code of Federal Regulations for Department of Justice Employees, which reads, and I will read it again just so everyone has this clear: an employee's participation in a criminal investigation—that is exactly what this is—should not create an appearance of a conflict—I don't know how you can create a bigger appearance of a conflict than the fact you maxed out contributions to the Administration you are supposed to be investigating—of interest likely to affect the public perception of the integrity of the investigation or prosecution. And let's remember there were 9,999 other lawyers that they could have maybe picked, but, no, we get Ms. Bosserman.

Mr. CUMMINGS. So we want to go and we want to go through the financial records?

Mr. JORDAN. No.

Mr. CUMMINGS. No, no, no, you listen to me.

Mr. JORDAN. Wait a second.

Mr. CUMMINGS. No, no, no. We want to go through the financial records.

Mr. JORDAN. No we don't.

Mr. CUMMINGS. Apparently so.

Mr. JORDAN. No we don't.

Mr. CUMMINGS. We want to go through the financial records of every attorney who works and who has made contribution.

Mr. JORDAN. I am asking Mr. Horowitz to find out for this committee, and more importantly for the American people, how is it that Ms. Bosserman gets picked out of 10,000 lawyers. And let's remember he just—

Mr. COOPER. Point of order, Mr. Chairman.

Mr. JORDAN. Hang on one second and I will get right to you.

He just testified that in 12 years in the Justice Department in the Criminal Division they dealt with all kinds of tax law issues and, to his recollection, not one time in that 12 years did the Civil Rights Division deal with tax law issues. But that is not what we have here.

Mr. COOPER. Point of order, Mr. Chairman.

Mr. JORDAN. The gentleman is recognized.

Mr. COOPER. I believe the gentleman's time has expired and there are others of us on both sides of the aisle who would like their time.

Mr. JORDAN. And you will be given your full time and some extra, frankly, if Mr. Issa agrees to that. But I was responding to the ranking member's comments, who had over five minutes as well, as I might add.

Mr. CONNOLLY. Mr. Chairman, would you yield for a question?

Mr. JORDAN. Mr. Cooper? Who had the question?

Mr. Connolly is recognized and then Mr. Cooper is recognized.

Mr. CONNOLLY. Mr. Chairman, I hear your concern about the fact that somebody writes a check for a partisan political candidate or party that that could create the appearance of a conflict. I assume the chairman then shares my concern that that could equally apply to an IG, such as Mr. George, who wrote political checks to a political party, yours. I assume you share my concern that that—I mean, what is good for the goose is good for the gander—that that would be equally of concern, in this case to an IG.

Mr. JORDAN. The gentleman from Tennessee is recognized.

Mr. COOPER. Mr. Chairman, the title of this hearing is Empowering Agency Oversight: Views from the Inspectors General Community. And I know this is the ADHD Congress, but it is very important that we try to stick to the topic and let's hear about empowering the IG community, ideally from the IGs. A number of us have questions, like I am struck by the testimony of Mr. Horowitz. It seems like your office in DOJ and OPR have overlapping responsibilities, and I wonder whether they are in fact redundant and maybe we need to consider merging OPR with your office, or maybe there is some sensible arrangement there. And I know that DOJ is a unique situation.

My particular interest is in IGs overall, all 73. And as the author of the 2008 legislation, for my colleagues who were not here then, I need to remind you how difficult it was to pass that bill. It took many years. Why? Because the administration of George W. Bush had a veto threat out on the legislation, in particular the Office of Management and Budget, because somehow they viewed empowered IGs, professionalized IGs, as a threat. It was always beyond me.

When we finally got the issue to the floor, over 400 of our colleagues voted in favor of this legislation, overcoming the veto threat that we had received from OMB. So it is important that we work through these issues on a bipartisan basis for the good of the American taxpayer, and I think we all want watchdogs inside these agencies and we want watchdogs with teeth, whether the agency employee is being investigated as a lawyer or not, or whether they are overseas or not, regardless of the circumstances.

I am particularly interested in testimonial subpoena power so that there is not a level of fraud that is unintentionally condoned just because it doesn't rise to the level of FBI scrutiny, but these folks kind of get the street talk, they know they can get away with it just because they can't be caught.

So if you could help me look at the OPR-DOJ IG issue and then this testimonial subpoena power, I think that would help actually address the topic of this hearing.

Mr. HOROWITZ. Thank you, congressman, and thank you because I know you were one of the cosponsors in a bill that would have addressed the very issue we are talking about. It was a bipartisan group in both the House and the Senate that supported it, and it is a very important issue to us because it does create the potential, just as you indicated, and the Brandon Mayfield case is the best example of that that I can publicly speak to, which is that was a case where an attorney in Oregon was improperly detained by the FBI due to false fingerprints. The issue was what happened on the FBI side and what happened at the Department.

As a result, there were two investigations. We did the investigation into the FBI agent alleged misconduct; the Department did the review of the attorney alleged misconduct. The result was our report, as I said, is public, it is available; the other report is not. The system has worked well with regard to our oversight of FBI, DEA, ATF, all the other components because it is simple: we have a right of first refusal. Cases come to us. If they involve senior level managers, significant misconduct or criminal violations or pervasive mismanagement, we take it; if not, it goes back because it is relatively routine. That avoids the duplication entirely. So this is an important issue.

With regard to testimonial subpoenas, there have been many instances in just my 20 months where we have seen this problem where employees resign, retire just before they are going to be interviewed by us. One I was told that occurred before I got here involved a politicized hiring review that we did back in the mid-2000 period. The night before the interview, one of the key witnesses resigned and we were unable to interview that employee.

Now, I appreciate completely the concern about unfettered subpoena power. I don't believe for a minute that should be the case. There should be appropriate restrictions. We should make sure individuals' due process rights are covered; they should be notified of their right to counsel. There should be an advanced notice to the Department to protect criminal cases. There are all sorts of protections that I think absolutely need to be built into the process. But there are many instances we could cite where our ability to do full, complete reviews that you would want us to do have been stymied.

Mr. COOPER. I thank the gentleman. My time has expired.

I thank the chair.

Mr. JORDAN. I thank the gentleman.

The gentleman from Utah is recognized.

Mr. CHAFFETZ. I thank the chairman.

To all of you, appreciate what you do and how you do it. The IG community is so important to us.

Mr. Horowitz, I have had the good opportunity to visit with you on several occasions, and your presence and expertise in your team

gives me great comfort that we are getting to the bottom of a lot of these things, and I wish you God speed in everything you are doing.

I want to talk for a moment about the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the ATF. We have had numerous issues with the ATF as a nation in the past. There is a case, it is known as Operation Fearless. This was conducted in Milwaukee, Wisconsin and it was rife with all sorts of problems. We had a theft of an assault rifle, two handguns from the primary undercover agent's government vehicle, the burglary of the undercover's storefront, recruitment by ATF agents of an alleged brain-damaged man to coordinate the gun deals. The ATF there was paying teenagers, paying teenagers to put a rather large size tattoo of a squid smoking a joint on their body to try to give some credibility to this storefront, that it was involved in nefarious activities.

There are a whole host of problems that I have with that, in the direction they were going. I guess what is even more troubling is that the committee became aware of some of these problems, was addressed in a letter from Chairman Issa and some other members, Senator Grassley, Chairman Issa, Chairman Goodlap from the Judiciary Committee. They did, months later, provide a response, but then in the briefing the ATF informs the Congress that this was an isolated incident.

Then, on December 7th, 2013, some exceptional reporting by the Milwaukee Journal Sentinel highlighted that they were doing similar types of operations in Portland, Oregon; Wichita, Kansas; Albuquerque, New Mexico; Atlanta, Georgia; Pensacola, Florida.

Are you aware of this case and are you actively involved and engaged in reviewing it?

Mr. HOROWITZ. I am aware of the case. I was aware initially of Operation Fearless that you indicated, and then the subsequent reporting about the broader concerns on storefront operations. We have initiated, in our follow-up review of the Fast and Furious report, a look at how the controls that supposedly have been put in place, how effective they were as to Fast and Furious issues, and also how effective they have been for storefront operations like this.

When the additional information was developed about further storefront operations beyond Milwaukee, what we have indicated to the committee, to the chair and ranking member, and to our other oversight committees is we are looking at those issues, because there are so many, as you have indicated, to try and understand where we should be focusing our attention and our review. We have, obviously, limited resources and we want to have the greatest impact, but we are aware and we are looking at the issue.

Mr. CHAFFETZ. And for each of those cities as well?

Mr. HOROWITZ. For the other operations, trying to get our arms around what is out there. We have asked for briefings. We have received briefings from ATF so that we can be better informed before actually launching the review. But we will be informing the committee and our other oversight committees of the steps we are going to take in light of this.

Mr. CHAFFETZ. Thank you, and I look forward to getting those briefings and understanding them.

To my colleagues here on the dais, I think one of the concerns here, it is an ongoing trend. In Operation Fast and Furious, we were told numerous times that there were no guns they were running, there were no guns that were released. They provided that in writing; they provided that verbally. And then here we have the ATF again telling us this is an isolated case, this hadn't happened. The consequence of this, how we get to the bottom of it, I don't know exactly how to do that. I don't know if somebody has suggestions.

But is this a trend that you see? Do you have any suggestions on how we deal with that?

Mr. HOROWITZ. Certainly the oversight that is being done both in the House and the Senate is important. Our work and our putting forward the reports that we put forward, and digging and looking for the evidence of that hopefully will be helpful to the Congress's oversight.

Mr. CHAFFETZ. Now, your office made a number of recommendations in the wake of fast and furious. Where is ATF in the implementation of those recommendations?

Mr. HOROWITZ. We launched our review in late October, early November, right after the shutdown, of the one-year review and looked back to do that. We are in the process of doing that. I am hoping in the next several months we will have a report for the committee and the public about our assessment of those controls.

Mr. CHAFFETZ. Thank you. I yield back at zero seconds, I want noted for the record. Thank you, chairman.

Chairman ISSA. [Presiding.] I see a plus one. Close.

Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Horowitz, to pick up on our colleague, Mr. Jordan's questioning, he was concerned about Ms. Bosserman's political history, correct?

Mr. HOROWITZ. That was the question.

Mr. CONNOLLY. Did I understand you to share his concern?

Mr. HOROWITZ. I know nothing about the facts involving the matter other than what I have read in the newspapers, so I am not opining on this issue.

Mr. CONNOLLY. All right. As an IG in general, would it concern you that the FBI might employ the services of somebody who has a particular expressed political predilection in the form of a campaign contribution?

Mr. HOROWITZ. I think the hypothetical question for us is dangerous to get into, and I will, think, respectfully defer.

Mr. CONNOLLY. Well, let me move beyond the hypothetical. First of all, for the record, there is a letter dated October 31 to the chairman, Mr. Issa, from Steven Kelly pointing out that there are 11 special agents assigned to this particular case, not one; and Ms. Bosserman is one of 11. Is that a fact?

Mr. HOROWITZ. I have no idea.

Mr. CONNOLLY. Are you familiar with this letter from Mr. Kelly?

Mr. HOROWITZ. I am not.

Mr. CONNOLLY. Well, presumably, since it is an official letter on Justice Department, it is not subject to dispute; he did in fact write it.

Mr. HOROWITZ. I am not disputing it, I am just tell you I haven't read the letter.

Mr. CONNOLLY. All right.

Chairman ISSA. So the gentleman would say that if the Justice Department says something, it must be true?

Mr. CONNOLLY. I will hold that in abeyance, Mr. Chairman, but I would ask, without objection, Mr. Chairman, that that letter be entered.

Chairman ISSA. Without objection, so ordered.

Mr. CONNOLLY. I thank the chair.

Mr. CONNOLLY. Secondly, Mr. Horowitz, also beyond the hypothetical, let me read to you a statement from the Department of Justice spokesperson with respect to Ms. Bosserman, this very issue: "It is contrary to Department policy and a prohibited personnel practice under Federal law to consider the political affiliation of career employees or other non-merit factors in making personnel decisions." That is a statement from the spokesperson of your Department. Do you in any way challenge that statement?

Mr. HOROWITZ. I have no information to challenge that statement.

Mr. CONNOLLY. You don't have any information about what the law requires?

Mr. HOROWITZ. Generally, I would accept that as a proposition.

Mr. CONNOLLY. Right. It is actually against the law to ask somebody their political affiliation when you are meting out assignments in your Department, is that not a matter of record?

Mr. HOROWITZ. We would not do that.

Mr. CONNOLLY. Right. So if we actually did what Mr. Jordan seemed to be suggesting, it would actually be a violation of law by superiors in the Department of Justice.

Mr. HOROWITZ. My understanding of the law generally would prohibit asking the question.

Mr. CONNOLLY. I thank you, Mr. Horowitz.

Mr. JORDAN. Would the gentleman yield?

Mr. CONNOLLY. Yes, Mr. Jordan, I would yield.

Mr. JORDAN. The way I read this, I think the way it is understood, employee's participation in criminal investigation should not create an appearance of conflict. It is the lawyer's obligation to make that known. We just happened to find it out. They didn't tell us; we found out from other witnesses—

Mr. CONNOLLY. Well, reclaiming my time.

Mr. JORDAN. That is why it is appropriate—

Mr. CONNOLLY. Reclaiming my time, Mr. Chairman.

I respect my friend's point of view and, therefore, I know he can relate to the consternation many of us on this side of the aisle felt when we learned about the political contributions of Mr. Russell George and wondered whether that might color his testimony before—

Mr. JORDAN. Would the gentleman yield again?

Mr. CONNOLLY. No. I am running out of time; otherwise, I would be glad to.

Mr. JORDAN. It is a good point.

Mr. CONNOLLY. But it just seems to me if we are going to make an issue out of someone's political giving, then let's make an issue

out of someone's political giving and address it in legislation. But it seems to me, and Mr. Horowitz has just testified under oath that it is his also concurring opinion that it would be a violation of law to do what you suggested, or seemed to be suggesting the Department of Justice ought to have done.

Ms. Gustafson, how does an IG investigation get before CIGIE? If someone says I think Harry Houdini has done something wrong or violated ethics, or whatever it might be, how does it get before CIGIE?

Ms. GUSTAFSON. And in this instance Harry Houdini is an IG? Is that what we are talking about?

Mr. CONNOLLY. Or Harriet Houdini. Either one.

Ms. GUSTAFSON. Well, the reason I asked that—

Chairman ISSA. Is this a disappearing question?

[Laughter.]

Mr. CONNOLLY. Well, I am trying to understand your process, because there is a case from the archives that is still pending before and it is taking an awful long time.

Ms. GUSTAFSON. So the IG Reform Act of 2008 statutorily created the Integrity Committee, which is a standing committee of CIGIE which does investigate allegations against an inspector general. So the way that those allegations would be conveyed to the Integrity Committee there are several ways; they have their own email, they have an address. If it comes through other matters, which is to say if it somehow reaches the chair of CIGIE, who is Phyllis Fong, she is the IG of Agriculture, she would convey those to the Integrity Committee, that is a standing committee that then undertakes their process for investigating—

Mr. CONNOLLY. Excuse me for interrupting one second.

Mr. Chairman, Mr. Jordan, when he was in the chair, promised us a little bit more time. Would the chair indulge me with another 20 or 30 seconds?

Chairman ISSA. Well, you are 24 and you are on a roll. Just keep going.

Mr. CONNOLLY. All right. I just had one quick followup, and I won't abuse it.

Chairman ISSA. Of course.

Mr. CONNOLLY. I thank the chair.

Sorry, Ms. Gustafson.

Ms. GUSTAFSON. So the Integrity Committee is a standing committee; there is a representative from the FBI, there are four IGs on that committee, Office of Special Council is on there. They determine whether the allegations warrant an investigation.

Mr. CONNOLLY. But, because I am running out of time and I do not wish to abuse the indulgence of both chairs, can an outside party come to you and say I think Harriet or Harry Houdini has—

Ms. GUSTAFSON. Oh, absolutely. Anybody can come with allegations.

Mr. CONNOLLY. Okay. Good to know. Thank you.

Chairman ISSA. Everybody has standing.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Chairman ISSA. If I could beg the indulgence of the gentleman just because of something that Mr. Horowitz said. In the case of

an attorney who may have a perceived conflict or an integrity question, although Mr. Connolly asked you the question, my understanding is in your earlier testimony that clearly this is where it doesn't go to you; the question of the gentlelady, Ms. Boswell, it is not going to come to you, it is going to go to the Officer of Professional Responsibility.

Mr. HOROWITZ. That issue arises and would actually trigger the concern Congressman Cooper raised about the potential that we would both think we might have jurisdiction and create overlapping issues. It does demonstrate that problem.

Mr. JORDAN. Mr. Chairman?

Chairman ISSA. Briefly.

Mr. JORDAN. My understanding, based on Mr. Horowitz's opening statement, it is in a lawyer's capacity as a lawyer, their conduct in the courtroom, their conduct as a lawyer, that goes to OPR. Anything else, whether they get the case, how they are assigned the case, professional misconduct, not recusing themselves like they should, that is all under the inspector general. It is just their advice as a lawyer, that is where OPR comes in, is that correct?

Chairman ISSA. I know we just sent a letter, and I am well aware. I just wanted to make sure that Mr. Horowitz had the situation that I think is going to occur, which is in the question of public integrity related to whether or not she should have disclosed and/or recused herself, I strongly suspect this will be a test for Mr. Cummings and myself of how it is handled, because it is a valid question that has been raised. There are two possibilities for who will look at it and how it will be interpreted. And as we look forward to proposed reform, I, quite frankly, with Mr. Connolly, Mr. Cooper, and Mr. Jordan, I am looking forward to see how the investigation, the decision, the process is, because we are here considering a significant legislative action that would clarify any areas of ambiguity, and you brought one up.

So I wasn't predicting that there was an authority; just the opposite. I think this is a good test case.

Okay, we now go to the gentleman from South Carolina, Mr. Gowdy, a man who knows about public integrity and what a lawyer should or shouldn't do.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Horowitz, you did a wonderful job with Fast and Furious. You told us that you would be fair and evenhanded, and you were. I want to talk about one thing that bothers you, one thing that bothers me, and then one thing that you are too smart to answer, but I want to talk about anyway.

What bothers me is when agencies come in here and there is an allegation of criminal conduct and they have to wait until the inspector general investigates it before they can stop the criminal conduct, because my understanding was that you actually don't investigate and prosecute criminal conduct. I don't think you have access to a grand jury, do you?

Mr. HOROWITZ. We investigate, but we can't make the prosecution.

Mr. GOWDY. Can you indict?

Mr. HOROWITZ. We cannot.

Mr. GOWDY. Can you prosecute?

Mr. HOROWITZ. We cannot.

Mr. GOWDY. Can you recommend sentences?

Mr. HOROWITZ. No.

Mr. GOWDY. If someone at the Department of Justice were watching an employee raid the vending machine, should they stop it, call the police, or call you?

Mr. HOROWITZ. Probably all three.

Mr. GOWDY. Yes. They should stop it. I mean, they don't need to wait for you to tell them to stop a criminal act, which is why I am so frustrated with the IRS. The notion that all they have to do is just refer it to the inspector general and they have no duty at all to investigate on their own, no duty to stop the conduct, just turn it over to the inspector general and that kind of tolls their moral statute of limitations.

I want to talk about what bothers you. You are a really, really good lawyer. I can't afford your hourly rate, but I am going to ask you anyway to put your hat on as a lawyer. What is the argument on the other side for not allowing you to do what OPR does?

Mr. HOROWITZ. The argument traditionally has been OPR has the expertise to deal with ethics issues, understands some of the more difficult issues within the Bar rules and the various State Bar rules. There are 50 State Bars, differing rules, and that expertise shouldn't be usurped.

Mr. GOWDY. All right. Your background, you were in the Southern District, you were in main Justice. I assume, to be the inspector general for the Department of Justice, you have to have a pretty similar background; you have to be an attorney, I would think, don't you?

Mr. HOROWITZ. Traditionally, that has been the case. Certainly the last three IGs have been lawyers.

Mr. GOWDY. Do you think that is why they were reluctant to give the jurisdiction for OPR to the inspector general, because you may have a non-lawyer as the inspector general or you may have someone that doesn't have a background in criminal prosecution?

Mr. HOROWITZ. I think that was one of the concerns at the outset, back in the late 1980s.

Mr. GOWDY. All right. I picked up from my friend from Virginia and my good friend from Ohio that you are probably, wisely, not going to weigh in, but I do want to ask you just some questions, not about this in particular. I want you to tell the committee what a strike for cause is. You are back in a courtroom in the Southern District, and what is a strike for cause?

Mr. HOROWITZ. As you are doing voir dire, which is jury selection, each of the parties, prosecutor/defendant in a criminal case, plaintiff/defendant in a civil case, has the right to strike for cause jurors. The judge ultimately decides whether to accept that, but the strike for cause is that that individual can't fairly judge the case for some particular reason either unique to the individual or to the case.

Mr. GOWDY. And do you also have other kinds of strikes that you can use when you are drawing a jury?

Mr. HOROWITZ. You have, then, peremptory challenges, where you don't need to explain a cause for the strike, but—

Mr. GOWDY. You just can't violate the law and it—

Mr. HOROWITZ. You can't do it for—

Mr. GOWDY. But you get to decide whether or not that particular juror could be fair.

Mr. HOROWITZ. Right.

Mr. GOWDY. And in reality, I suppose my mom could be fair in judging my conduct. She could be, but there is no way in the world you would ever seat her on a jury.

Mr. HOROWITZ. I probably would not.

Mr. GOWDY. No, you would not. And I wouldn't seat your mom on a jury. She could be fair. I don't know Ms. Bosserman. I never met her. The fact that you donate money to a candidate does not de facto mean you cannot be fair. But I can't help but think, in an investigation this politically charged, you can't find someone at the Department of Justice that doesn't have this background. You and I both work with people that would never donate money to any candidate; they are just apolitical. They are career prosecutors, they are not wanting to be the U.S. attorney, they are not wanting to be a Federal judge, so they are not going to donate money to Senators; they are just career prosecutors. For the life of me, I just don't understand why you wouldn't pick someone so we don't have this conversation.

You spent a large portion of your career being concerned about the result. But you also spend an equal amount of your career being concerned about the process. I don't know whether Ms. Bosserman could be fair or not. I would just say this: it was an unforced error on the process side.

And I don't understand why they did it, Mr. Chairman.

Chairman ISSA. I thank the gentleman. I might note for the record that no one ever found me guilty more often than my mother.

[Laughter.]

Chairman ISSA. We now go to the gentlelady from Illinois, Ms. Kelly.

Ms. KELLY. Thank you, Mr. Chair, and welcome to the witnesses.

Ms. Gustafson and Mr. Horowitz, I have a few questions about budget cuts on your IG operations. You both, whether today in testimony or in prior hearings, talked about hiring freezes and your staffing levels, so I wanted to know are your staffing levels still below the levels they were prior to the budget cuts.

Ms. GUSTAFSON. My staffing levels, you know, haven't changed. As every agency is, I was waiting with baited breath to see, and still am until it is enacted, what my budget will be for this year, so I have had a hiring freeze now for a couple years and I remain 17 percent below. And that tends to be, just given attrition, it is almost all in Audit; my audit staff is drastically low right now.

Mr. HOROWITZ. And we are still far below where we were when I was sworn in in April 2012. I am very hopeful, after seeing the proposed legislation, that we will get that budget and be able to move forward, because that will help considerably.

Ms. KELLY. And, Ms. Gustafson, if the hiring freeze remains in place and you cannot fill your vacancies, what impact will that have on your ability to oversee the Small Business Administration?

Ms. GUSTAFSON. Well, there is no question, again, my vacancies are in Audit, that the amount of audit work that we can do, both

in the 7(a) and the business lending programs, which is a \$750 billion portfolio, and then 23 percent of all Government contracts are small business contracts; and our oversight of that is going to be slower. I mean, we simply are going to be having less oversight until I can come back up to speed.

Ms. KELLY. And have there been cuts in your travel budget or any other of your budgets? And what have the consequences been of these cuts?

Ms. GUSTAFSON. I have been lucky in that I have not had to restrict travel of my investigators. Most of my travel budget comes from my criminal investigators. I only have about 40 of them to cover the entire Country. I will tell you that I know that there are some IGs that have restricted travel of criminal investigators, where, if the allegation is in Omaha, they haven't had the money to go to Omaha to look for those crimes. I have not had to do that because I am down so many people, unfortunately.

Ms. KELLY. So it does impede the ability to investigate, without having enough resources.

Ms. GUSTAFSON. Right.

Ms. KELLY. Even though you both seem helpful, but if there are flat budgets going forward would prevent further reductions, but also prevent your office from growing back to their pre-cut levels, what would the consequences of this type of funding be on your audit programs in the coming years?

Ms. GUSTAFSON. Well, I would remain at some of the lowest levels that I have been at in some time, again, because, even stagnant, some of my auditors, they will, as they mature, as they get more experience, they have gone up in grade, so in order to absorb and be able to not have to do furloughs, we have had to keep those vacancies, and that would have to stay.

Ms. KELLY. And for any of you, what were the consequences of the Government shutdown on your offices?

Ms. GUSTAFSON. We stopped working for 16 days, my audit staff and my investigative staff, unless they had criminal cases going on or grand jury appearances, things that, on a case-by-case basis, absolutely needed to be done, were time sensitive. They were home. The taxpayers weren't getting anything. They were home.

Mr. HOROWITZ. The same here. Other than our investigators, who were at work, our audit staff was completely at home and all of our audits, as a result, were shut down during that period.

Ms. KELLY. Thank you.

Ms. BULLER. It was the same at the Peace Corps OIG; only the investigators worked. And we had congressionally mandated work that was due in November that we couldn't do, that we were hoping to get done.

Ms. KELLY. Thank you, and I yield back.

Mr. CUMMINGS. Would the gentlelady yield?

Ms. KELLY. Yes, I will.

Mr. CUMMINGS. Thank you very much.

Let me ask you this. Yesterday I was at an event at Social Security in my district. We have probably a large number of Social Security folks because we are headquarters. And we were dedicating a building and I had a chance to talk to some of the employees afterwards, and one of the things they were telling me is over the

last three years they lost 11,000 employees. But they talked about the morale, and you can't put a dollar sign on that, but they were talking about how they were now having to do a lot more work with a lot less people, and that they felt that they were not being efficient. So I am just wondering how does it affect morale and what kind of slippery slope are we going down here? And you may not agree with that, but go ahead.

Ms. GUSTAFSON. No, I think that there has been a tremendously negative impact on morale in my office in the last several years for various factors. You know, the pay freezes, as other costs have gone up, I think when we were going through sequestration, things like that, and people were using terms of essential and non-essential, I think there is nothing more morale-reducing than somehow being told or walking around thinking, well, why am I non-essential. I think that it has been very tough, quite frankly, to be a Federal employee. It has certainly been a tough atmosphere for a lot of people, but I think that morale in my office has suffered; they wondered if they had to be furloughed. I mean, they have been living under a cloud, I think, for a long time and it has been difficult.

But I do want to say this, because I think it is only fair. I am every day just thrilled and really pleased by the dedication of the public servants. I think they still love their job, which is great, and they are very dedicated; and I think it would be wrong for me to not note that.

Mr. HOROWITZ. I have been on 20 months, and in that 20 months there have been the threats of furloughs, pay freezes, the shut-down, etcetera, so it has impacted morale. We have had to restrict travel and training. Employees who want to advance can't get trained. But I will say something else that they very much appreciate is the support of this committee, the other oversight committees, because they care so much about the work they do. And I can't tell you how important it is when they know some of their work is being considered by the committees, by Congress. The document issues I have talked about, I am guessing IG Buller would say the same thing, there is nothing more morale debilitating than folks who want to do their job and have to spend six months ultimately getting it, but going through everything they go through, having to elevate it to me, so I have to elevate it to the attorney general or a component head. That is another part, I think, of the morale issue.

But what has happened the last 20 months, I agree with you completely, Congressman Cummings, it has been a significant morale issue.

Ms. BULLER. If I could just weigh in on the last part of what Mr. Horowitz said. What we have experienced with our access issue with general counsel's office has really been very deflating as far as morale goes. What appears to us is that we are being somewhat singled out to be denied access to information that we are entitled to, and it makes my staff feel that they aren't being considered as professionals.

Chairman ISSA. Thank you. I think that is good information for us to know for both causes morale.

Ms. Kelly, I would note for the record that in the omnibus this committee was instrumental in ensuring that there is now anti-

shutdown provision for the District of Columbia, and I have a meeting with the ranking member tomorrow and one of the topics is modernizing the very act of what happens if we go to a period without funding Government-wide. And since this committee has Government-wide jurisdiction, it will be a topic for legislation by this committee. So I look forward to working with the gentlelady on that.

With that, we go to the gentleman from Arizona, Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

Thank you for all that you do. We certainly appreciate it. Being from the private sector, I also see kind of looking at this analogy of a car getting stuck in the mud. You have to look at all the principles; the ground, the water, the tire, the surface, all those types of aspects. And it is the conduct and the bureaucrats' mind-set that bothers me, because there is not consequences, unlike private sector. I was a dentist, so I do a procedure, I am responsible for that procedure for so long of a period of time. But it seems to be, here in this nightmare on the Hill, that there is no consequences. So I would be very interested from you as how do we look at accountability for time served, you know, having access during that time served, whether it is just in one agency or another, but having jurisdiction within that.

Would redefining that application help us, Ms. Gustafson?

Ms. GUSTAFSON. I think that in order for there to be consequences and accountability, I think the key thing for us as inspectors general is that we always have a good dialogue with Congress and that we are always able, as Mr. Horowitz just noted, to come up here and talk about our work because, quite frankly, I think one of the frustrations, though an understandable one for us, is we can't make anybody do anything because we do not have a programmatic function.

What I have found in my four years here is the quickest or the easiest way, and it is not easy to make them do something, is make sure that Congress knows what is really concerning you because they fear and listen to Congress a lot more than they may listen to us, but I think they fear Congress more, and I think that that is one of the things that is key. Like I said, I think it is natural that, given our role, we are not supposed to run things, I think it is a source of frustration, but I think that is why it is so important and why we have that dual reporting responsibility both to the agency and to Congress, so that we can kind of have that partnership.

Mr. GOSAR. And I understand, but I think that if there is more of a caveat that there is a responsibility or there is a resultant application that is very similar to private sector, I think you are going to have a lot more application, people saying, listen, I can't stray because there are consequences for my behavior. And I think that benefits us all the way across the board because it is not just the application of you and Congress, but also what are the damages should I stray outside those lines.

Would you agree, Mr. Horowitz?

Mr. HOROWITZ. I agree and I think the issue that I have highlighted that is unique to my office on accountability relates to our ability to oversee potential misconduct by attorneys in the course

of their work. Again, that was something that was found by the GAO back to Chairman Brooks and Judiciary Committee back in 1994, that a key part of accountability is transparency, of understanding that there was an independent oversight of the decision, and that the facts were paid out in a fair, thorough way by an independent overseer in those appropriate cases where we should be doing that work.

Mr. GOSAR. You bring in another aspect. When we have complicated cases in the medical world, we have like a case manager, and it seems to me that we could have somebody that is overseeing both investigations and coordinating it. It seems like that would streamline the process. Does that make sense to you?

Mr. HOROWITZ. And, frankly, that is, in some respects, what we have now in place with FBI, DEA, ATF, Marshal Service. They still have their own internal affairs bureaus. It simply comes to us in the first instance so that for what isn't routine, what is significant misconduct, what involves high level misconduct we can do. We only have 400-plus employees. I can't do every case. The FBI has far more employees, as do the others. It is having that ability for us to look first, pick the cases and take those cases where the public, the Congress would expect independent oversight.

Mr. GOSAR. You are just highlighting. You are just on a roll here. You just tied back into where I was going and talking about whistleblowers, because I think very, very important aspect is protections of whistleblowers coming forward in those regards, so I wanted to ask you a number of questions in regards.

So are you aware of any instances in which a DOJ employee was alleged that his or her security clearances were revoked or denied in retaliation for a protected disclosure?

Mr. HOROWITZ. I am actually. We have one recent allegation we received about that issue. I am not sure, given only 20 months on the job, I am not sure if there have been any others preceding me.

Mr. GOSAR. And your office does have the authority to investigate these types of claims?

Mr. HOROWITZ. If it is an FBI employee or a former FBI employee, we have jurisdiction over FBI employees and whistleblowers in terms of retaliation. So other department employees we do not have jurisdiction over; that would go to the Office of—

Mr. GOSAR. So in reviewing cases like that, from the limited time that you have been in, has any whistleblower ever had that reprisal and had their privileges revoked?

Mr. HOROWITZ. We have received that allegation, but we have not concluded that that was the case in that instance that I am aware of. We have, in two other instances, not dealing with those facts, but in two instances recently issued reports where we found retaliation unrelated to the clearance issue concerning that whistleblower.

Mr. GOSAR. And if those allegations were to be true, what would your office be prepared to do?

Mr. HOROWITZ. So what we do is we issue a report to the department's office of oversight that then has to handle them, as well as send it to the component for their follow up on our report and findings, much like we did in Fast and Furious, where we sent the re-

port to ATF and the Department and said here are the problems, here are our recommendations, now tell us what you are doing.

Mr. GOSAR. From your insight, stellar all the way through law, do you think that there is more applications to protections of whistleblowers that need to be enumerated by Congress?

Mr. HOROWITZ. Let me think a little further about that, given I am only 20 months on the job. I know that is coming up now on two years, but I would want a little more time to think about whether there are issues that I haven't seen yet that some of the folks on my staff who do these cases routinely would suggest.

Mr. GOSAR. I would like that. And my previous question in regards to consequences for actions from employees within the agencies, making sure that—I mean, we have seen it over and over again. When I go back home, everybody says, well, Congress and the agencies are held to a whole different standard than we in the private sector; you get away with murder is what they will say, versus what we do in the private sector, and I do agree with them to that aspect. So I would love all of your aspects and protections for whistleblowers, and then also consequences for the actions of employees. So thank you very much.

Chairman ISSA. Would the gentleman yield? Just one quick question.

You mentioned FBI retirees. You ordinarily do not have the ability to deal with retirees. What is different about that?

Mr. HOROWITZ. Correct. I am sorry. If an FBI retiree reported that while they were at work they were retaliated against, we would—

Chairman ISSA. You would protect them, but you couldn't call a fellow retiree who, let's say—

Mr. HOROWITZ. Correct. Correct.

Chairman ISSA. Let me just briefly, if Ms. Speier will give me 30 seconds. If we gave you at least the ability that DOD has, which is a uniformed individual can be recalled from retirement in order to continue an investigation, if we gave you a similar authority Government-wide, that retiring did not allow somebody to evade an IG investigation for the conduct or activities during their tenure, if we gave you that limited change in the IG Act so that the entire workforce would be available to you if they left through retirement—I am not even saying left without a retirement, but left through retirement—would that be helpful in many of your investigations of senior staff?

Mr. HOROWITZ. It would. And it doesn't necessarily even need to be senior staff, frankly. I have seen it across the board in 20 months in several investigations where that would be helpful.

Chairman ISSA. Thank you.

Ms. SPEIER. Mr. Chairman, thank you.

To each of you, thank you for your service to the taxpayers of this Country.

Ms. Buller, you referenced that the sexual assault complaints that are filed are restrictive.

Ms. BULLER. Yes.

Ms. SPEIER. And I think it is very important for us to appreciate that even in the Department of Defense you can file an unrestricted report or a restricted report. When you file a restricted re-

port, the assailant is never investigated, and it is like allowing a sexual predator to continue to prey on other victims. That is something we can fix, is it not?

Ms. BULLER. If you choose to do so with legislation. The problem that we have with the Kate Pusey Act, it is legislatively mandated. That is not exactly what we are talking about or what I am advocating or what my problem is. We do understand that victims of sexual assault are very traumatized and that they—

Ms. SPEIER. I understand your perspective. I want the committee to appreciate that right now only restricted reports are allowed within the Peace Corps, which prevents any kind of action being taken against the predator. Is that correct?

Ms. BULLER. It is not that that is only what is allowed; that is the default. Instead of having a system where a volunteer who is a victim of sexual assault comes in and says I am going to make a report and have that be unrestricted, it automatically goes to restricted.

Ms. SPEIER. All right. Let me ask you, Ms. Gustafson, the Alaska Native Corporation and the preferences in the 8(a) program have been extensively looked at for abuse and mismanagement. Do you have all the authority you need and have all the recommendations you have given over the years been implemented?

Ms. GUSTAFSON. As you note, ANGs are 8(a)s, and we do have the authority that I believe we need to oversee the 8(a) program and to oversee any participants. I would like to get back with you. We have done extensive work in the 8(a) area. I know that there have been some regulatory changes that SBA has made. What I would like to do is I can get back with you with a list of where the recommendations are, because, like every IG, we track our recommendations and whether they have been implemented and agreed with, so I would be happy to get back with you on any open and pending recommendations.

Ms. SPEIER. All right. Also, the goals for women-owned small businesses are pitiful in terms of the various agencies actually meeting those goals. Do you have any recommendations—And you can do this by letter, if you want—as to how we can somehow meet those goals, as opposed to just having them mean nothing?

Ms. GUSTAFSON. I would be happy to get back with you. As you know, the women-owned small businesses is a newer program and the goals are newer, so I would be happy for us to take that back and maybe get back with you on maybe some comparisons and see if there are tools that the other programs have that might be useful.

Ms. SPEIER. All right. The CRS is working on a report right now on the independence and effectiveness of the inspector general's agencies, and they are particularly focused on this peer review system. As I understand it, the peer review is one that is self-review and it is peer review of each other, of IGs of similar size, and there is some concern that there maybe a cozy relationship that is created and you scratch my back and I scratch yours, or I won't challenge or criticize you and you won't criticize me. Charles Edwards, the acting deputy DHS IG until he resigned in December, was accused of misusing agency money for personal travel, including having his staff drive him around and his wife for personal errands

and scheduling site visits in Florida so he could attend his PhD classes, helping his wife get a job as a supervisory auditor within his office, and retaliating against an employee that attempted to call attention to his misconduct, and offering bonuses to employees that helped him with his PhD.

An anonymous whistleblower also focused on the former IG for the Library of Congress, who alleged to have verified his own time sheets and claimed credit hours to accrue more than 800 hours in annual leave that he would be compensated for upon his retirement on January 3rd. He engaged in nepotism to hire family friends for positions in the office and used taxpayer money for accounting degrees of family friends instead of hiring qualified personnel. House administration minority staff told our office in December that these allegations are factors that contributed to his retirement.

So how do we make sure that the IGs are on the straight and narrow?

Ms. GUSTAFSON. Just to clarify, I think we are talking about two different things. Peer reviews are done in IG offices much like in audit offices, which is where, every three years, an IG will peer review the other to see if standards are being met, auditing standards. We also go through peer reviews of investigator divisions.

You are talking about allegations of misconduct by an inspector general, so I want to focus on that, which is the duty of the Integrity Committee of CIGIE that are charged with investigating those allegations. As I noted before, that committee existed before the IG Reform Act of 2008, but was codified in the IG Reform Act of 2008. And as you noted, under that process, should the allegations warrant investigation by a determination of the committee, another inspector general's office would undertake that investigation. So some of the things you mentioned, like Mr. Edwards, he would be investigated by another IG that would have the resources and the time to investigate him.

I will tell you again that this is the way it has been done, and there is often a question who watches the watchdogs. I think that, quite frankly, we are very proud of the work of the Integrity Committee. I think that, in general, I think it has found to do good work. If CRS is looking at it, I think that is happy. We are happy to work with the committee. There are sometimes concerns about the Integrity Committee, and we are certainly happy, as a member of the Executive Council, we often have that dialogue.

But I think the best answer is that is kind of the best we have come up with. Now, obviously, if there is a specific allegation, sometimes special counsel will investigate an IG, but as far as investigations of misconduct, I believe that in general IGs are best positioned to do those investigations because those are the type of investigations that we do, we investigate professional misconduct. So it is a system that was set up by Congress. I think it is a system that we are supportive of, but we are always happy to discuss it if there are—

Chairman ISSA. Thank you.

Ms. Speier, I might note that in the IG reform bill that is being worked on now, two of the areas that I think address this concern we are codifying further the seven day rule and when Congress gets notified, particularly this committee. We are also including the

very question of integrity as a required report. Any allegation of an integrity violation by a principal IG has to be reported to this committee as soon as known; not on a disclosure basis, but on a confidential basis because essentially this committee oversees IGs, and if there is a question of any of the 72, it is critical that this committee be aware of it. But we would look forward to your input in these other areas you discussed.

Ms. SPEIER. Thank you. Yield back.

Chairman ISSA. Thank you.

The gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you, Mr. Chairman. First of all, I want to say I really appreciate the work of the inspectors general overall. They are especially helpful to this committee and, in fact, I introduced a bill several years ago to create an inspector general for the Tennessee Valley Authority, and that was passed and I am glad we have that in effect. I know the inspectors general sometimes are not the most popular people in their departments, but I appreciate the work that is done and I especially appreciate the recent work we have had done by the inspector general for Iraq, who has been in front of us recently several times.

But, Mr. Horowitz, I am interested in this. About 20 years ago Forbes Magazine had a cover article and it says, Time to Slim Down. Since 1980, the Justice Department has nearly doubled in size, to 98,000, and quadrupled in budget to \$11 billion. And now the budget of the Justice Department is 250 percent higher than it was then, an average increase of 12 percent a year. And the point of that article was that there were so many lawyers at the Department of Justice and they were falling all over themselves trying to come up with cases to prosecute, and Forbes said many business people were being prosecuted for violating laws that they didn't even know were in existence.

I know that everybody has violated probably several Federal laws unknowingly, and an innocent mistake is not supposed to be criminal, but a zealous prosecutor can make even an innocent mistake seem criminal. And I am remember the celebrated case of Ray Donovan, who was in President Reagan's cabinet. After he was acquitted, he said, where do I go to get back my reputation.

The power of prosecution is a dangerous and powerful power, so I am concerned about this. Then I remember Senator Stevens and the misconduct that came out later by some of those prosecutors. So I am a little concerned or confused about what your power is in that regard to do something if some prosecutor has abused his discretion.

I was a criminal court judge for seven and a half years before I came to Congress, trying the felony criminal cases. Most criminal court judges, almost all are former prosecutors. I happened to be one of the unusual ones who came from having done criminal defense work. But it seems to me at times that the Justice Department is almost out of control, and if you see that, what can you do about it?

Mr. HOROWITZ. The way the jurisdiction currently works, congressman, if there is an allegation about a prosecutor's exercise of their prosecutorial authority, that goes to the Office of Professional Responsibility. So the OPR handled the Stevens matter and the re-

ferral there, and handled the New Orleans matter recently involving the blogging that made the press. I have been asked whether I would have the authority to look at that. That was referred to the Office of Professional Responsibility because it involved conduct by the prosecutor in the course of their prosecuting the case. I have been an AUSA, I was, for 10 years, before coming back to the Department of Defense lawyer, so I fully appreciate the concerns you express about the power prosecutors have and the need to make sure that that is carefully overseen.

Mr. DUNCAN. Did I hear you say a few minutes ago or an hour ago or so that you are the only inspector general that is limited in that respect?

Mr. HOROWITZ. That is my understanding, that the IG Act, only that provision, which is in 8E, which is specific to my office, my understanding is the other IGs do not have that limitation.

Mr. DUNCAN. Do you think that that restriction should be eliminated or limited in some way?

Mr. HOROWITZ. I do. There has been bipartisan efforts to do that over the years—

Mr. DUNCAN. But the Justice Department has been able to stop that from happening?

Mr. HOROWITZ. It has not gone through in the past. And Congressman Cooper actually was one of the individuals in 2008 who pushed that issue, as we talked about earlier.

Mr. DUNCAN. All right. Thank you very much.

Chairman ISSA. Thank you.

We now go to the gentlelady, Ms. Grisham, I believe by agreement. Mr. Davis, is that correct? That is what I was told.

Ms. Grisham.

Mr. DAVIS. Thank you very much, Mr. Chairman, and I certainly thank the gentlelady.

I want to thank the panelists for their endurance and being here the whole period of time.

Ms. Gustafson, you mentioned in your testimony that the CIGIE would like Congress to add an exemption to the Freedom of Information Act to protect work papers and other information developed by inspectors general in evaluating the security of agency information systems. Agencies previously used Exemption 2 of the Freedom of Information Act to protect this information. However, under the Supreme Court's decision in *Milner v. Department of the Navy*, agencies' broad use of Exemption 2 has been limited. CIGIE has proposed exemption from FOIA of Information that "could reasonably be expected to lead to or result in unauthorized access, use disclosure, disruption, modification, or destruction of an agency's information system or the information that system controls, processes, stores, or transmits."

You characterize this proposal as a narrow exemption. I am not so sure how narrow this is and I would like, however, to hear more from you exactly what type of information you believe should be protected that is not already protected under FOIA. Could you explain in more detail what kind of information you are concerned about protecting from public disclosure and why disclosure of this information would be of some concern?

Ms. GUSTAFSON. Yes, Representative Davis. What the IG community is most concerned about are the FISMA audits and other audits and evaluations and reviews we do of information technology, information security systems of our agencies. This is something that is mandated, of course, by Congress, understandably so, that we go and make sure that the IT systems are as secure as they can possibly be.

Traditionally, as you know, all our reports are public under law, which makes sense. We work for the taxpayers, so our reports are publicly posted. What had been done previous to the Milner decision was were there anything in those reports that could reasonably be used by somebody with much more IT knowledge than I to perhaps use a vulnerability to perhaps inflict some damage on an IT system, that would be redacted under the High 2 exemption, which under Milner, which was a pretty sweeping decision, a lot of those exemptions went away because I believe the Supreme Court said that was being interpreted too broadly.

So we, as a community, are seeking to achieve a balance between the public's right, of course, to know our work and we want our public to know the work, and our ability to withhold information that could be used to basically exploit our systems. This is something we are working with. We have a subgroup of the Information Technology Committees and the Legislation Committee. We work very closely with the committees in Congress that are working on this IT legislation. We appreciate very much that our input is being used.

And I will let you know, sir, that we do also work with those non-governmental organizations that are very sincere and very strong in supporting openness in Government, and we have worked with those and we will continue to work with those organizations; POGO, the Sunshine Foundation, things like that. We are trying to achieve this balance and we are hoping that we can reach a balance where this information can be protected and yet our reports remain open and we are not withholding unnecessarily information from the people.

Mr. DAVIS. Well, as the public becomes more information savvy and there is pursuit of more transparency, how are those discussions going in terms of working with these entities and at the same time being certain or as certain as you can be that you are protecting the integrity of the systems?

Ms. GUSTAFSON. Well, again, these are very robust discussions that we are having where we are trying to always answer the question of is this information that literally could be utilized, could be a roadmap for somebody to exploit a vulnerability in a system. It is not that we want all of our work to be protected such that the taxpayer doesn't realize perhaps SBA has an issue with FISMA. We think that there are certain things the public needs and should know about whether we are protecting our information technology systems. We simply don't want to be giving the bad guys information they can use against us, and that is really what we are trying to do.

Mr. DAVIS. Thank you very much.

Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman and I share with the gentleman and the IG the concern for that.

We now go to the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel. Before joining this committee, I must admit I did not have the respect or appreciation for what IGs and your staff do, and communicate our appreciation for the very important service you provide to this committee and other committees.

Mr. Horowitz, let me ask you, knowing the fact that probably the singularly most important function, ultimately, in your service and your agency's service is to issue a report, what is the thumbnail process for the OIG in issuing reports?

Mr. HOROWITZ. Well, the first thing we do, obviously, is hopefully gather all the documents we need and the evidence we need to assess the facts and the issues. We then internally write up our report, whether it is an audit or a review, such as Fast and Furious. We send drafts, we talk internally, we finalize our report. In some instances, for audits, we will report back our mid-audit findings to the component, in part so they can take corrective action sooner, rather than later, but, for example, in Fast and Furious we did our draft report and we then sent it for official comment to the Department. We would do the same if it was a component; we would send an audit for comment. The component would give us, in some instances, again, in the audit setting we will sit down informally with the component to get their feedback, our auditors, their auditors, etcetera. We may or may not make changes to our working draft at that point, but we will make those decisions, no one else will, it will be an IG decision.

Mr. WALBERG. Does that include the timing of your release, it is completely up to you?

Mr. HOROWITZ. Correct. In our office—certainly I won't speak for all the IGs, but certainly in our office our practice is we make the decisions on when to release it and how to release it.

Mr. WALBERG. What is the appropriate relationship between the inspector general's office and the DOJ in this case?

Mr. HOROWITZ. Well, on that issue, we would, and have traditionally, provided the Department one day in advance the report that we are issuing publicly, and then we will, on our own, through our mechanism, release it publicly. But it is not given to the Department for them to release until we have actually released it; we are the ones who control the release.

Mr. WALBERG. So you consult with them regularly before release, at least that is the normal process. You would consult with the Office of Legal Counsel?

Mr. HOROWITZ. We would not consult with the Office of Legal Counsel, necessarily. What we would do is we would interact with. Consult I am not sure is necessarily what we would do, but we would certainly interact with the component we are overseeing, whether that is ATF, the FBI, a U.S. attorney's office, in an audit in particular, about what we are finding if there is a problem so they can take corrective action as we are finishing our report and reporting on the problems we found.

Mr. WALBERG. And it is possible, then, for them, in working with you, to alter the language of the report, the content of the report?

Mr. HOROWITZ. The component or the Department can certainly give us their comments about what we have written and what we are intending to say. We will certainly consider that, but we will be making those decisions; there will not be joint editing, writing, anything like that. That is a core function of our independence is we are the deciding officials as to what goes in that report.

Mr. WALBERG. Okay. Okay. You referenced Fast and Furious. You gave a report and set down some recommendations in that report. In your opinion, has the Department made progress in implementing the language of that report, the expressed concerns of that report?

Mr. HOROWITZ. The Department has reported to us that they have, and we have now initiated, and we alerted the committee that we were initiating, a month or two or so ago, the one-year follow-up of our report so that we can report to you and the public how the Department and ATF has done.

Mr. WALBERG. Thus far, are you satisfied with the Department's efforts in responding to that report?

Mr. HOROWITZ. Congressman, until we finish our reviews, we make no judgments. We want facts. We will sit down with my staff and we will come up with our views after hearing from everybody. We want to make sure we have all the evidence.

Mr. WALBERG. Have they responded appropriately? I guess I would say that. Their efforts in response, has it been appropriate in time?

Mr. HOROWITZ. So far we have gotten the materials we have asked for, but we are in the beginning stages, the first several weeks of that review, so we are hopeful that that will continue.

Mr. WALBERG. Thank you.

Chairman ISSA. Thank you.

Ms. Grisham?

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

I want to join my colleagues in expressing my appreciation for the roles of inspectors general across Government. In fact, in my district and in my State of New Mexico, both fortunately and unfortunately, we have had experiences with the Department of Justice protecting individuals from Government abuses and practices, and currently have an ongoing investigation with the largest city in my district, the Albuquerque Police Department. So recognizing that we have that independence, that we can make those complaints and reports, and that you recognize the value and the importance of that work. In fact, it really is life or death in many of the programs and services that we are providing when it is dealing with law enforcement or medical services provided by a Government agency or entity. So I want to thank you for that independent and crucial and critical work.

I want to follow up on something that my colleague, Mr. Davis, was talking about in striking the balance between being transparent and meeting our requests under FOIA, but also making sure that we don't enhance a bad actor's ability to either continue on that path or to prevent us from finding additional information.

Has there ever been a circumstance where publicly disclosed IT vulnerabilities helped hackers further compromise an agency's IT systems since the 2011 Supreme Court case? To the best of your

knowledge, does anybody have any information that that has occurred or was likely to occur or the threat was there?

Ms. GUSTAFSON. To the best of my knowledge, I am not aware of any. I will tell you that I think that the nature of the public reports have changed, which is to say I think that what is being publicly released has changed because we can no longer black out things that we would have exposed a security vulnerability. So the work is still being done; I think the nature of the product has changed and that there is just a real concern that should there be a legal challenge or something, again, there is a fear of work papers and things like that under FOIA. We really think FOIA needs to be strengthened to protect those papers. It has been fairly recent; it hasn't happened yet, but I know that there is a very serious concern, especially among the IT auditors. We have a very robust IT committee and, again, people who know this IT stuff much better than I, and I know that they have changed, again, the nature of the public reports while they do the work.

Ms. LUJAN GRISHAM. Anyone else have any comments?

It is really a very delicate balance because part of providing—sometimes the folks who are responsible—I will go back to the Department of Justice issues—have no idea that they have the kind of problems that the Department of Justice is able to identify and find, and when you see those public reports with patterns and practices that can identify for you a much better path to provide the best possible service and care. I appreciate having those be public and I think it is important for the public to know what the risks are for many of these kinds of services and issues, but you certainly don't want to promote.

But I do worry that sometimes we identify concerns that have not factual validity. There are so many things that go wrong despite our best efforts that I think sometimes we have a tendency not to be proactive and to retreat, and I want to be very careful. And I appreciate that your response to Mr. Davis and the committee is that you are mindful, you are concerned, you want to do everything that you can to be as transparent as you can for a variety of reasons, not the least of which is to make sure that we know what is going on and we are clear about the problems that you are finding and identifying, and then this body can do something about that if it requires legislative action or there is something we can do to be proactive. But when you are concerned, we don't want you to retreat from those actions.

Is there a group that is working on a kind of a best practices? Is there a way to get additional information back to the committee so that we have a sense about what we can do to aid you in making those final decisions?

Ms. GUSTAFSON. Again, we both have an IT Committee of CIGIE itself, much like the Legislation Committee and, again, there is also even a subgroup, it is the IT Committee, the Audit Committee, and the Legislation Committee. We have both of those groups up and running and we have had dialogue, so we are happy to continue the dialogue and have some new dialogue; there is definitely groups that we can have talk.

Mr. HOROWITZ. I certainly appreciate your concern because we see the issue, as you indicated, when we are doing oversight of the

Department and its components, we frequently get the first markings back on classification, on law enforcement sensitive, on other issues, which is, in our view, over-classified or over-marked because the first reaction of those involved, and their motives are not improper, but it is concern over protecting information; and we are always sensitive about that and we need to be particularly sensitive when we are asking the committee to do something like this.

Ms. LUJAN GRISHAM. If I might, because I am out of time, Mr. Chairman, I would really appreciate if, as you identify where you are headed and what some of those ideas are, to provide that information back to the committee. Also, I just experienced in New Mexico the executive audited behavioral health entities that are receiving Medicaid, found that 100 percent of them were engaged in fraudulent activity in terms of their billing and service practices. All contracts were canceled. The reports then are redacted, go to the attorney general; attorney general can't provide that information.

And as that battle about is it really 100 percent, is there continuity of care, all the things that you have to figure out, you know, we are peeling away layers that identify that we don't have all facts, similar to the things that this committee often finds, we don't have all the facts, that the stuff that was redacted was redacted not to protect information to further the investigation or prevent other problems, but rather that it wasn't clear what the issues were, so it minimizes your ability to make such a broad decision.

So I am particularly concerned and appreciate that follow-up and response.

Thank you for your indulgence, Mr. Chairman.

Chairman ISSA. Absolutely. And I share with the gentlelady the various unclassified classifications, the sensitive, but unclassified and redacted. My favorite is the one that they never actually say, which is redacted for embarrassment, which often is the case on some of them,

In closing, I am just going to share something that occurred to me as you were talking, Ms. Gustafson. The fact is that as we look through the Mitre documents and others related to the Healthcare.gov and we discovered that there were vulnerabilities, actual vulnerabilities on launch date, they were not mitigated on launch date and some of them were not mitigated and some may still not be mitigated, mitigating meaning fixed, we have that concern that the actual flaws should not be ever made public until they are fully mitigated.

One of the great questions, of course, is can they continue to not make public what they mitigated after they have mitigated it. And I think that is an area of concern where, if in fact IGs clearly do un-redact, if you will, at the point that something has been assured to have been fully mitigated, it literally creates the roadmap for the hacker in which the road you have been assured has been blocked, if it has not been blocked, then let's be honest, the hacker is almost a service in that situation in that if somebody says it has been blocked, then they ought to be willing to say this was a problem and we fixed it, to the extent that there are not other similar problems known but not yet mitigated.

Having said all of that, you have an absolute need to know that so that in fact you can have the oversight for whether or not the mitigation occurs, whether or not they can then be made publicly available, and we will look to work with the IG community to ensure that FOIA continues to be as open and transparent as possible, but does not create access to hackers as a result of disclosure. And I think that, of all the things that we could end on, the recognition that that is an area in which the court has challenged our intent in a way in which I believe FOIA could be opened up slightly in order to clarify that.

I want to thank all of you. You heard a lot of things we intend to do, particularly I think when it comes to how we would provide a pathway to testimonial subpoena, cross-agency access, and access to people who have left the Federal workforce, all of those issues are issues that Mr. Cummings and I will pick up tomorrow, but they will not be completely resolved tomorrow, so we will look not only forward to your input, but those 72 briefs that I mentioned.

And I am actually welcoming that because if people have a private resistance, but in fact it is a resistance from being accused of having asked for a power and thus look bad, then they need not brief. And if they have a real concern and they want to express it, we want to hear that concern so that when we orchestrate a fix, that it is consistent with any real concerns, rather than simply the concern that I don't want to be the one that asked for more authority, which I think at least in some cases is probably the case.

So again I want to thank you for your patience. And from all of us on the dais, this committee is adjourned.

[Whereupon, at 11:56 a.m., the committee was adjourned.]

