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WATCHDOGS NEEDED: TOP GOVERNMENT INVESTIGATOR POSITIONS LEFT UNFILLED FOR YEARS

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

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WEDNESDAY, JUNE 3, 2015

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

The Committee met, pursuant to notice, at 10:01 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Lankford, Ayotte, Ernst, Sasse, Carper, McCaskill, Baldwin, Booker, and Peters.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. This hearing will come to order. I ask unanimous consent to have my written opening statement entered into the record.[1] No objection. I will do it when his back is turned to me. So ordered.

I would like to spend a little bit more time than I normally do with some opening comments because this issue is pretty dear to my heart and I think all of our hearts. We always say the Government Accountability Office (GAO) is our favorite agency, but certainly the Offices of Inspectors General (OIG) are our favorite offices within these agencies and departments, particularly for this oversight Committee. It is just incredibly important to have permanent Inspectors General (IG) that are completely independent, that will provide Congress and the American public transparency, and that watchdog assignment, that responsibility for departments and agencies so that we have awareness of what is happening. It is the only way we are going to be able to improve the efficiency, the effectiveness, the accountability of government, is to have that type of transparency.

My own initial involvement with the importance of Inspectors General really came after the Cartegena incident. Now, I come from the private sector. I have had independent financial auditors. I have had surveillance auditors with the International Organization for Standardization (ISO) certification. These are some independent outside groups that provide that independent oversight. This is about as good as we can do within government, having, obviously government employees, but we need that independence and transparency.

[1] The prepared statement of Chairman Johnson appears in the Appendix on page 37.

After the Cartegena hearing where we had the Director of the Secret Service, Mark Sullivan, testifying before us, it was determined that we would have an inspection, an investigation conducted by the Inspector General's office.

My staff went down in a secure briefing to read the initial report. A couple months later, when that report was actually issued, we realized that there were parts of the report that were originally included in that that had been taken out of the report inappropriately, which led to a continuing investigation on the part of our Subcommittee to find out that there were some other problems with Charles Edwards and we issued a report supported by both sides. A couple days before we had a hearing with Mr. Charles Edwards, he resigned and went on to some other duty.

The result of the lack of transparency, the lack of what I think would be reports with integrity based on what was happening within the Secret Service, the cultural problems with the Secret Service, the net result of that is we have not reformed the Secret Service. We are still continuing to have credibility issues within an agency that I think is incredibly important to have the utmost credibility. So that is one circumstance that was my first time certainly being made aware of how incredibly important it is to have a completely independent, completely transparent Office of Inspector General. And, of course, Charles Edwards, the problem with him is he was an Acting IG, and he was openly vying for the permanent IG position, so you have a natural conflict of interest right there, which I think was at the heart of that problem.

Fast forward. We saw the revelations in Arizona in terms of the Department of Veterans Affairs (VA) health care system, people dying waiting to be given care. Now, that information was broken through news reports, not revealed to the public where it should have been revealed through the Office of Inspector General of the VA.

In our own State, Senator Baldwin's State and mine, further news reports revealed early this year that there are similar problems in the Tomah VA Health Care Center where, because of overprescription of opiate drugs, veterans died. And, in particular, the day I learned about it, early in January, on January 12 Candace Delis took her father, Thomas Baer, into the Tomah VA facility. He was a suffering stroke victim. He waited somewhere between 2 and 3 hours, probably suffered a couple strokes. In the end, he was transported to Gundersen Lutheran La Crosse. He died a couple days later. He basically died of neglect.

Now, had the Office of Inspector General been transparent, had the office not administratively closed a report that it had been working on a couple years, had that report been made public, what Candace Delis told me on the phone a few days after I learned of the incident, she said, "Senator, had I known that there were problems with the Tomah VA health care system, I never would have taken my father to that facility."

Now, what is really sad is Candace Delis and Thomas Baer lived in Marshfield, Wisconsin. A world-class health care facility resides in Marshfield, Wisconsin. Thomas Baer would have been alive had we had the type of transparency, the type of independence in the

Office of Inspector General within the VA system. I truly believe that.

So these issues are not just theoretical. This is not just about, good government. People's lives can be in the balance here. So these are incredibly important issues.

The purpose of this hearing is really to, I think, first convey how important that independent and transparent function is of the Office of Inspector General; and then, second, to find out why this White House, this Administration, who claimed to be and wanted to be the most transparent Administration in history, has taken so long to fill so many positions of Inspectors General. Here are just a couple of examples.

The State Department went 1,701 days without a permanent Inspector General. That is more than 4½ years before that position was finally filled.

The Interior Department is right now holding the current record: 2,291 days, 6¼ years since we have had a permanent Inspector General within the Department of Interior (DOI).

The Department of Labor (DOL) was pretty bad. Labor had 1,555 days that position went vacant. That is more than 4¼ years.

Now, let us just compare past Administrations.

The Reagan Administration, the average days of vacancy was about 224 days.

Under the first President Bush, it was about 337 days.

Under Bill Clinton, 453 days average vacancy.

Under the second President Bush, 280 days.

Under President Obama, the average vacancy has been 613 days, 1⅔ years these positions have gone vacant, have not been filled. That is a problem.

Now, again, we have a good panel here to describe and fulfill the first purpose of this hearing, which is describe how important it is for the Office of Inspector General to be independent and transparent.

Unfortunately, we do not have the White House's version of events, and let me just read a timeline in terms of our attempt to get the White House to give this Committee the information.

On May 14, we first reached out to the White House about this hearing and invited Valerie Green, who is the Director of the Office of Presidential Personnel. That would be the person within the White House that could give us that answer: Why have these positions gone unfilled for so long?

On May 19, we began discussions with the White House Counsel's Office after the White House said it would not send Ms. Green.

On May 22, we formally invited Ms. Green and offered the White House to send a designee from her office if it could not send Ms. Green.

On May 27, the White House rejected the invitation and said it would only send Beth Cobert, whom we all like—I have a great deal of respect for Beth Cobert. We all do here on the Committee. But she is Deputy Director for Management at the Office of Management and Budget (OMB). She is not involved in these decisions in terms of these nominations. She is not in that Office of Presidential Personnel. She obviously has some tie-in with the Council

of Inspectors General on Integrity and Efficiency (CIGIE), but she would not be in the position to answer the questions that this Committee is trying to ascertain.

On May 28, we again reiterated to the White House that Ms. Cobert is not an appropriate witness because she plays no part in the White House's nomination process. We also highlighted a 2012 House hearing in which an OMB witness testified on this matter, and they could not answer the members' questions about the nomination process because they "have no role in that."

On May 28, we invited the former director of the office, Jonathan McBride, who is now working in the private sector at BlackRock. The White House told BlackRock and Mr. McBride that it does not want Mr. McBride to testify and asked him not to speak with us.

On June 4, the Committee offered to accept a non-public briefing with the Office of Presidential Personnel in lieu of testimony today. Yesterday, Mr. McBride refused to testify and directed the Committee to speak to the White House. Also yesterday, the White House said it would not provide Members with a briefing, is not sending Ms. Green or anyone else from that office, and is refusing to allow the former director of that office to testify.

This is very disappointing to this Committee. I think this is our responsibility to conduct this oversight, and we are not going to get the information from the White House, which is the second purpose of this hearing. So I think it is unfortunate, but I wanted to put that on the record.

With that, I will turn it over to our Ranking Member, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Good morning, everyone. Thank you for joining us today. We look forward to this important hearing.

I take second place to no one with an appreciation for the important role that Inspectors General play in our government. In order for us to be effective in ferreting out waste and fraud in the Federal Government—there is still too much of it—this Committee needs to partner with our colleagues in the Senate, we need to partner with the Administration, the Executive Branch, we need to partner with GAO, we need to partner with the Inspectors General, we need to partner with all kinds of entities, nonprofit entities that are outside of the Federal Government, in order to find out how do we get better results for less money.

Last Congress, if I am not mistaken, I sent a letter, along with Senator Tom Coburn, who was then our Ranking Member, to the Administration saying there are too many vacant positions, vacant for too long, of Inspectors General throughout our government, do something about it.

I led a second effort, joined in this case by our Chairman, and joined I think by everybody on this Committee, as was the case 2 or 3 years ago, writing to the same President with the same message: There are too many vacancies for too long a period of time for Inspectors General, do something about it.

Well, I think in this case we have actually done something about it. Am I happy, am I satisfied with the progress that has been made? Not entirely. But let us keep this in mind: There are 72 In-

spector General positions throughout our government, 33 of them require confirmation. There are today, I believe, seven vacancies in these Senate-confirmed positions. The Administration has put forth nominees for three of these seven positions, which means there are still four for which we need nominees. And my own view is that the way to get stuff done is not just to send letters to the President, to make phone calls not just to the President, but the Chief of Staff, the other folks who are advising the President, and to be unrelenting in doing this.

The other thing, we have an obligation ourselves—we are not entirely pure as a Committee. We have seen situations where Members of this Committee literally have held up nominations for Inspectors General, not just for weeks, not just for months, but for even longer periods of time. So this is the pot to some extent calling the kettle black. But this Administration needs to do a better job. I believe that and I am sure every Member of this Committee believes that.

The idea of having a vacancy for the IG at the Department of Veterans Affairs for a year and a half, unacceptable. The idea of having a vacancy for the IG at the Department of the Interior for over 5 years, really unacceptable. And I am a thorn in the side of my friends in this Administration in making sure that we address these vacancies, and I am confident that we will, because I am not quitting. And I know the rest of you will not either.

Let me just say this: Some of my colleagues know this is a shared responsibility, and our responsibilities include not just hounding the Administration to get us good folks, nominees for these positions, but when they do, for us to expedite processing the nominations. I have seen situations where we held up the thing for so long that somebody nominated for an IG position, I think living in California, they had looked and seen how long the process took to get the previous nominee who finally withdrew, and that nominee in California said, "I am not going to move my family to Washington, D.C., uproot my family and go through that kind of vetting process to see if I am going to get confirmed." And they just backed out. So there is a shared responsibility here.

A guy named Richard Skinner was the first Senate-confirmed Inspector General of the Department of Homeland Security (DHS). He explained the special authority that comes with Senate confirmation at a hearing that we held in this Committee about 2 years ago. This is what he said, and this is a quote:

"With having acting people in place, what you are doing is running in place. . . . [Y]ou are not taking those risks necessary as a confirmed IG would to provide oversight . . . that is absolutely critical to the success of any program."

I think that is a powerful statement of how Senate confirmation enhances independence.

We look forward to hearing from our witnesses today as we work together to find ways to not just reduce the number of vacancies in these key positions, but also to ensure they are filled with highly qualified candidates who will help us root out problems and save money for our taxpayers.

Now, on the issue of asking the advisers to the President to come and testify before Senate committees, this is not a new subject. I

came here, elected at the same time that George W. Bush was elected President, and a number of times in his Administration, we sought to compel the President's advisers to come and testify before Congressional committees. They chose not to do that. And the reason why, one of the reasons why is the view that if someone is an adviser—I am not talking about a Cabinet Secretary or a confirmed position, but somebody who is an adviser to the President, Presidents want that person to give their honest, unvarnished advice. This is what we heard before, from the previous Administration, and we heard from this one as well. If the person is expected to give the President advice on a particular issue and is going to be compelled to come here and testify, will that person be as inclined to give actually the frank, honest advice that a President needs? And the last Administration said, "We do not think so," and frankly, neither does this one.

Now, who did the President offer to send, who did the Administration offer to send? As the Chairman has said, the person he offered to send was Beth Cobert, whom we know and respect a great deal. She is one of the top people at OMB. And the reason why they offered to send her is that she serves as Executive Chair of the Council of Inspectors General on Integrity and Efficiency. And not only that, she is somebody the President listens to, and she talks to him on a fairly regular basis. And she, as much as anybody, can deliver the message directly to him, directly to the President's top aides, his Chief of Staff and other people, on a consistent basis, and say, "These vacancies have been in existence for too long. We need to do something about it." That is why she would have been a good witness.

So on that happy note, I am happy we are all here. Everybody agrees we need IGs, we need good ones, and we need them to be going to work today and every day. And let us just make sure that we all pull together in the same direction, and we will get that done.

Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

I do want to point out that I have certainly made a commitment to move nominations for this Administration as quickly as possible. I have already got a record with Russ Deyo. I worked pretty long and hard working the phones and working my colleagues to make sure we could release those holds. And we do have one nomination for an IG before this Committee, Carol Ochoa for the General Services Administration (GSA) IG position. She was nominated on March 11. This Committee received her required documents on May 11. We conducted a staff interview on May 20th——

Senator CARPER. Mr. Chairman, can I interrupt for just a second?

Chairman JOHNSON. Sure.

Senator CARPER. Finance has a markup right now. They are working on one of my bills that I have been working on. I need to run out for a quorum. I will be right back.

Chairman JOHNSON. Dismissed.

Senator CARPER. I apologize.

Chairman JOHNSON. But, again, we have been trying to work through this nomination as quickly as possible. Again, we received

her required documentation May 11. We did the staff interview on May 20. We have scheduled her confirmation hearing for June 17, and we will do everything possible to get her confirmed as quickly as possible. So we certainly have that commitment.

Again, I want to welcome the witnesses. Thank you for your thoughtful testimony. I have read it, and I am looking forward to your testimony and answers to our questions. It is the tradition of this Committee to swear in witnesses, so if you will all rise and raise your right hand. Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. HOROWITZ. I do.

Ms. BRIAN. I do.

Mr. EPSTEIN. I do.

Chairman JOHNSON. Thank you. Please be seated.

Our first witness is Michael Horowitz. Inspector General Horowitz is the Inspector General for the Department of Justice (DOJ) and chairs the Council of Inspectors General on Integrity and Efficiency. We refer to it as "CIGIE" because that is a lot easier to say. Prior to joining the Inspector General's Office, Mr. Horowitz had a decorated career as a Federal prosecutor in the Criminal Division of the Department of Justice. Mr. Horowitz.

TESTIMONY OF THE HONORABLE MICHAEL E. HOROWITZ,[1] CHAIR, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY, AND INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. HOROWITZ. Thank you, Mr. Chairman, Ranking Member Carper, and Members of the Committee. Thank you for inviting me to testify today. This Committee has consistently provided strong bipartisan support for the work of Inspectors General, and I want to thank you for that support.

In January, I was sworn in as the Chair of the Council of the Inspectors General, and one of our most important missions there is to provide, as the IG Act indicates and requires us to do, to recommend individuals for appointment as Inspectors General. And since the creation of the Council of Inspectors General in 2009, we have recommended over 100 individuals for Inspector General positions, and many of the candidates are now serving as Inspectors General. Indeed, I am one of those candidates that was recommended by the Council.

To fulfill their responsibility, Inspectors General must be scrupulously independent, thorough, impartial, fair, and accountable to the public. Being able to make difficult and unpopular findings is part of the job description. Finding IG candidates who can fulfill all of these objectives can be a challenge, but it is critical to the IG selection process.

In seeking to fulfill our responsibility to find candidates to recommend for IG vacancies, the Council of IGs has established an Inspector General Recommendation Panel. We seek to recruit candidates from both inside and outside the Inspector General community to apply for IG vacancies. Once received, applicants are re-

[1] The prepared statement of Mr. Horowitz appears in the Appendix on page 41.

ferred to the panel for review. The panel looks for certain core qualifications of applicants. And since the type of experience that is needed can cut across industries and sectors, the panel considers applicants from various professional backgrounds, including from the IG community, Federal, State, and local government agencies, and the private sector. After review, the panel determines which applicants to recommend for consideration.

The Council of IGs, however, is not the only source of IG candidates. For example, interested individuals can contact the appointing authorities directly. Moreover, the appointing authorities are not required to accept or even act on the recommendations that we send them.

Far too often, the process for selection and appointment of IG candidates takes too long. As of today, there are eight IG positions that remain vacant. As of the end of this month, all of these positions, with the exception of the Central Intelligence Agency (CIA) Inspector General position, will have been vacant for over one year.

At present, there are nominees pending for three of the positions: the U.S. Agency for International Development (USAID), the Federal Deposit Insurance Corporation (FDIC), and the GSA. I am very familiar with two of those nominees for FDIC IG and GSA IG because both of them currently work with me in the Department of Justice Office of the Inspector General. Their dedication and experience will make them outstanding Inspectors General, and I am hopeful they will join the Inspector General community shortly.

On behalf of the Council of IGs, I would encourage swift action with respect to selecting IG candidates for the remaining IG positions and confirming them promptly so that we can have all of the positions filled.

As this Committee has recognized previously, during the period of an IG vacancy, Acting Inspectors General and career staff can carry on the work of their offices, and they do it with the utmost of professionalism. Indeed, my office had an Acting Inspector General for 15 months prior to my confirmation, and she served with great distinction. However, a sustained absence of permanent leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an OIG. Moreover, no matter how able or experienced an Acting Inspector General may be, a permanent IG has the ability to exercise more authority in setting policies and procedures and, by virtue of the authority provided for in the IG Act, inevitably will be seen as having greater independence. As such, a timely process for addressing vacant IG positions is crucial.

I can speak from my personal experience about the extended period of time it can take to identify and confirm an IG candidate. My predecessor, Glenn Fine, announced in November 2010 that he would be leaving the position in January 2011. I was not nominated until July 31, 2011, and I was not confirmed until March 29, 2012. It was approximately one year from the time that I was contacted about the Inspector General position until the time that I was actually confirmed. I am particularly concerned, as the Chairman just mentioned a similar concern, that such a lengthy process could discourage strong candidates from seeking IG positions.

The Council of IGs will continue to encourage talented senior staff in the IG community to apply for vacant IG positions and to expand our recruitment efforts to find qualified candidates from outside the IG community. In addition, we will continue to seek to engage with the Office of Presidential Personnel to try to push for the prompt selection to fill establishment IG vacancies. And we will work with the leaders of the designated Federal entities that have IG positions to encourage them to seek input from the Council of IGs when an IG vacancy occurs. We will also continue to work with the Committee and its staff on these issues.

The Council of IGs is committed to reviewing its practices and improving our contributions to the process to ensure that IG vacancies are promptly filled with outstanding candidates.

Thank you, and I would be pleased to answer any questions the Committee may have.

Chairman JOHNSON. Thank you, Mr. Horowitz.

Our next witness is Danielle Brian. Ms. Brian has been the Executive Director of the Project on Government Oversight (POGO), since 1993, leading the project to investigate fraud, waste, and abuse in the Federal Government and achieving a more accountable and ethical government. Ms. Brian.

TESTIMONY OF DANIELLE BRIAN,[1] EXECUTIVE DIRECTOR, PROJECT ON GOVERNMENT OVERSIGHT

Ms. BRIAN. Thank you so much, Chairman Johnson—I am sorry Ranking Member Carper is not here at the moment—and Members of the Committee. Thank you for inviting me to testify today and for this Committee's longstanding and ongoing oversight of the IG system.

POGO has worked for years to study and improve the IG system. We are seeing in the news this week additional examples of why good oversight by IGs is important. For example, it was the DHS IG that is now a permanent IG who ran the security tests bringing banned items into airports and found the Transportation Security Administration (TSA) failed 67 out of 70 tests, or 95 percent. This resulted in immediate reforms, including the reassignment of the TSA's Acting Administrator.

Unfortunately, not all IG shops are doing such important work. Among the most pervasive threats to IG independence and effectiveness are the longstanding vacancies that have languished at IG offices throughout the Federal Government. Generally speaking, Acting IGs have several disadvantages over their permanent counterparts. As Mr. Horowitz was highlighting, one is that Acting IGs do not enjoy the same level of credibility because they have not gone through the vetting process. Two, Acting IGs are temporary by nature and have an incentive to curry favor with the agency head as a way of auditioning for the permanent appointment. And, three, Acting IGs are loath to address the most important and, at times, embarrassing problems that confront them. As a result, they become more lapdog than watchdog for the agency.

Several years ago, POGO created a special Web page—Where Are All the Watchdogs?—to keep track of ongoing vacancies in the

[1] The prepared statement of Ms. Brian appears in the Appendix on page 45.

IG system. IG vacancies under President Obama have lasted an average of 613 days, as the Chairman mentioned, nearly 2 years. The vast majority of that time has been spent waiting for the selection of a nominee by the President.

IG positions can become vacant for a variety of reasons and in some instances might even be beneficial. For instance, POGO and other groups called on President Obama to remove Senate-confirmed Commerce IG Todd Zinser after a House probe found that Zinser and his deputies retaliated against whistleblowers and that he had hidden a previous case of whistleblower retaliation during his confirmation process.

Whatever the reasons may be for a vacancy to begin or continue, the following examples show what can happen when an IG office languishes for too long under acting leadership. One OIG staffer told POGO, "The situation is akin to a plant that is left unwatered for years."

The Department of Veterans Affairs has now gone, as was mentioned, a year and a half without a permanent IG, and President Obama still has not offered a nominee. If there were a Federal agency more in crisis in my years of working in Washington than the VA, I cannot think of one.

In the meantime, the IG's office has been led in an acting capacity by Richard Griffin. Griffin's independence and interactions with Department leaders have repeatedly come under scrutiny during his tenure as Acting IG, including POGO's own run-ins with that office.

Last year, after Griffin conferred with one of the VA's top officials, the IG's office added language to a draft report that undermined a whistleblower's claims about veterans' deaths and falsified wait lists, according to an e-mail released by the House Veterans' Affairs Committee.

In addition, Chairman Johnson, you and other Members of this Committee have rightfully raised your own concerns about the independence of the VA IG's office and the need for permanent leadership. Incredibly, that office continues to defend its decision to withhold its findings from the public, stating that its reports were "technically available if the public or Members of Congress submitted a Freedom of Information Act (FOIA) request." This posture—which is, unfortunately, all too common among both acting and permanent IGs—creates the strong appearance that the VA's watchdog is shielding the Department from Congressional and public scrutiny.

At the Department of Homeland Security IG's office, the tenure of Charles Edwards as Acting IG serves as a shining example of all that can go wrong when IG offices are headed for too long a time under acting leadership, as the Chairman mentioned.

My written statement includes additional case studies of long-standing vacancies that threaten the independence of IG offices. At the Department of Defense, for example, the impact of then-Acting IG Lynne Halbrooks' efforts to shield her agency from bad press are still being felt. Just yesterday, McClatchy papers reported that a Federal judge is investigating allegations that the Pentagon IG's office under Halbrooks' watch may have improperly destroyed ex-

culpatory documents during a leak investigation of the National Security Agency (NSA) whistleblower Thomas Drake.

At the State Department, there was no permanent IG for the duration of Secretary Clinton's tenure. This raises the obvious question as to whether someone at the agency would have blown the whistle on the Secretary's refusal to use government e-mails had there been a real watchdog in place.

In the early days of the Obama Administration, I was able to speak with senior officials in the White House to propose potential IG nominees. The last time I reached out on that subject, it appeared I was dealing with White House interns. My personal experience seems to reflect this Administration's growing ambivalence toward IGs in general. We are pleased to see that the number of vacancies at Federal IG offices has dropped in recent years, but seven vacancies for Presidentially appointed IG positions is still too many, especially when two of those vacancies have languished for more than 1,000 days.

In addition to filling the vacancies with strong permanent IGs, POGO has issued other recommendations to ensure that both acting and permanent IG watchdogs do not become subservient lapdogs. One of our biggest concerns is that the IG Act induces many OIGs to spend a significant amount of time chasing what we called "small-window projects" in order to boost their offices' metrics in semiannual reports to Congress. POGO has started to explore how to revamp these ineffectual reporting requirements so that IG reports are more meaningful and reflective of the information that Congress and agencies actually need.

I would also quickly warn you about the current move to shift the responsibility of overseeing Afghanistan reconstruction spending from Special Inspector General for Afghanistan Reconstruction (SIGAR) John Sopko over to the Department of Defense (DOD) IG. Remember the problems you have been having with the VA IG requiring the public and Congress to file a FOIA request to get reports? The DOD IG is far worse. They mark their reports "For Official Use Only" as a matter of course. If you want to learn how you are spending money in Afghanistan, I would strongly encourage you to keep the SIGAR shop open.

Thank you very much for inviting me to testify today. We look forward to working with the Committee to strengthen IG independence and to ensure that these essential offices function as aggressive watchdogs.

Chairman JOHNSON. Thank you, Ms. Brian.

Our next witness is Daniel Epstein. Mr. Epstein is the Executive Director of Cause of Action, a government oversight group that works to root out waste and fraud in Federal agencies, including working to increase transparency and accountability. Mr. Epstein.

TESTIMONY OF DANIEL Z. EPSTEIN,[1] EXECUTIVE DIRECTOR, CAUSE OF ACTION

Mr. EPSTEIN. Good morning, Chairman Johnson and Members of the Committee.

Since its founding, Cause of Action has worked productively with IGs by sharing research that enhances their investigative efforts.

In April 2012, agents from the Department of Energy (DOE) Inspector General Office informed my organization that they opened up an investigation into the misuse of funds by the International Humanities Center.

In May 2014, the U.S. Department of Housing and Urban Development (HUD) OIG confirmed that an investigation was opened into whether HUD violated appropriations laws in promoting the Affordable Care Act.

Most recently, the Health and Human Services (HHS) Office of Inspector General began an "open and ongoing investigation" into issues concerning lobbying with the Affordable Care Act funds.

Sitting in Washington, the President's decision not to fill certain IG vacancies may seem political. Consider the following agency issues during the current Administration that might have been embarrassing to the President.

Earlier this year, it was revealed that former Secretary of State Hillary Clinton used a private e-mail server to conduct agency business.

Last month, an audit revealed that civilian and military officials used Defense Department credit cards for gambling and escort services in Las Vegas and Atlantic City.

The General Services Administration had its own scandal centered in Las Vegas.

In 2013, this Committee investigated Acting DHS IG Charles Edwards, and the Department of Transportation (DOT) Inspector General at the direction of CIGIE later found him to have engaged in misconduct.

The Department of Veterans Affairs has been plagued by scandal regarding medical care of veterans. The former Acting USAID IG removed findings from reports sent to this Committee.

Fannie Mae, overseen by the Federal Housing Finance Agency, suffered from financial conflicts of interest amongst its executives.

The Federal Deposit Insurance Corporate is currently in the crosshairs of Congress for a controversial program known as "Operation Choke Point." And the Department of Labor was found by this Committee to have engaged in massive amounts of wasteful spending.

The President did not submit nominations to the Senate for permanent IGs at any of these agencies—GSA, USAID, FDIC, FHFA, DHS, Defense, State, and Labor—until after he was elected to his second term. The President has still not nominated a permanent IG for Veterans Affairs or the Interior Department.

Permanent IGs might have solved some or all of the systematic agency problems that led to these scandals, but investigating, publicizing, and remediating waste, fraud, and abuse by Federal agencies empowers Congress and the public and forces the President to

[1] The prepared statement of Mr. Epstein appears in the Appendix on page 61.

engage in uncomfortable decisions when an OIG uncovers misconduct amongst Presidential appointees; that is, the President is ultimately accountable for removing his appointees.

This point can be further illustrated by highlighting an investigation conducted by this Committee. In 2013, HSGAC's Subcommittee on Financial and Contracting Oversight conducted an investigation into then-Acting IG Charles Edwards. Mr. Edwards resigned just days before he was to testify before this Committee. However, the resignation from the IG's office did not mean his separation from government employment. After taking administrative leave and resigning from the OIG, Charles Edwards was granted a transfer to DHS' Office of Science and Technology Directorate. However, the IG Act states that when an Inspector General is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress not later than 30 days before the removal or transfer.

The legislative history behind the 2008 IG Act amendments, which this Committee provided, says that the President is required to notify Congress for any removal or transfer to ensure that the IG was not removed or transferred for political reasons. It has never been made public whether the President ever communicated the reasons for Mr. Edwards' transfer, but it is reasonable to infer no such communication by the President occurred.

To be charitable, while it could be the case that the President may have ignored the statutory requirement to inform Congress before an IG was transferred, the President likely obtained legal advice that an Acting IG is not covered by this statutory requirement. But the fact that the President may have received such legal advice is precisely why the Inspector General vacancies should not remain unfilled, because it delegates too much discretion to the Executive to determine the scope of Acting IG authority.

The problems associated with Acting IGs extends to the recent revelations at the State Department that former Secretary of State Hillary Clinton exclusively used a private e-mail system for official government business. During Mrs. Clinton's entire tenure, the State Department Acting IG was Harold Geisel, an ambassador under former President Bill Clinton. As a career member of the Foreign Service, Mr. Geisel was prohibited by statute from becoming a permanent IG. In testimony before the House Committee on Foreign Affairs, the GAO criticized the appointment of Acting IGs at the State Department from career Foreign Service officers because of their inherent lack of independence and noted in particular that Mr. Geisel had 25 years in senior State Department positions.

During Mrs. Clinton's tenure, the White House never made any attempt to appoint a permanent IG, and Mr. Geisel served as the Acting IG for 5 years. In 2013, both the Chairman and Ranking Member of the House Committee on Foreign Affairs signed a joint letter sent to newly appointed Secretary of State John Kerry as well as another letter to President Obama, noting that the "gap of more than 1,840 days is the longest vacancy of any of the 73 Inspector General positions across the Federal Government."

As part of my written testimony submitted to this Committee, my organization is releasing previously undisclosed records we obtained through FOIA requests submitted to the State Department OIG and the National Archives and Records Administration (NARA) for information pertaining to Secretary Clinton's e-mails. The OIG claimed that there were no responsive documents from Mr. Geisel's time. NARA, however, confirmed that responsive OIG records existed, though it claimed exemptions over such documents.

Other records produced by NARA show that as early as 2012, NARA officials were concerned that Mrs. Clinton might alienate Federal records from government control. Despite this (and the obligation imposed on NARA by the Federal Records Act), there is no indication that NARA ever notified the Department of Justice or Congress about the possible alienation or destruction of Federal records or sought to use the law enforcement powers to retrieve Secretary Clinton's records. To the contrary, NARA publicly commended the State Department for its record management practices.

Given NARA's 2012 concerns and its opportunities to cure Hillary Clinton's alienation of records, it either was aware of the State Department's intentional failure to preserve Mrs. Clinton's e-mails or was extremely negligent in its efforts to monitor senior officials' e-mails. It is an unfortunate coincidence that Hillary Clinton's e-mail abuses occurred when the State Department and the National Archives both lacked permanent IGs.

Many of the scandals I have discussed would have been foreseeably avoided or timely remedied had these agencies had permanent independent IGs. Unlike other Federal officials appointed by the President, IGs partner with Congressional oversight committees and public interest organizations in order to oversee their resident Federal agencies. This creates unique incentives for IGs to be politically accountable to Congress in ways that other Presidential appointees may not be, which serves a democratic purpose rendered impossible when no Senate confirmation takes place or when the Acting IG's legitimacy is challenged, as is often the case.

I thank the Committee for the opportunity to testify on these important issues.

Chairman JOHNSON. Thank you, Mr. Epstein.

I would like to start with you, as long as you raised the issue about the FOIA request through NARA and the Office of Inspector General for the State Department. You say that with your FOIA request you found out that NARA said there were responsive documents that were not supplied by the State Department to your FOIA request?

Mr. EPSTEIN. Yes, that is correct. Actually, it is one of the exhibits that I submitted with the written testimony. We actually FOIA'd for very similar things to the State Department OIG and to NARA, which was quite simply we wanted any records and communications about their investigations into Hillary Clinton's e-mail use. The time period was from January 2009 to the present. The current OIG responded that there were no responsive records. We have a document from NARA that says there is a communication with the State Department OIG, but they withheld it under an exemption known as B–5, which is deliberative process.

Chairman JOHNSON. So you know there were responsive documents, but you have not gotten those responsive documents.

Mr. EPSTEIN. Yes, the likelihood is—we have filed an appeal. We would likely have to litigate that question, and I can tell you from the perspective of good government groups, litigation usually does not prove fruitful for getting transparency. It is a last resort type of thing.

Chairman JOHNSON. OK. Well, again, thank you for your work on that, and this Committee will certainly followup on that.

Mr. Horowitz, CIGIE has since 2009 recommended about 114 potential IGs for those vacancies, correct?

Mr. HOROWITZ. That is correct.

Chairman JOHNSON. Do you know what happens to those?

Mr. HOROWITZ. Once we make a recommendation, we do not know what the process is thereafter.

Chairman JOHNSON. Do you know how many of those 114 potential nominees have actually been selected by the Administration and appointed?

Mr. HOROWITZ. As I sit here, I do not know the number off the top of my head.

Chairman JOHNSON. But the bottom line is that certainly CIGIE believes there are a lot of potentially qualified Inspectors General for this Administration to appoint.

Mr. HOROWITZ. Right, that is correct. And it has certainly been far less than 100 that have been selected, so there are still many candidates available.

Chairman JOHNSON. Now, I believe the maximum number of days that somebody can serve as an Acting IG is 210 days, correct?

Mr. HOROWITZ. That is my understanding.

Chairman JOHNSON. How many Acting IGs right now have exceeded that?

Mr. HOROWITZ. Well, as I mentioned, seven of the eight vacancies exceed one year—or will exceed one year. That is certainly more than 210 days.

Chairman JOHNSON. So how does the Administration get around that statutory requirement?

Mr. HOROWITZ. Well, what has happened is the Acting IGs, which are often the Deputy Inspectors General, simply fall back to be the Deputy Inspector General, and there is no Acting and there is no confirmed IG.

Chairman JOHNSON. So it is really form over substance. They all of a sudden change your title from Acting IG and they become a Deputy IG again, and they serve as an Acting IG.

Mr. HOROWITZ. Someone needs to make some decisions within the office, so that is what ends up happening.

Chairman JOHNSON. That is certainly one of the areas that we need to find some reform on. There has to be some enforcement mechanism for that statutory requirement. Is that basically your understanding?

Mr. HOROWITZ. Somebody needs to make some decisions with regard to that. Certainly the best way to do it is to get nominees pending and confirmed.

Chairman JOHNSON. OK. I have a lot of questions. Hopefully we will have time for a second round.

Senator CARPER. You are the Chairman.

Chairman JOHNSON. I know. [Laughter.]

We have a lot of people—I am in charge.

Ms. Brian, in being briefed for this hearing, I did find out something rather disturbing, that the office of POGO had been ransacked, broken into is probably the best—can you describe what happened there?

Ms. BRIAN. Yes, sir. It was a few months ago when staff came to POGO for work that morning and found that one of the filing cabinets had clearly been tried to be jimmied open, and at that time we had not had quite the physical security that we now have established in our offices. We called the police for them to investigate, and we are in sort of a typical Washington office building where we are not the only office in that building, and none of the other offices in that building had been burgled, nor had there been anything else in town, according to the police, in that particular area. And so the police concluded that it was because of the kind of work that we do, that it was an information gathering—there were also some desks that clearly materials had been moved around on the desks. So it was clearly someone who was trying to find something that was in our office.

Chairman JOHNSON. Was there any information missing that you are aware of?

Ms. BRIAN. It is one of those things what we do not know. So it was not clear to us what was taken, if anything, or if it was just photographs that were taken, for example, of our desks. We were able to establish that our servers had not been violated, but certainly because of that we have significantly ramped up physical security and cybersecurity for our office.

Chairman JOHNSON. In your testimony you talked about Acting IGs auditioning for the permanent IG slot. That is certainly what we saw as a real problem with Charles Edwards. Can you just describe what happens there, the type of department or agency capture of that Acting IG and how damaging that is to independence and transparency?

Ms. BRIAN. Yes, well, I certainly have been actually lobbied by Acting IGs specifically asking for our support in their efforts to become permanent IGs, so I have witnessed it firsthand. And what happened, of course, because IGs are dual-hatted, they both report to the Congress but also to the head of an agency. And because the head of any IG's agency has significant say in who is the appointee to be the IG, what we see is that those Acting IGs over and over again try to curry favor with the head of that agency in order to get that appointment. And what that means is making sure that they are not only not doing hard-hitting, independent work while they are in charge of the Inspector General's office, but often we are also finding that they are deliberately trying to cover up bad news that should be revealed, as you mentioned you saw with the VA IG.

Chairman JOHNSON. So, in other words, they may decide not to pursue a particular investigation; they may in a report doctor or certainly not have as hard-hitting a report, maybe remove things at the request of the different agencies, which is what we saw with

Charles Edwards. Is that the type of specific activity you are talking about?

Ms. BRIAN. Oh, yes. I can give you another specific example with the Department of Defense IG where there was actually quite an extraordinary investigation where at the time CIA Director Leon Panetta had improperly released information about the identities of the people involved in the "Zero Dark Thirty" raid to film makers, and he had then moved over to become the Secretary of Defense. The then-Acting IG for DOD was responsible for the investigation into the allegation of that release of information and what happened.

We were leaked a draft IG report that had been sitting in the DOD IG for over a year that identified the fact that Secretary Panetta as well as other senior staff had, in fact, released highly classified information, and that report was being squelched. So we released it, and within a month that Acting Pentagon IG released a scrubbed version of that report where there was no mention of Mr. Panetta. And he was, of course, someone who would have been helpful in Ms. Halbrooks' getting the permanent position had she gotten what she was working toward.

Chairman JOHNSON. OK. Well, thank you for your work. Senator Carper.

Senator CARPER. Thanks, Mr. Chairman. I apologize for coming and going. I am going to be doing it here again in just a minute.

One of the issues that our Committee has worked on for years, Dr. Coburn and I and other Members of the Committee, deals with improper payments. And as you know well, improper payments add up to a lot of money. The Federal budget deficit, which about 6 years ago peaked at $1.4 trillion, it has come down; it is closer to $400 billion today, still way too much. But of that, about a quarter of that, $125 billion, according to GAO last year, was the amount of our improper payments, mistaken payments, accounting errors, in some cases fraud, $125 billion. That is a quarter of our budget deficit. And we were marking up legislation in Finance to address that further, hopefully to enable us to better recover monies that have been improperly paid. So I apologize for having to slip out for that, but it was a good mission, and I think a successful one.

I want to give my first question to you, Ms. Brain—I want to call you "Brain." I have your name on my brain.

Ms. BRIAN. Thank you for the compliment. [Laughter.]

Mr. CARPER. I was telling her earlier I have a good friend whose last name is Brain, Chuck Brain. So we have a good time with his name. I am sure we will have one with yours as well. But thanks for bringing your brains, all of you bringing your brains today and your hard work to this hearing.

But, Ms. Brian, in your testimony, you discuss the threat to independence that longstanding vacancies in IG positions across our government can create. Just take a minute and talk to us about the effect, please, on the rank-and-file employees in those IG offices and what kind of impact it has on their work, just in a practical way. Thank you.

Ms. BRIAN. Thank you, Senator Carper, also for your work on improper payments.

Senator CARPER. You bet. Labor of love.

Ms. BRIAN. It is really boring but important.

Senator CARPER. Tom Coburn, if you are out there listening—and I know you are—I am still doing the Lord's work.

Ms. BRIAN. Yes, I think that is a great question, because what you have are career staff who have given their lives to the mission of rooting out waste, fraud, and abuse at their agencies, and as I mentioned in my testimony, one staffer described the lack of leadership in their office as being like a plant that is left unwatered for years. The demise of morale in the office is significant. When you not only have a lack of leadership but a real sense that the leadership is often in cases of these longstanding IGs that we have spoken about that are in acting capacity, almost working counter to the purposes of the agency. So they are among the big victims of these vacancies. They are the people who have given decades often to investigations and audits, and their work is either ignored or slowed to a terrible pace, or in some cases as we described, actually just held up because it is too embarrassing for the agency.

Senator CARPER. Thank you.

Does anybody else have a view on that, just very briefly? You do not have to, but OK, thanks.

[No response.]

Thank you, ma'am.

A followup question, this would be for you Michael. I understand that CIGIE plays a role in helping to identify qualified candidates to fill IG positions. How does that process work? In what ways do you think it could be improved to help better identify qualified candidates? Do we have any role in that at all? Thank you.

Mr. HOROWITZ. So we have set up an IG candidate panel that is currently chaired by the IG at the Federal Election Commission, and the responsibility of the panel is to speak to vacancies when they occur so that people within the IG community and outside the IG community are aware of them, encourage people to apply, seek to have strong candidates apply for those positions.

When they get the applications, often it is not necessarily for a specific IG vacancy but for an IG position generally. They will look at it. The panel will review it. They will consider the various characteristics that we believe make a strong IG, some of which I talked about in my opening statement. They will then recommend those candidates that they have looked at, that they believe meet those qualifications, to the White House, and at that point, as I mentioned earlier, we are not further involved or consulted on those candidates. They go to the White House for review.

I think one of the things that we have talked about and one of the things that I think we could do more of getting the word out beyond the IG community and beyond the Federal Government to State and local government agencies who have—there are a number of very strong oversight organizations, obviously, in State and local government.

I was in the private law firm world, before coming back to the government, for 10 years working with corporate compliance officers, ethics officers. There a vast majority, as the Chairman mentioned earlier, of very highly qualified candidates in the private sector who do many of the same things we do with a very different

structure and very different responsibilities. But we could be doing more to reach out to them, I think.

Senator CARPER. Good. When I was Governor, I was nominated by President Clinton to be on the Amtrak Board of Directors, and I had to go through a vetting process. I had been a naval flight officer (NFO) with top secret clearance, and I was a Governor for a number of years, and I went through a vetting process that was just, I thought, deplorable. It took forever, a lot of time, energy, and I thought, my God, just to be on the Amtrak Board? They should pay me to do that.

One of the reasons why it is hard to get people who want to do these jobs—they are important jobs, they are hard jobs, and you are on the point of the spear in many cases, and some important issues. But the vetting process can just take forever. We do not treat people very well through that process sometimes, and we have to do better.

I appreciate your answer and your ideas, and I would ask for the record if Danielle and Daniel if you all have some points to add to what Michael has said on that point, how do we get more people who are well qualified wanting to do these jobs, that would be helpful.

Maybe one more, if I could, just real briefly. Mr. Horowitz, does CIGIE start vetting candidates—and you may have said this—only when there is a vacancy? Just come back to this. Or does CIGIE continuously vet candidates who would be willing to serve as an IG at any agency? I think you said that.

Mr. HOROWITZ. We run the process continuously. So even if there were no vacancies, we would still collect applications because we know with 72 IGs there is going to be turnover.

Senator CARPER. OK. Last, when a Presidentially appointed IG steps down or is removed, there is broad awareness of the vacancy, and at least certain amount of public pressure to fill it, but I am concerned that there may be less attention and urgency with respect to the IGs appointed by an agency head. Ms. Brian, would you take a minute and tell us, can you discuss the different dynamics for these vacancies and whether you share those concerns? Thank you.

Ms. BRIAN. Thank you, Senator Carper. Actually, my colleague has a copy of the website that POGO maintains—Where Are All the Watchdogs?—where we actually track both Presidential and agency-appointed nominees and vacancies. So we maintain all of them together.

There is a whole separate question about agency IG appointments and whether they have the same kind of independence as Presidential appointments. We think it is sort of a nuanced question. We are not necessarily opposed to the fact that there are some—particularly because they are often boards rather than single heads of agencies that the IGs are responsive to. So, of course, there is—a couple of the current vacancies are agency appointments, but they do not tend to be as longstanding as the Presidential appointments.

Senator CARPER. OK. Thanks. The Chairman and I have an interest in—we think we have too many Senate-confirmed positions in the government, and that may be a view held by some others

here as well, and we have an interest in further reducing the number that have to come before us, because we think we are oftentimes in the Senate an impediment to getting people who want to serve and actually into positions where they can serve. So if anyone is interested in maybe joining that cause, you are welcome to.

Chairman JOHNSON. Thank you, Senator Carper.

Senator McCaskill—I know this is a real issue dear to her heart. She worked very closely with me as Chairman of that Subcommittee that was investigating Charles Edwards. It was right before that hearing of our Committee that Charles Edwards was transferred. But she has another meeting she has to go to, and I am going to let her ask a quick question.

Senator MCCASKILL. Thank you. Very briefly, love you, POGO. Thank you.

Second, yes or no, Mr. Horowitz: Do you believe all IGs' salaries should be public?

Mr. HOROWITZ. Yes.

Senator MCCASKILL. Are they now?

Mr. HOROWITZ. No.

Senator MCCASKILL. And I just want to go on the record that I will not rest, I will not stop until we know every salary of every IG in our government. It is a scandal.

Thank you, Mr. Chairman.

Mr. HOROWITZ. Can I just briefly——

Chairman JOHNSON. Sure.

Mr. HOROWITZ. Senator, we have done the followup that you asked us to do at the last hearing. It is actually an extraordinarily—I have learned, I am sure you are aware, it is an extraordinarily complicated issue actually. There are, as it turns out, multiple pay scales for IGs across a number of titles within the Federal Code, including, in fact, as I learned, Presidential appointees have different pay levels.

So, for example, those of us who were appointed in 2012 and 2013 are frozen at the pay scale that was in existence then because of the appropriations act that did not include the 1-percent pay raise for us, but newer IGs appointed in 2014 are under the current pay scale. So as I have learned, they are actually paid more than the IGs appointed in 2012 and 2013.

So it has taken us some time, actually, to understand some of these nuances, and we——

Senator MCCASKILL. Mr. Horowitz, let me interrupt you for a minute. I get all that. But there are IGs in this system that do not want their salaries public because they are making an obscene amount of money in a very tiny agency. They do not want to say what their salaries are because they know we are going to go crazy when we hear it, and so will the American people.

So that is why they are recalcitrant about telling you how much they make. I know there are these different pay scales, and I want to address that. But, if those people who are making $300,000 a year as an IG in a tiny agency, think they are going to be able to hide that much longer, they are wrong.

Mr. HOROWITZ. No, and, Senator, what I was getting to is the reason it has taken us the time to get all the material together as well as you asked about what kind of work folks are doing, we now

have that together. We have reached out to your staff. We are going to be meeting I think in 2 weeks.

Senator MCCASKILL. Great.

Mr. HOROWITZ. I was just trying to give you the background as to why it has taken——

Senator MCCASKILL. I understand. I just did not want you to think I lost my passion.

Mr. HOROWITZ. I knew that was not the case.

Chairman JOHNSON. I sense she is kind of waning a little bit. [Laughter.]

Ms. BRIAN. I want to thank you for the love, Senator McCaskill.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you.

Mr. Horowitz, thanks for being here, and for all of you as well, and what you are doing on this. Let me ask, has the Council recommended names for Interior for the IG?

Mr. HOROWITZ. I do not know whether we have specifically. I would have to go back and ask, because it has been a couple of years——

Senator LANKFORD. It has been years that it has been open, so—and I believe my question is: Is there an urgency within the Council to say this has been open for years, we have to feed them names because it is open?

Mr. HOROWITZ. I am somewhat speculating here. I am guessing we have made recommendations for that position, but I can go back and check.

Senator LANKFORD. I would like to know on Interior, on VA, on Export-Import (Ex-Im) Bank, and on CIA specifically if there are names that have been recommended.

Mr. HOROWITZ. And my understanding on—since they occurred while I was Chair, VA and CIA I know the answer is yes.

Senator LANKFORD. OK, but what about Ex-Im Bank?

Mr. HOROWITZ. I have to go back and check on the other ones. Ex-Im Bank has a nominee now, so I would have to go back and see what happened earlier.

Senator LANKFORD. OK. The Chairman brought up this issue about the 210 days.

Mr. HOROWITZ. I am sorry. Let me correct myself. Ex-Im Bank does not have a nominee. I was thinking of USAID.

Senator LANKFORD. At all?

Mr. HOROWITZ. At all. I will go back and check.

Senator LANKFORD. That is what I had heard as well, and obviously Ex-Im Bank is in the spotlight right now, and there have been multiple issues that have happened around it.

My question is on the 210-day limit before the Acting has no relevance and all the law and all the issues that are there. I get that. What incentives can be built into—this builds on what the Chairman was saying—to provide incentives that we have someone at least nominated before that time period? There has to be some sort of incentive that can be built in and some ideas that are out there so that we do not have Acting for 2, 3 years or to have really a Deputy to take this one.

Ms. BRIAN. Well, Senator Lankford, the issue is complicated in that it is a Presidential appointment, and there is sort of the separation of powers issue.

Senator LANKFORD. Right.

Ms. BRIAN. So I would encourage the Congress to remember that you are the holders of the purse strings and you have other ways of making the Executive Branch pay attention. You cannot force the Executive Branch perhaps to make an appointment, but you can get their attention by not doing things they would like you to do until they do make those appointments.

Senator LANKFORD. OK. So let me ask a question that is a purely speculative question. Why would there not be a nomination for an Inspector General in an agency? We have competent people that are being suggested. We have lots of Americans that are willing to be able to serve. Why would there not be a nomination for an Inspector General?

Ms. BRIAN. Well, as you said, it is clearly a speculative answer, but there is no doubt that Inspectors General who do their job well are often bringing bad news to the fore, and they are often not popular with their agency or the Executive Branch because they are often the bearers of bad news, and so that is an obvious disincentive to——

Senator LANKFORD. I am not sure they are the bearer of bad news. They are just the bearer of news, period, of what is going on. So my assumption is for the IG their job is not to go find bad news. It is just to find any news, what is happening right, what is happening wrong. It is a transparency piece on it, and my question is: Why would we not want to have transparency in certain agencies?

Ms. BRIAN. Well, there is no question that what you are saying is correct. You are asking what would be the incentive not to appoint one——

Senator LANKFORD. Correct.

Ms. BRIAN [continuing]. And that was why I answered——

Senator LANKFORD. Because they can also bring bad news.

Ms. BRIAN. Correct.

Senator LANKFORD. Correct.

Mr. Epstein, were you going to say something on that as well?

Mr. EPSTEIN. Yes, I mean, I would say, No. 1, it is clear that President Obama has nominated IGs as early as 2009, and he has nominated IGs as recently as this year, and I think that if you just look at the incentives of the President, it is not just a question of news at all. It is also if there are issues at the agencies, appointing an IG who is effective and permanent is going to reveal findings and ultimately if the President, especially as this Committee knows, you have someone like Charles Edwards who himself as the Acting IG was engaged in misconduct, that could make the nominating President look bad. And so I think there might be political reasons.

I also think that when we look at the question of how do you hold certain IGs accountable, there is—as my organization was told by the previous Chairwoman of CIGIE, CIGIE told us in a letter that it has no allocations or resources to conduct audits, investigations, or evaluations. Apparently—and I think IG Horowitz could probably talk more about this—at least for the Integrity Committee

of CIGIE, that is all done by the Federal Bureau of Investigations (FBI). And so, if you look at the case of Charles Edwards, there was not a report by CIGIE until after he had already resigned. If you look at Charles Edwards' own investigations, the Mayorkas issue with the U.S. Citizenship and Immigration Services (USCIS), the Cartagena issues with Secret Service members, these were all investigations that went on for a number of years, and I think what you see as a problem with Acting IGs is, as Ms. Brian has indicated, they want to curry favor with the President, they want to curry favor with the agency heads, and so they have an incentive not just to avoid investigations but to delay investigations.

Senator LANKFORD. Mr. Horowitz, for the Inspectors General, when they are going to do a long-term look of a real investigation, whether they have a tip, whether they have inside information, whatever it may be, who chooses what investigations they take on and what they choose to report on? Who makes that decision?

Mr. HOROWITZ. Well, in my office it would be me consulting with the leaders of my divisions based on their recommendations.

Senator LANKFORD. So how is that different for an Acting IG?

Mr. HOROWITZ. That would still occur in terms of a process, I think, for——

Senator LANKFORD. But how long does a report take? If you are going to do a more lengthy investigation—I know it varies from place to place, but how long does that take?

Mr. HOROWITZ. They can take 6 months to more than a year, depending upon the complexity of it. Our Fast and Furious report, for example, took 18 months.

Senator LANKFORD. Have you got all the documents you need for that yet, by the way?

Mr. HOROWITZ. For that one we do at this point. For others we do not. And I appreciate your support on that issue.

Senator LANKFORD. There is still plenty to do on that as well. My question is then with an Acting IG, if they do not know how long they are going to be there, do they take on the larger reports that are more lengthy? Or do they typically skip those?

Mr. HOROWITZ. Well, I think that is the challenge for an Acting IG, whether they are seeking the job or not, is the unknown of how long is that position going to be vacant. The longer it goes, the more decisions they have to make. You cannot delay decisions indefinitely. And that is precisely the challenge, Senator, what you have outlined, which is, Do we undertake a long-term review that could impact resources, that might be inconsistent with what the permanent IG will want to do?

Senator LANKFORD. OK. Thank you. I yield back.

Chairman JOHNSON. Thank you, Senator Lankford. Senator Baldwin.

OPENING STATEMENT OF SENATOR BALDWIN

Senator BALDWIN. Thank you, Mr. Chairman. I really want to thank you for holding this very important hearing. Thank you to the witnesses for sharing your very valuable insight on this.

As the Chairman mentioned in his opening comments, we have had a real opportunity to see in Tomah, Wisconsin, the role of the Department of Veterans Affairs Office of Inspector General and how critical it is in auditing and evaluating VA programs, conducting health care inspections, reviewing medical center operations, and investigating allegations of serious violations of policies and procedures by high-ranking members of the Department. The failings of the VA and the VA Office of Inspector General in Tomah come against the backdrop of a year of incredibly challenging problems for the VA. While I personally believe that the overwhelming majority of VA and VA OIG employees strive every day to deliver for our veterans, they need stable leadership. That is why I have called on the President to nominate a permanent Inspector General for the VA.

I would also point out that not only do the IGs provide information to the agencies and the President, they also provide incredibly important information when Congress needs to exercise greater oversight or pass further legislation. And if this information is not fully transparent, if it is not fully accessible, if it not fully objective, it impacts our ability to do our jobs.

This Committee has done some important work in advancing an IG reform bill, and I was pleased to co-author provisions in the bill with Senator Johnson that refer specifically to what we were seeing in Tomah.

I just have a few questions, and, frankly, they are mostly to dig deeper into questions you have already been asked to specify information that I would like to receive either today or in followup.

First, following up on some of the Chairman's questions of you, Mr. Horowitz, I want to get a greater sense of how often appointing authorities act on your recommendations versus alternative routes. There are other ways that potential nominees can come to the attention of appointing authorities, including the President of the United States. And so I would like to know, on a more granular level, how often the President acts on recommendations made by the panel, and also if you ever receive feedback from the appointing authority on the recommendations and the individuals that you send. I know you said earlier that you do not have those numbers with you, so I would certainly take them in followup to this hearing.

Mr. HOROWITZ. Absolutely, and I will do that.

And on the feedback issue, my understanding is we generally do not get feedback. It is simply a one-way passing of information generally, here are the recommended candidates, not an explanation back as to why some were not picked, for example.

Senator BALDWIN. All right. Also in follow-up to a previous question, can you share the number of candidates for the VA Inspector General vacancy that have been forwarded from the Council to the Office of Presidential Personnel?

Mr. HOROWITZ. I will follow up on that.

Senator BALDWIN. Do you have that with you today?

Mr. HOROWITZ. I do not know off the top of my head. I know there are some. I just do not know the number specifically.

Senator BALDWIN. OK. And, if you would, I would be interested to know when those resumes and names were forwarded.

Mr. HOROWITZ. I will follow up.

Senator BALDWIN. I would like to know how long that information and those ideas have been before the President.

Mr. HOROWITZ. And, of course, as I mentioned, Senator, there will be individuals recommended generally for IG positions that will have been there when that vacancy occurred January 1, 2014. So in our view, those are individuals we send to have strong experience and abilities across the board and can fill positions generally. So there will be both candidates we would say would be available generally, and then I will followup on specific candidates.

Senator BALDWIN. Each of you in your testimony gave some considerable thought to why Acting IGs are perhaps seen as less credible in the eyes of agency leaders, Members of Congress, and the public, as well as why they might lack sufficient independence. I heard Ms. Brian elaborate on that a little bit, and I wonder, Mr. Horowitz, if you could elaborate a little bit more on your concerns of having Acting Directors of long duration.

Mr. HOROWITZ. Well, I think there are several issues that come with that. One we have talked about briefly, which is decisions that have to be made about long-term hiring, long-term policies, long-term practices. Those are difficult decisions for an acting head of any agency. I was in a U.S. Attorney's Office, I was in the Criminal Division when transitions occurred between Administrations. Those were difficult times for even the acting heads of those organizations to make those kinds of decisions.

And with regard to Inspectors General, these are obviously very challenging, difficult jobs for a variety of reasons, and there is an enormous amount of protection and from the statute, the IG Act, that goes to Inspectors General with regard to removal. That does not apply to anybody else. Everybody else is a career employee in the organization that is under career civil service laws. But for me, in a Presidentially confirmed position, there is only one person in the entire government who can act and remove me, and that is the President of the United States. And that provides a significant amount of protection and independence and for me to exercise that independence.

Senator BALDWIN. Thank you.

Chairman JOHNSON. Thanks, Senator Baldwin. Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman. I do appreciate you holding this hearing. This has been an issue ongoing for, I think, quite a while now, and before I do get to my questions, I just would like to make a few remarks as to this issue. This is very important to me, and particularly with the avenue that I am going to take, particularly to our veterans.

I have been concerned our veterans are not receiving the highest quality of mental health care at many VA facilities, and tragically, in February, Iraq and Army veteran Richard Miles of Des Moines, Iowa, committed suicide. And I was deeply troubled by reports from

his family, from his friends, and both local and national media outlets which claimed that Richard may not have received adequate mental health care from the Department of Veterans Affairs.

That led me to ask the Inspector General to look into Central Iowa VA's mental health care programs, the care that Richard received for his post-traumatic stress disorder (PTSD), and their management of his particular case. That was in February. It is now June. And this has been so deeply troubling to me.

I would note that the Office of the VA IG has told me on multiple occasions that they would get the report to me. Again, I requested this report in February. It is now June. They told me they would have the results to me first in April, and after receiving no response, we reached out again, and then they said, "We will have it to you in May." We reached out again at the beginning of this week, still have not received an answer.

So it is very frustrating and absolutely unacceptable that it has taken so long. We have many veterans that seek assistance with our VA systems, whether it is for mental health care or other types of care. Especially with our mental health care, we need to ensure that they are receiving timely and adequate care, and in this case I have no idea whether that happened or not because we have not gotten a response.

So as a Senator, I do have the responsibility to ensure that those veterans are receiving adequate care and that we are living up to the promises that we have made to these veterans as a Nation.

So the VA and its IG need to come forward with information that will provide Iowa veterans a better understanding of the adequacy and management of their mental health care and those programs.

So while I am in a position right now that I can no longer do anything for Richard, I am in a position where I can do something for many of our other veterans that are seeking mental health care to help with these invisible wounds. And this could be of any era of veteran. But the only way that we can do this is to ensure that we have efficient and motivated IGs, and especially one in the VA that can be held accountable.

Thank you for listening to that, but with that, I would also like to ask a couple of questions.

Mr. Horowitz, you wrote in your testimony that one of the Council of IGs' most important responsibilities is to submit recommendations of individuals to the appropriate appointing authority. Would you recommend Mr. Griffin to be the IG for the VA? Have you had any discussions with the White House on a formal nomination process for the VA IG spot?

Mr. HOROWITZ. I have had conversations, and my understanding is the Chair of the panel and the panel itself that we have set up has also had discussions in the sense of recommending candidates for the position. When I say "discussions," again, they are usually one-way discussions. It is us recommending candidates to them.

Senator ERNST. And have you seen any responses, particularly with Mr. Griffin? Is he a candidate for the position?

Mr. HOROWITZ. I do not know if he is a candidate, and I have not gotten feedback on where things are as to the candidates we have recommended.

Senator ERNST. OK. And therein lies some of the problems, I think, that maybe recommendations are made, but they are not acted on. That I am not sure of. I just know that the VA does need an IG and somebody that will be responsive to these types of situations.

Also, Mr. Horowitz, and, of course, Ms. Brian and Mr. Epstein, last year former White House Deputy Chief of Staff and now the VA Chief of Staff, Rob Nabors, said that the VA was crippled by a corrosive culture and poor leadership, which negatively impacts the delivery of care at VA. And considering this White House report, VA scandals with systemic wait time falsification—we could go on and on. And it is on the GAO's high-risk list. In your opinion, why hasn't the White House prioritized nominating and getting through the Senate a full-time IG? Are there areas we need to consider?

Ms. BRIAN. I just cannot speak to why they have not prioritized it. It seems so obvious to me that it should be a priority. And in my written testimony I gave some examples of how we have had our own experiences, a very negative experience with the Acting IG. So I would hope that they find someone else to fill the position.

Senator ERNST. Thank you.

Mr. EPSTEIN. I cannot speak specifically about the President's state of mind, but I think there are two things that might shed some light on some of those questions you asked. The first is—and I would be happy to kind of submit an additional statement on this. The President, I believe, under the Vacancies Act, could—he has done so with the National Labor Relations Board (NLRB). He could put an IG into a position which would not have to be past that 210-day timeline and then would not have to be a Deputy. So I think the President has—is ready, willing, and able—maybe not willing but has the ability to put someone there. And so it is a question of the pressure to do that. Why do you do that for certain boards that may be politically beneficial, but you do not do that when it comes to Inspectors General.

I think the other thing is a lot of what has been discussed is the fact that there may be delays in appointments through that vetting process. But as part of that vetting process, whether it is the Office of Presidential Personnel or the President's Counsel, they get background checks on nominees from the FBI. So one thing that if my organization tried to do this, we would be stonewalled, but hopefully the Senate would not be, is the Senate could request information, whether the records are kept confidential, but the number of records are not, of how many background checks were done for potential nominees to the Department of Veterans Affairs, how many background checks were done for potential nominees to the Export-Import Bank. Then you can determine how, in fact, willing was the President to consider nominations. If you cannot get the facts from CIGIE, you can get information concerning how many potential nominees were actually considered, and that could give some kind of sunlight to whether the President took seriously the need to actually put a permanent Inspector General to prevent a lot of these problems that you discussed at Veterans Affairs.

Senator ERNST. Thank you, and thank you, Mr. Chairman. And I would say that of all of the IG positions that are vacant, this one literally has lives riding on it.

Chairman JOHNSON. I totally agree. I made that same point. Obviously, one of the purposes of this hearing is to put that pressure on the White House to get somebody appointed, or certainly nominated, and hopefully the Senate would quickly confirm that individual. So hopefully the outcome of this hearing will be that nomination. Senator Ayotte.

OPENING STATEMENT OF SENATOR AYOTTE

Senator AYOTTE. Thank you, Chairman. I want to thank Senator Ernst for her questions, and I just have to say this is dumbfounding. President, if you are listening, the fact that since December 2013 we have not had a permanent Inspector General in the VA, I mean, I cannot tell you—what happened in Iowa, what happened in Arizona, what happened in Wisconsin, what is happening in New Hampshire, we spent a lot of time on the floor last summer trying to come up with a reform bill, and now we are trying to hold the VA accountable to actually give veterans choice with private care. In my State, we just had a huge forum the other day on problems that we are having in even having the VA implement this law. And the President of the United States has not nominated since December 2013 a permanent Inspector General. To me this is something that I would think every American, Democrat, Republican, Independent, would care about. And of all the priorities that the President could have, I mean, Mr. Epstein, you mentioned it. He used the Vacancies Act to fill the NLRB. Well, we are talking about veterans who are suffering, veterans who have died, and I think there is—whatever we can do, Mr. Chairman.

But, Mr. President, if you care about our veterans—Mr. Horowitz, CIGIE has submitted a proposal of someone, as I understand. It is not on your end.

Mr. HOROWITZ. That is correct.

Senator AYOTTE. CIGIE has submitted recommendations of an individual or individuals who could serve in this position. Correct?

Mr. HOROWITZ. That is correct.

Senator AYOTTE. So it is in the President's lap right now, and it seems like our veterans deserve action on this immediately by the President of the United States. And I did not come here today to make this speech, but in listening to all this, I just cannot believe it, that this would be vacant since December 2013, of all the things that we are trying to get right for those who have done so much for our Nation.

So that said, I was very interested, Ms. Brian, in terms of you said you have had some serious concerns with the current Acting right now at VA. Could you help us with what those are?

Ms. BRIAN. Sure. Well, in addition to your own Committee having had your direct engagement and concerns with—and also the House having concerns about the operations of that shop, we shared all of the Senators' concerns when news of the failings of the Veterans Affairs Department was coming forward, and we at POGO thought, "What can we do to sort of help shed light on how could this be sort of systemically a problem across the agency?"

And so we worked with Iraq and Afghanistan Veterans of America and launched a website that said if you work inside the VA, could you let us know what is your sense of what is happening so we could have a better understanding of what could be done to fix the agency. And, incredibly, we had 800 people come forward. I mean, it was an astounding number of people, and I think it is important to recognize in this case, this shows how many people there are who work inside the system, who care deeply about the mission of the VA, who were taking risk by coming forward and saying, "I am a doctor at this facility," "I am a tech at this facility," "This is what I am seeing." They came forward to give us a sense so that we could help them do something about it.

Within weeks, we were contacted by the VA IG who asked us for the names of the people who had come to us, and we said, "Well, of course, we are not going to give you the names of the people who are coming to us, but we are very happy to work with you to give you a sense of what we are learning." We were then immediately met at the door with a subpoena from the Acting VA IG demanding the identities of the whistleblowers who were coming forward to try to help fix their agency.

So POGO remains unwilling to abide by that subpoena, but for us it was indicative of the flawed priorities of that office, that it was more important to them to sort of identify who the whistleblowers are than it was to encourage anyone to help try to figure out what the problems are.

Senator AYOTTE. Well, let me just commend POGO for refusing to comply with that subpoena, because when people come forward as whistleblowers, the notion that the VA would be more focused on identifying the whistleblowers versus the underlying problems I think just demonstrates Exhibit A of what we are dealing with and why it is so critical that we actually get a permanent IG with this agency. And you think about all the things that we do, our veterans, they have served our country, they have put their lives on the line, they have done so much, and you would think that that would be the one area we would prioritize. It is not a partisan issue.

I wanted to followup, Mr. Horowitz, in terms of this idea—and I heard from listening to Mr. Epstein and Ms. Brian, this idea of a conflict, it sounds, when we have an Acting IG. It seems like they are put in the situation where the Acting IG has to curry favor with the agency head, or there is a potential that that could happen, and that creates these challenges that obviously undermine what the purposes of what CIGIE and the IGs are trying to accomplish.

Can you comment on that? And, also, in your role, do you feel you have sufficient authority to have oversight over these Acting IGs to be able to take proper action if you think that one of them is not performing the way that you believe they should?

Mr. HOROWITZ. So with regard to the first question, Senator, I think one of the challenges for any Acting IG, no matter how good they are, is that perception that they are the acting individual. They do not come with all the protections that I do as a confirmed IG with the IG Act's independence that comes with it, and that is

a challenge, I think, for an Acting IG no matter how strong they are.

As I said before, I had somebody serving as an Acting for 15 months before I arrived. She did an outstanding job. But that is always going to be the perception, both within the organization and external to the organization, because nobody knows: Are they getting the job? If they are not interested in the job, when is the person who is getting the job coming in? All that uncertainty that is there exists.

With regard to the second issue, CIGIE by statute—I do not have authority over the other IGs—or Acting IGs, for that matter. They have independence——

Senator AYOTTE. So who is the watchdog on that?

Mr. HOROWITZ. Well, if there are allegations of wrongdoing, that would go to the Integrity Committee, which is chaired by the FBI, and we have had discussions with the Committee, this Committee and on the House side, about concerns that have existed with regard to the Integrity Committee. But they would be the ones that would get any referrals of complaints about misconduct-related issues over Acting IGs. The Chair of CIGIE is not empowered to do anything with——

Senator AYOTTE. Ms. Brian, I know you wanted to comment.

Ms. BRIAN. I just wanted to add to Mr. Horowitz, but, of course, the Congress is also the watchdog, and the Congress has often done a terrific job at playing that role of doing—the staff doing great investigations into problems with the IG office.

Senator AYOTTE. So I know that my time is up, but last Congress, we were so worried, myself, Senator Boozman, and Senator Shaheen, we actually introduced a piece of legislation that if the positions were not filled within 210 days, the vacancy under the law, that the authority to fill would then be transferred to Congress, and that would eliminate this sort of idea that maybe the Executive Branch has a disincentive to have real rigorous oversight. And I think that is something that we should revisit and consider looking at some other model to make sure that we actually get these things filled and also that we think about this idea of a potential conflict. So I thank all of you for being here.

Chairman JOHNSON. Thank you, Senator Ayotte, for your passion on this issue. I think you missed my opening comments about the Tomah VA and the daughter of Thomas Baer, who told me over the phone that if she had only known—in other words, if the Office of Inspector General had only issued a report so the public understood the problems of the Tomah VA, she never would have taken her father where he basically died of neglect in that facility. So these are issues of life and death, and thank you for your passion on this.

Mr. Horowitz, we obviously have, this Committee, I have had some real problems with the VA Acting Inspector General, Mr. Griffin. Because of the Tomah VA situation, we have been trying to get information, trying to get the case file. It was revealed in a news report that there are 140 different inspections and investigations where reports have been issued that have not been made public. We could not get the case file. We could not get the communications, even though we worked with the Office of Inspector General

for a number of months. We finally had to take the extraordinary step of issuing a subpoena.

Now, we have the power to issue that subpoena. I wish we have not had to do that. We issued that subpoena on April 29, looking for a response by May 13. We have received some response, but not complete responsiveness.

I want to just ask you, because I am actually kind of shocked that the Office of Inspector General subpoenaed the offices of POGO. Do Offices of Inspectors General have that power to subpoena a group like POGO?

Mr. HOROWITZ. Under the IG Act, Inspectors General have authority to issue documentary subpoenas to outside organizations. I do not know the facts of——

Chairman JOHNSON. Do you think that is an appropriate subpoena to that group, looking to find out who the whistleblowers are?

Mr. HOROWITZ. I would not in my position consider issuing a subpoena to any organization to look for information about whistleblowers.

Chairman JOHNSON. Has CIGIE opened up an investigation in the Integrity Committee against this Office of Inspector General?

Mr. HOROWITZ. I would have to reach out to the Integrity Committee, because that is chaired by the FBI by statute. It is not——

Chairman JOHNSON. I would ask that you check into that for me. Mr. Epstein.

Mr. EPSTEIN. Yes, I would actually respectfully disagree with IG Horowitz. I actually do not think the VA OIG under the Inspector General Act has any authority to subpoena any outside entity that has no purpose that deals with Federal program administration. Subpoenaing an organization that is out there protecting whistleblowers and conducting oversight over the Federal Government has nothing to do with a programmatic function. It is clearly ultra vires under the Inspector General Act.

Chairman JOHNSON. From my standpoint, I think one of the primary roles of the Offices of Inspectors General is to investigate cases where the agencies and departments are retaliating against whistleblowers. I mean, whistleblowers are really kind of—shining the sunlight that whistleblowers bring to Congress and bring to the public, it is about the only way we can reform and improve the efficiency and effectiveness of government. And so we offer those whistleblower protections so that we encourage those people to come forward.

When the Office of Inspector General—and that is, of course, what happened with Charles Edwards. I think that is probably the most egregious problem with the Inspector General Charles Edwards. He was retaliating against people that were issuing reports that he did not like.

So, Ms. Brian, you talked about in your testimony that Richard Griffin, his office had undermined whistleblowers. Can you describe that a little bit more?

Ms. BRIAN. Well, as soon as the subpoena occurred, we felt it was our responsibility to alert people who were contacting us that such an inquiry had taken place and that we certainly intended not to comply with it. But as you can imagine—and there was some won-

derful support from former Senator Coburn also who wrote to them demanding an explanation of why they were doing this.

But the bottom line was it creates a chilling effect because now you have people who thought, OK, well, this is a safe place to go, and we are doing everything that we can to protect their identity, but to think that there is an office that has the capacity—whether they do or not, they were trying to exercise the capacity to identify who the people were who were coming to us. It had a terrible chilling effect.

Chairman JOHNSON. And, again, was that the only purpose of that subpoena? Is there any other justification for the subpoena you received from the Office of Inspector General for Veterans Affairs?

Ms. BRIAN. You would have to ask them, but I think the fact that we said we are very happy to work with them to identify what information we were getting without revealing identifying details of who the people were, and they were not interested in any conversations of that kind.

Chairman JOHNSON. Can anybody, any of the three witnesses, speak to other instances of this type of retaliation against whistleblowers or retaliation within the Offices of Inspectors General? We obviously saw it with Charles Edwards. We are seeing it here, I think, with the Office of Inspector General at the VA. Are there other instances of this? Is this widespread, or is this really an anomaly?

Ms. BRIAN. Well, Senator, as I mentioned in my oral testimony, there is currently a case involving—and this is actually a confirmed IG at the Commerce Department, who has been found through House investigations to have retaliated against whistleblowers. And as it turned out, it has only recently become clear that Todd Zinser had withheld evidence that, in fact, he had been found to have retaliated previously against whistleblowers from the confirmation process. And so we have sort of a current case where you have someone who is a sitting IG where that has taken place, and that actually——

Chairman JOHNSON. Is he still in that position?

Ms. BRIAN. Yes, he is. And we have asked the President to remove him. So that is something that I think is also worth noting. When you mentioned earlier—of course, we all feel a great urgency in filling the vacancy, for example, at the VA IG, but once there is a nominee, I really would encourage the Congress, and the Senate in particular, to take the role of confirmation very seriously. That is part of why you need to not have such a lengthy process before the nomination, because you need to give the Congress time to do a thorough vetting as well.

Chairman JOHNSON. Well, this Committee is dedicated to that.

Mr. Epstein, I do not want the moment to pass, because I know you have done an awful lot of work with the State Department's Office of Inspector General in terms of how they may or may not have responded to the revelation that Secretary Clinton was storing probably official e-mails on a private server. Can you just give us your thoughts in terms of how a permanent Inspector General should have responded to knowledge that Secretary Clinton was, I believe, violating State Department protocols and policies?

Mr. EPSTEIN. Well, Senator, we know for a fact, based off NARA's response to the same inquiry we sent to the OIG, that the OIG has records in its possession concerning whether Hillary Clinton was complying with the Federal Records Act. And I think in this case, Harold Geisel, you know, from a lot of work that has been made public by others, was viewed even by GAO as having a conflict of interest. So I think what a permanent IG would have done is avoided that conflict of interest that we have all discussed and actually been able to get that information public in a report.

We know that Mr. Linick, who is now the IG, has been very active in doing thorough reports about e-mail record preservation at the State Department, and that is something that had he been in place earlier, we may have had a lot of these problems avoided.

Chairman JOHNSON. Are you aware whether Mr. Geisel was aware of Secretary Clinton's violation of the policies?

Mr. EPSTEIN. From the records that my organization has received, we know that there is a substantial likelihood that at the time he was the Acting IG at the State Department, there were records or communications in his possession that were shared with the National Archives concerning Hillary Clinton's record preservation, but I can only speculate as to whether he was directly involved or whether it was others in his office.

Chairman JOHNSON. OK. But, again, you do not have the documented evidence of that. All you know is that there were some documents or a document that was responsive to a FOIA request that you simply cannot get hold of?

Mr. EPSTEIN. Yes, the National Archives has said that those records are subject to deliberative process.

Chairman JOHNSON. OK. Thank you.

Senator Carper—oh, go ahead.

Ms. BRIAN. Mr. Chairman, I am sorry. I realized there is another example that I made a quick reference to in my oral testimony of a current retaliation case. Yesterday it was reported by McClatchy newspapers that a Federal judge is investigating allegations that the then-Acting IG of the Department of Defense destroyed documents during the high-profile leak investigation of NSA whistleblower Thomas Drake. We have seen the letter to the Federal judge, and the Federal magistrate has sent to the Public Integrity Section of the Justice Department, requesting that they look into this matter. And the two people who were referred, one was the then-Acting Inspector General Lynne Halbrooks, who has just retired, but also the current General Counsel of the DOD IG, Henry Shelley.

Chairman JOHNSON. Well, thank you for that. Mr. Horowitz, I think your Integrity Section is going to be somewhat busy here. Senator Carper.

Senator CARPER. I want to turn away from Hillary Clinton for a moment and get back on track here just a little bit. The situation we have here is we still have too many IG vacancies. I am troubled by the fact that there has not been a Senate-confirmed IG at Interior for over 5 years and concerned why there has not been a Senate-confirmed IG at the Veterans Administration for more than a year. And I have been worked hard, along with my colleagues here, to make sure that that is brought to the attention of the adminis-

tration, including the very top of the administration, so we can get some action. And we are seeing some action, and we need to see some more. So I hope that will remain the focus of what we are about here today. We are wasting too much money in this government. Any big organization wastes money. And we do not have it to spare, so we need to redouble our efforts.

I have maybe one question for Mr. Horowitz and then another one, if I can, for Ms. Brian. They are short questions. Hopefully, short answers.

Mr. Horowitz, as you have talked with some of the highly qualified candidates who have been considering going through this process to fill a vacancy, has the difficulty of navigating the process and the length of time it takes impacted their decisions to put themselves forward as a candidate?

Mr. HOROWITZ. It has certainly made them ask themselves the question about the process, and, frankly, I had that situation myself, having spent a year going through this process and at a time when I was at a law firm and people wondering, am I leaving, am I staying. Fortunately, I live and lived in the D.C. area, so I did not also have the problem of wondering what was I going to do with my family, were they going to have to move, were we going to move in the middle of a school year, et cetera. Those are very difficult issues for any nominee to have to sit and wait and wonder.

Senator CARPER. I remember turning to my wife, when I was trying to—I mentioned earlier I had been nominated by President Clinton to serve on the Amtrak Board, and I had to go through all this vetting, which I just thought was crazy. And I remember turning to my wife at some point in time and saying, "There is no way I am going to finish doing this. This is just way too much." And she calmed me down, and so I ended up serving, and I am glad that I did. But, boy, what a pain.

Ms. Brian, a question for you. I know you know many of the potential candidates for becoming Inspectors General. Do you think the way the process works or does not work is a barrier for some who we would be lucky to have as IGs in our agencies?

Ms. BRIAN. I certainly do think that the current process is a barrier, and by that, what I mean is that it is sort of a black hole, and I think more transparency, at least for those who have been nominated or think they might be nominated, would be very helpful to encouraging people to serve.

Senator CARPER. All right. Thanks.

The other thing I want to say in closing, I finished my active duty tour in the Navy in the middle of 1973, moved to Delaware to get an MBA from the University of Delaware. The first week I was at Delaware, September 1973, I got in my Volkswagen Karmann Ghia with a rebuilt engine, and I drove up the Kirkwood Highway from the University of Delaware to the VA hospital. I had in hand my DD–214, which indicated I was eligible for certain benefits. And I got to the hospital, it turned out I was eligible for some dental benefits, and I met a young dentist who was going to examine me and figure out what, if any, work needed to be done. I will never forget what he said to me then. He was just out of dental school, and I think he was there for a short tour before he actually went off to practice on his own. And he said, "Mr. Carper, you need

to know this." He said, "This is not a very good hospital. They do not do very good work here. The morale is not good." It turn out they had 16-bed wards, had a pharmacy that was messed up. They did not do outpatient surgery, and they had a bad reputation. And he said it was well deserved.

That was the fall of 1973. I was elected State treasurer 3 years later, to Congress 6 years after that, and I have spent since 1983 trying to make sure that the quality of care at that hospital and the two outpatient clinics in central and southern Delaware provide exceptional care for our veterans. I am very proud of the work that they do. Can they do better? Sure. We can all do better. And they are under the gun to do better, and I expect them to, and they expect to.

As it turned out, if you go back 6 years ago, across the country we had reports of as many as 100,000 people dying in hospitals because of mistakes—not VA hospitals, not VA outpatient clinics, but hospitals writ large across the country. And somebody said, "We have to do something about that." And we have been doing something about that in this country. And whether someone is dying in a VA hospital in Delaware or your States or Wisconsin or any other place, one death is too many, especially if it is a death caused by a mistake or inappropriate attention or care. And we have to bear down on them and continue to.

But this has been a problem, writ large, for health care delivery in this country for some time, and we are doing better, writ large, across the country. And, clearly, we have room for improvement in the VA system, and I am committed—I know our Chairman is and certainly Senator Baldwin—to make sure that we do that across the country.

To the extent we can do better by our veterans through a better watchdog at VA, I want to make sure that we do that, and I am committed to making sure that we fill that position soon.

Thank you.

Chairman JOHNSON. Thank you, Senator Carper.

I want to thank all the witnesses. You took a lot of time and prepared some very thoughtful testimony. We appreciate your answers to our questions.

I think in terms of the two purposes of this hearing, we have certainly fulfilled the first. I think we certainly understand how important these positions of permanent Inspector General are. These people have to have integrity. They need to be totally accountable and completely transparent. That is absolutely necessary.

Unfortunately, we really did not find out why these vacancies have gone on so long. We will continue to work with the White House to try and determine and get that answer. We will continue to work with the White House and apply pressure on them to get these appointments made, particularly with the VA. And, Mr. Horowitz, I really count on you working with the CIGIE to take a look at the Integrity Section here and investigate some of these issues that have been raised during this hearing. And this Committee also will—we are dedicated to move quickly on the nomination of Ms. Ochoa for the Inspector General for the GSA.

With that, let me just say the hearing record will remain open for another 15 days until June 18 at 5 p.m. for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:49 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"Watchdogs Needed Top Government Investigator Positions Left Unfilled for Years"
June 3, 2015

As prepared for delivery:

Good morning and welcome.

Inspectors general (IGs), the watchdogs of the executive branch, are the only employees within federal agencies that are statutorily mandated to be independent from their agencies' heads. There are 33 IGs who are nominated by the president and confirmed by the Senate. It is so vital that these watchdogs maintain their independence from the agencies they oversee that, once confirmed, they can be removed only by the president with notice to Congress.

When IG positions remain unfilled, their offices are run by acting IGs who, no matter how qualified or well-intentioned, are not granted the same protections afforded to Senate-confirmed IGs: They are not truly independent, as they can be removed by the agency at any time; they are only temporary and do not drive office policy; and they are at greater risk of compromising their work to appease the agency or the president. We have seen the damaging results of this inherent conflict of interest on many occasions, including the current acting IG for the Department of Veterans Affairs, former acting IG for the Department of Homeland Security Charles Edwards, and former acting IG for the Department of State Harold Geisel.

The need for permanent IGs is a bipartisan issue. I'm proud to say that I joined with each member of the committee in urging the president in a March 24, 2015 letter to swiftly appoint IGs to vacant positions. This followed a similar letter from the committee on Jan. 24, 2013. Neither letter drew a response from the White House.

Despite all we know about the disadvantages, and indeed the serious risks, of IG vacancies, and despite the strong bipartisan support for filling these positions, there remain seven vacancies of presidentially appointed IGs, with only three nominations sent to the Senate for consideration. The four vacancies without nominees are the Department of Interior (with an acting IG since February 2009), the Department of Veterans Affairs (with an acting IG since December 2013), the Export-Import Bank (with an acting IG since June 2014) and the Central Intelligence Agency (with an acting IG since January 2015).

The most concerning is the Department of Veterans Affairs vacancy. The president has known since November 2013 that the IG was stepping down yet has still failed to nominate someone for the position. The acting IG, Richard Griffin, has shown alarming signs that he lacks independence from the agency, including his failure to release more than 140 reports to the public and to Congress, his fighting to keep documents from Congress, and reports that he has lost the trust of whistleblowers at the agency. My letter to the president asking him to appoint a permanent VA inspector general has been ignored, as have similar letters

sent this year by members of this committee and last year by House Committee on Veterans' Affairs Chairman Miller and then-Chairman Carper and Ranking Member Coburn of our committee.

Unfortunately, the administration has been disturbingly slow to appoint permanent IGs. Data going back to the Reagan administration received from the Project on Government Oversight shows that the current administration has, on average, left IG positions vacant for hundreds of days longer than any of his predecessors.

We are holding this hearing to seek answers about the administration's nominations process and to understand how it broke down. I appreciate the participation of three witnesses here today to explore this issue. Unfortunately, however, the witness list is incomplete without hearing from the Office of Presidential Personnel in the White House. The committee invited both the current and former director of the Office of Presidential Personnel, and the White House has blocked both from testifying here today. I realize the significance of requesting testimony from a White House advisor, but I determined it was the only way we could conduct appropriate and diligent oversight. We will continue to seek answers from the White House to these important questions.

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Statement of Ranking Member Thomas R. Carper
"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"
June 3, 2015

As prepared for delivery:

I want to thank Chairman Johnson for holding this hearing today to discuss the essential role Inspectors General play in our government. Their work helps us save money, reveal and prosecute wrongdoing, and promote the integrity of government.

Every year, Inspectors General identify tens of billions of dollars in potential savings the federal government can achieve through improved management practices and recovery of improper payments.

I believe that the work of Inspectors General, along with that of Government Accountability Office (GAO), is invaluable to this committee as we work to get better results for less money and reduce the federal deficit. That's why it is so critical that we have qualified, experienced people in place to fill these roles.

I've joined all of my colleagues on this committee in writing the President on several occasions to stress the importance of him providing us with strong nominees to fill these vacant positions. And while it is frustrating that no one from the Administration has responded in writing to those letters, I would note that there are fewer vacancies now than in the past few years.

Of the 72 Inspector General positions, 33 require confirmation. There are seven vacancies in these Senate-confirmed positions.

The good news is that the President has put forth nominees for three of these positions. One of these – the nominee to be Inspector General for the General Services Administration – will be considered by this Committee this month.

The remaining four vacancies include the Department of Veterans Affairs – vacant for a year and a half – and the Department of the Interior – vacant for over five years. This is just unacceptable, so I renew the request all of us have made to the President to send us well-qualified nominees for these jobs.

As my colleagues know, getting Inspectors General and other nominees into their jobs is a shared responsibility – the President nominates and the Senate confirms. The process has become far too slow on both ends, leaving key positions open too long and discouraging good people from serving.
While vacant positions are often filled in the interim by someone in an acting capacity, someone holding a job on a temporary basis is rarely as effective as someone who is Senate-confirmed.

Richard Skinner, the first Senate-confirmed Inspector General of the Department of Homeland Security, explained the special authority that comes with Senate confirmation at a hearing this Committee held two years ago. He said:

> 'With having acting people in place, what you are doing is running in place.... [Y]ou are not taking those risks necessary as a confirmed IG would to provide oversight... that is absolutely critical to the success of any program.'

I think that is a powerful statement of how Senate confirmation enhances independence.
I look forward to hearing from our witnesses today as we work together to find ways not just to reduce the number of vacancies in these key positions, but also to ensure they are filled with highly qualified candidates who will help us root out problems and save money for taxpayers.

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Office of the Inspector General
United States Department of Justice

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

before the

U.S. Senate
Committee on Homeland Security and
Governmental Affairs

concerning

"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"

June 3, 2015

Mr. Chairman, Senator Carper, and Members of the Committee:

Thank you for inviting me to testify today about the need to fill vacant Inspector General (IG) positions. The Committee has consistently provided strong bipartisan support for the work of Inspectors General, and I want to thank you for your support of our mission.

As you know, in January, I was sworn in as Chair of the Council of the Inspectors General for Integrity and Efficiency (Council of IGs or CIGIE). Our mission at the Council of IGs is to maximize the economy, effectiveness, and professionalism of personnel across the IG community by collaborating to enhance policies, standards, and approaches to the crucial work of Inspectors General. One of the Council of IGs most important responsibilities, which is provided for in the Inspector General Act, is to submit "recommendations of individuals to the appropriate appointing authority" for consideration when an IG vacancy occurs. And since the creation of the Council of IGs in 2009, it has recommended over 100 individuals for IG positions, and many of the candidates it recommended – myself included – are now serving as Inspectors General.

Inspectors General are entrusted to root out fraud, waste, abuse, and misconduct and improve the efficiency of government programs. To fulfill this mission, IGs must be independent of their respective agencies and accountable to the public. An IG's independence is critical to objectively reviewing agency programs, making findings that might be critical of the agency, and recommending improvements. Similarly, investigations of allegations of misconduct must be conducted in an independent and objective manner. In short, the work of Inspectors General must be thorough, impartial, fair, and independent. Finding IG candidates who can fulfill these objectives is critical to the IG selection process.

As I noted, the Council of IGs is statutorily mandated to recommend candidates for Inspector General positions, and we have established an Inspector General Recommendation Panel to fulfill these responsibilities. To recruit applicants, officials from the Council of IGs seek to publicize the Panel's role and current IG vacancies during presentations and informal discussions with Council members, personnel in the IG community, and agency leadership. In addition, we provide information to the public on our website (www.ignet.gov). Individuals who are interested in IG positions are encouraged to contact the Panel for additional information or assistance.

Once received, applications are referred to the Panel for review. The Panel looks for core qualities of applicants such as demonstrated experience managing an organization; exceptional prior analytical or investigative work; and honed leadership and communication skills. In addition, qualified candidates should exhibit an ability to propose innovative solutions to complicated problems, and should have unquestioned integrity. Further, with regard to candidates for particular Offices of Inspector General, the Panel considers candidate experience in those areas over which the Offices have oversight authority. Since these types of experience can span across several industries and sectors, the Panel considers

applicants from various professional backgrounds, including the IG community; federal, state, and local government agencies; and the private sector. In addition, the Panel considers an applicant's ability to remain independent while working collaboratively, which is essential to successfully leading an OIG.

After review, the Panel determines which applicants to refer to appointing authorities for consideration. However, the Council of IGs is not the only source of IG candidates. For example, interested individuals can contact the appointing authorities directly. Moreover, the appointing authorities are not required to accept or act on recommendations received from the Council of IGs.

Far too often, the process for selection and appointment of IG candidates takes too long. As of today, there are eight IG positions that remain vacant, one for a Designated Federal Entity, the Denali Commission, which is appointed by the Commission, and seven for Establishment IGs, which are Presidentially-appointed, Senate-confirmed positions. Those seven IG positions, by length of vacancy, are the Department of the Interior, the Agency for International Development (AID), the Federal Deposit Insurance Corporation (FDIC), the Department of Veterans Affairs, the General Services Administration (GSA), the Export-Import Bank of the United States, and the Central Intelligence Agency (CIA). As of the end of this month, all of these IG positions, with the exception of the CIA IG position, will have been vacant for over 1 year. At present, there are nominees pending before the Senate for the AID, FDIC, and GSA vacancies. I am very familiar with the nominees for FDIC IG and GSA IG, because both nominees currently work with me in the Department of Justice OIG and have served in the federal government for more than 50 years of combined service. Their experience and dedication will make them outstanding Inspectors General, and I am hopeful that they will be able to join the Inspector General community shortly. On behalf of the Council of IGs, I would encourage swift action with respect to selecting and confirming candidates for the remaining vacant IG positions, and for any future vacancies.

As this Committee has recognized previously, during the period of an IG vacancy, acting Inspectors General and career staff carry on the work of their offices, and they do it with the utmost of professionalism. Indeed, the Office of the Inspector General at the Department of Justice had an acting Inspector General for 15 months prior to my confirmation, and she served with great distinction. However, a sustained absence of permanent leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an IG. Moreover, no matter how able or experienced an acting Inspector General may be, a permanent IG has the ability to exercise more authority in setting new policies and procedures and, by virtue of the authority provided for in the IG Act, inevitably will be seen as having greater independence. As such, a timely process for addressing vacant IG positions is crucial to an OIG's success.

I can speak from my personal experience about the extended period of time it can take to identify, vet, nominate, and confirm an Inspector General candidate. My predecessor, Glenn Fine, announced in November 2010 that he would be leaving the position in January 2011, but it was not until July 31, 2011, when I was

nominated. I had my confirmation hearing in October 2011, and was confirmed on March 29, 2012, with no opposition. It was approximately one year from the time that I was contacted about the position of Inspector General until the time that I was actually confirmed. And 15 months without a confirmed IG is a significant period of uncertainty for an OIG office, and I am concerned that such a lengthy process could discourage the most qualified individuals from seeking these positions.

The Council of IGs will continue to encourage talented senior staff in the IG community to apply for vacant IG positions and to expand our recruitment programs to find qualified candidates from outside the IG community to seek IG positions. By increasing our outreach within and outside the IG community, we will continue to augment an already distinguished OIG workforce with these and other useful professional skills. In addition, we will continue to engage with the White House Office of Presidential Personnel to seek the prompt selection of candidates to fill IG vacancies for Establishment Agencies. And we will work with the Administration and Designated Federal Agencies to encourage them to seek the input of the Council of IGs when an IG vacancy occurs. The Council of IGs also will continue to work with the Committee and its staff to ensure that candidates nominated to fill IG vacancies at Establishment Agencies can be considered promptly by the Senate for confirmation.

The Council of IGs is committed to reviewing its practices and improving our contributions to this process. I look forward to continuing to work with the Committee on these issues in order to ensure that IG vacancies are filled with outstanding candidates. I would be pleased to answer any questions the Committee may have.

POGO PROJECT ON GOVERNMENT OVERSIGHT
Exposing Corruption, Exploring Solutions.

Testimony of Danielle Brian, Executive Director,
Project On Government Oversight,
before the Senate Homeland Security and Governmental Affairs Committee regarding
"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"
June 3, 2015

Chairman Johnson, Ranking Member Carper, and Members of the Committee, thank you for inviting me to testify today and for your ongoing oversight of the Inspector General (IG) system.

My name is Danielle Brian and I am the Executive Director of the Project On Government Oversight (POGO). Founded in 1981, POGO is a nonpartisan independent watchdog that champions good government reforms. POGO's investigations into corruption, misconduct, and conflicts of interest achieve a more effective, accountable, open, and ethical federal government.

At their best, Offices of Inspector General (OIG) are essential to a well-functioning federal government. IG offices recover billions of dollars in wasted taxpayer funds and make improvements to federal programs that keep us healthy, safe, and secure.[1] IGs wear two hats, reporting to their agency heads and to Congress. As a result of this dual-reporting structure, IGs are uniquely positioned to serve as your eyes and ears within the executive branch, giving you the information you need to conduct effective oversight and pass meaningful legislation.

POGO has worked for years to study and improve the IG system, and we have supported legislation to make IGs more independent and accountable.[2] As such, we are deeply troubled to find that many senior IG officials are allegedly currying favor with the very agency leaders they're supposed to oversee, and taking other inappropriate actions that would cause any reasonable person to question the IG's independence.

Among the most pervasive threats to IG independence and effectiveness are the long-standing vacancies that have languished at IG offices throughout the federal government. POGO believes it is no coincidence that so many long-time acting IGs have found their independence called into question on front pages of newspapers across the country—especially when those acting officials make it known they are auditioning for the role of permanent IG.

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[1] In fiscal year 2013 alone, IG offices collected $14.8 billion in investigative receivables and recoveries. Council of the Inspectors General on Integrity and Efficiency, *Progress Report to the President, Fiscal Year 2013*. https://www.ignet.gov/sites/default/files/files/CIGIE%202013%20Progess%20Report.pdf (Downloaded May 29, 2015)

[2] Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence*, February 26, 2008. http://www.pogo.org/our-work/reports/2008/go-ig-20080226.html; Project On Government Oversight, *Inspectors General: Accountability is a Balancing Act*, March 20, 2009. http://www.pogo.org/our-work/reports/2009/go-igi-20090320.html; and Project On Government Oversight, *Watching the Watchdogs: The Good, the Bad, and What We Need from the Inspectors General*, January 14, 2014. http://www.pogo.org/our-work/reports/2014/watching-the-watchdogs-the-good-the-bad-and-what-we-need.html

At the same time, it is important to keep in mind that the opening of an IG vacancy can occur for a perfectly appropriate reason—such as removing a permanent IG who fails to uphold her office's mission.

BACKGROUND

POGO first testified about IG vacancies at a May 2012 hearing before the House Oversight and Government Reform Committee.[3] As we stated at the time, some acting IGs are experienced and competent leaders, and IG professional staffers often have no problem carrying on their day-to-day work under acting leadership. Some IG offices conduct the same number of investigations and audits under both acting and permanent officials.

Nonetheless, a long-term vacancy often does great harm to an IG's independence and effectiveness. One OIG staffer told POGO the situation is akin to a plant that is left unwatered for years, observing that the viability of the office can suffer in the same way the plant would.

Generally speaking, permanent IGs enjoy several advantages over their acting counterparts.

Credibility

Permanent IGs—especially those nominated by the President and confirmed by the Senate—undergo a rigorous vetting process, and are required under the Inspector General Act to be selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability."[4] A nominee who survives this process will typically be more credible in the eyes of agency leaders and employees, congressional overseers, and members of the public.

Independence

Acting IGs are temporary by nature, and can easily be removed without the protections afforded to permanent IGs under the Inspector General Act and related laws. When an acting IG broadcasts that he wants the permanent job, it creates an inherent conflict: the thoroughness or aggressiveness of his office's work can weaken his chance of being appointed to the permanent slot. It means the acting IG's job prospects are dependent on the goodwill of the very administration he's charged with overseeing.

According to a report on Quality Standards published by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), OIG independence is important both in fact and in appearance, so that "opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties."[5] Even the slightest appearance of partiality could mean, for instance, that an IG office will lose the trust of a would-be

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[3] Testimony of Jake Wiens, Investigator, Project On Government Oversight, before the House Committee on Oversight and Government Reform on "Where Are All the Watchdogs? Addressing Inspector General Vacancies," May 10, 2012. http://www.pogo.org/our-work/testimony/2012/go-ig-20120510-inspector-general-testimony.html

[4] Inspector General Act of 1978, §3(a), Appendix to U.S.C. Title 5. http://www.gpo.gov/fdsys/pkg/USCODE-2013-title5/pdf/USCODE-2013-title5-app-inspector.pdf (Downloaded May 29, 2015)

[5] Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Federal Offices of Inspector General*, August 2012, p. 10. https://www.ignet.gov/sites/default/files/files/Silver%20Book%20Revision%20-%208-20-12r.pdf (Downloaded May 29, 2015)

whistleblower who is debating whether or not to tell the office about systemic agency malfeasance.

Strategy
A permanent IG who enjoys the protections of the Inspector General Act and related laws can devise a long-term strategy to address the most important and, at times, embarrassing problems that confront her agency. Rather than initiating ambitious projects, current and former IG staff have told POGO, acting IGs are more likely to favor short-term projects that do not rock the boat, essentially serving as a caretaker until a permanent IG takes over.

TRACKING IG VACANCIES

Several years ago, POGO created a special web page, "Where Are All the Watchdogs?" to keep track of ongoing vacancies in the IG system. Our vacancy tracker shows how long IG offices have been headed by an acting official, and, in the case of IGs appointed by the President, how long a nominee has been waiting for Senate confirmation.[6]

As of today, there are seven vacancies at presidentially appointed IG positions, one vacancy at an agency-appointed position, and three nominees awaiting confirmation. The shortest vacancy is at the Central Intelligence Agency, which has gone 123 days without a permanent IG or a nominee. The longest vacancy is at the Interior Department, which has now gone almost 2,300 days without a permanent IG, making it the longest IG vacancy of the Obama Administration.

Table 1 lists the vacancies as of today's hearing, counts how long the positions have been vacant, and shows if a nominee is pending for a presidentially appointed position.

[6] Project On Government Oversight, "Where Are All the Watchdogs?" http://www.pogo.org/tools-and-data/ig-watchdogs/go-igi-20120208-where-are-all-the-watchdogs-inspector-general-vacancies1.html

TABLE 1: CURRENT INSPECTOR GENERAL VACANCIES AS OF JUNE 3, 2015						
Department/ Agency	**Vacancy Date**	**Nominee**	**Nomination Date**	**Days Since Nomination**	**Total Days Vacant**	**Who Nominates**
DOI	2/23/2009*	-	-	-	2,291 days	President
USAID	10/15/2011	Ann C. Barr	5/11/2015	23 days	1,327 days	President
FDIC	9/25/2013	Jay N. Lerner	11/12/2014	203 days	616 days	President
Denali	12/28/2013	-	-	-	522 days	Agency
VA	12/31/2013	-	-	-	519 days	President
GSA	4/20/2014	Carol F. Ochoa	3/11/2015	84 days	409 days	President
Ex-Im	6/27/2014	-	-	-	341 days	President
CIA	1/31/2015	-	-	-	123 days	President

Notes and Sources: POGO defines the start of a vacancy as the last date on which a permanent IG served in that capacity. The initial list of vacancies was obtained from a directory of IGs maintained by CIGIE: https://www.ignet.gov/content/inspectors-general-directory. Vacancy dates for IG positions that require a presidential nomination were obtained from a database maintained by the Government Accountability Office (GAO): http://www.gao.gov/legal/fedvac/vacancies.html. Vacancy dates for IG positions not listed in the GAO database were obtained from a variety of sources, including IG resignation letters, semiannual reports to Congress, and agency press releases. Information regarding presidential nominations was obtained from White House and congressional records:
http://www.whitehouse.gov/briefing-room/nominations-and-appointments,
http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/nom_cmtec.htm

*Earl Devaney, the most recent permanent Inspector General at the Department of the Interior, was appointed Chair of the Recovery Accountability and Transparency Board on February 23, 2009. Devaney took a leave of absence from his position at Interior at that point, leaving Acting IG Mary Kendall responsible for running the office. Devaney resigned from federal service in December 2011. POGO considers the position effectively vacant at the time Devaney was appointed Chair of the RAT Board. However, it should be noted that the Obama Administration could not appoint a permanent IG until Devaney resigned.

Table 2 shows how long it took the Obama Administration to fill those presidentially appointed IG positions that were vacant at some point during his Administration but that are now filled. Previous IG vacancies under President Obama have lasted an average of 613 days. The average time between the beginning of an IG vacancy and the selection of a nominee (nomination lag) has been 504 days. The average time between presidential nomination and Senate confirmation (confirmation lag) has been 116 days.

TABLE 2: LENGTH OF NOW-FILLED INSPECTOR GENERAL VACANCIES IN THE OBAMA ADMINISTRATION							
Position	**Vacancy Date**	**Nominee**	**Nomination Date**	**Nomination Lag in Obama Administration**	**Confirmation Date**	**Confirmation Lag**	**Days Vacant in Obama Administration**
State IG	1/16/2008	Steve A. Linick	6/27/2013	1,619 days	9/17/2013	82 days	1,701 days
DOL IG	7/14/2009	Scott S. Dahl	7/18/2013	1,465 days	10/16/2013	90 days	1,555 days
CNCS IG	6/11/2009	Deborah J. Jeffrey	11/15/2011	887 days	6/29/2012	227 days	1,114 days
DHS IG	2/27/2011	John Roth	11/21/2013	998 days	3/6/2014	105 days	1,103 days
DoD IG	12/24/2011	Jon T. Rymer	6/24/2013	548 days	9/17/2013	85 days	633 days
FHFA IG	7/30/2008	Steve A. Linick	4/12/2010	447 days	9/29/2010	170 days	617 days
CIA IG	3/14/2009	David B. Buckley	8/5/2010	509 days	9/29/2010	55 days	564 days
EPA IG	3/3/2006	Arthur A. Elkins, Jr.	11/18/2009	302 days	6/22/2010	216 days	518 days
SIGAR*	2/4/2011	John F. Sopko	-	-	5/23/2012	-	474 days
DOJ IG	1/28/2011	Michael E. Horowitz	7/29/2011	182 days	3/29/2012	244 days	426 days
ED IG	7/1/2008	Kathleen S. Tighe	11/20/2009	304 days	3/10/2010	110 days	414 days
HUD IG	10/12/2010	David A. Montoya	7/18/2011	279 days	11/18/2011	123 days	402 days
IC IG**	10/7/2010	Irvin C. McCullough, III	8/2/2011	299 days	11/7/2011	97 days	396 days
SIGTARP	3/31/2011	Christy L. Romero	2/1/2012	307 days	3/29/2012	57 days	364 days

Ex-Im IG	10/1/2009	Osvaldo L. Gratacos Munet	5/13/2010	224 days	9/29/2010	139 days	363 days
FHFA IG	9/29/2013	Laura S. Wertheimer	5/22/2014	235 days	9/17/2014	118 days	353 days
SBA IG	8/12/2008	Peggy E. Gustafson	7/6/2009	167 days	9/24/2009	80 days	247 days
NASA IG	4/11/2009	Paul K. Martin	10/1/2009	173 days	11/20/2009	50 days	223 days
DoD IG	7/14/2008	Gordon S. Heddell	6/1/2009	132 days	7/10/2009	39 days	171 days
			AVERAGE:	**504 days**		**116 days**	**613 days**

Notes and Sources: The initial list of vacancies was obtained from a directory of IGs maintained by CIGIE: https://www.ignet.gov/content/inspectors-general-directory. Vacancy dates for IG positions that require a presidential nomination were obtained from a database maintained by the Government Accountability Office (GAO): http://www.gao.gov/legal/fedvac/vacancies.html. Vacancy dates for IG positions not listed in the GAO database were obtained from a variety of sources, including IG resignation letters, semiannual reports to Congress, and agency press releases. Information regarding presidential nominations was obtained from White House and congressional records: http://www.whitehouse.gov/briefing-room/nominations-and-appointments, http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/nom_cmtec.htm

POGO defines the start of a vacancy as the last date on which a permanent IG served in that capacity. The nomination lag was calculated from the earliest day in the Obama Administration when the vacancy began to the date of nomination (i.e., the nomination lag does not include the time the position was vacant under the previous Administration).

*The Special Inspector General for Afghanistan Reconstruction (SIGAR) requires an appointment by the President, but does not require Senate confirmation.[7]

**The Inspector General of the Intelligence Community (IC) was established in a 2010 law enacted during the Obama Administration. POGO calculated the initial vacancy date for this position on the day the law was enacted.[8]

[7] National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, § 1229(c), January 28, 2008. http://www.gpo.gov/fdsys/pkg/PLAW-110publ181/pdf/PLAW-110publ181.pdf (Downloaded May 29, 2015)
[8] Intelligence Authorization Act for Fiscal Year 2010, Public Law 111-259, §405, October 7, 2010. http://www.gpo.gov/fdsys/pkg/PLAW-111publ259/pdf/PLAW-111publ259.pdf (Downloaded May 29, 2015);

A 2009 study on government vacancies compared the average vacancy length across recent Administrations for at least some presidentially appointed IG positions. The study relied on vacancy data provided by the Office of Personnel Management (OPM). POGO has not been able to validate or replicate the underlying OPM data, and therefore we do not know if it is feasible to use the presently available data to compare IG vacancies from past Administrations to those of the current Administration. Nonetheless, the 2009 study suggests that it took less time on average to fill IG vacancies in past Administrations.[9]

EXAMPLES OF CURRENT AND RECENT IG VACANCIES

While the overall number and length of IG vacancies are important, the true implication of a particular vacancy can only be understood in context.

IG positions can become vacant for a variety of reasons, some of which are troubling, while others are completely appropriate—and in some instances might even be beneficial. For example, it would be extremely troubling if an IG position became vacant because the President removed an aggressive IG without good reason. But it would completely appropriate—and arguably beneficial—if an IG position became vacant because Members of Congress pushed for the resignation of an IG who lacked integrity or was ineffective, or because a President removed an IG for engaging in serious misconduct.

Likewise, IG vacancies can continue for extended periods of time for a variety of reasons. For example, IG positions can remain vacant simply because the President has not taken action to nominate a candidate, which is a problem. But IG positions can also remain vacant when negative information about a nominee emerges during the confirmation process, raising previously unknown doubts about the qualifications of that nominee. In that situation, the benefits of keeping an unqualified candidate from becoming a permanent IG might outweigh the costs of extending the vacancy.

Whatever the reasons may be for a vacancy to begin or continue, the following examples show what can happen when an IG office languishes for too long under acting leadership.

Department of Veterans Affairs
The Department of Veterans Affairs (VA) has now gone 519 days without a permanent IG, and President Obama still has not offered a nominee. The vacancy began at the end of 2013 when the previous IG, George Opfer, retired from federal service.[10] The IG's office has since been led in an acting capacity by Richard Griffin.[11]

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[9] Anne Joseph O'Connell, "Vacant Offices: Delays in Staffing Top Agency Positions," *Southern California Law Review*, Volume 82, 2009, p. 957. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1411812 (Downloaded May 29, 2015)

[10] Letter from George J. Opfer, Inspector General, Department of Veterans Affairs, to the White House, regarding resignation from federal service, November 6, 2013. http://www.va.gov/oig/articles/oig-ig-letter.pdf (Downloaded May 29, 2015)

[11] Department of Veterans Affairs, Office of Inspector General, "Richard J. Griffin, Deputy Inspector General." http://www.va.gov/oig/about/deputy-inspector-general.asp

Griffin's independence and interactions with Department leaders have repeatedly come under scrutiny during his tenure as Acting IG. Last year, after Griffin conferred with one of the VA's top officials, the IG's office added language to a draft report that undermined a whistleblower's claims about veteran deaths and falsified wait lists, according to an email released by the House Veterans' Affairs Committee. (The whistleblower, Dr. Sam Foote, alleged that 40 veterans died while sitting on a phony list waiting for an appointment through VA's Phoenix health care system. The OIG wrote in its final report that it was "unable to conclusively assert that the absence of timely quality care caused the deaths of these veterans."[12]) In the same email, the VA official questioned why the IG's office didn't even interview a former director of the VA's Phoenix hospital who allegedly ordered the falsification of patient records. (She "has not been interviewed for a number of reasons," Griffin responded. "Best to describe orally.")[13]

Griffin and the IG's office have stated that the Department does not dictate the final content of OIG reports, and that any changes made to the Phoenix report were part of the normal agency-OIG dialogue during the editing process.[14] Nonetheless, House Veterans' Affairs Committee Chairman Jeff Miller (R-FL) told the *Washington Examiner* "[t]here is a mountain of evidence related to this situation that in its best light presents the appearance of impropriety and in its worst light indicates a relationship between VA and its inspector general that is too close for comfort."[15]

Chairman Johnson, you and other Members of this Committee have rightfully raised your own concerns about the independence of the VA IG's office and the need for permanent leadership. In a letter to the President earlier this year, you noted that the IG's office did not even brief your staff about a March 2014 report concerning the high rate of opioid prescriptions and other alleged problems at the Tomah VA medical center in Wisconsin.[16] These concerns were only amplified when a report by *USA Today* revealed that the IG's office had not publicly released the findings of 140 health care investigations since 2006.[17] The office has since started releasing certain reports, some of which "substantiated complaints of serious harm or death" and showed

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[12] Department of Veterans Affairs, Office of Inspector General, *Veterans Health Administration: Review of Alleged Patient Deaths, Patient Wait Times, and Scheduling Practices at the Phoenix VA Health Care System*, August 26, 2014. http://www.va.gov/oig/pubs/VAOIG-14-02603-267.pdf (Downloaded May 29, 2015)

[13] Mark Flatten, "VA inspector general was pressured to change report," *Washington Examiner*, November 3, 2014. http://www.washingtonexaminer.com/va-inspector-general-urged-to-alter-report/article/2555647 (Downloaded May 29, 2015) (Hereinafter "VA inspector general was pressured to change report")

[14] Testimony of Richard J. Griffin, Acting Inspector General, Department of Veterans Affairs, before the House Committee on Veterans' Affairs on "Scheduling Manipulation and Veteran Deaths in Phoenix: Examination of the OIG's Final Report," September 17, 2014. https://veterans.house.gov/witness-testimony/richard-j-griffin-0 (Downloaded May 29, 2015)

[15] "VA inspector general was pressured to change report"

[16] Letter from Senator Ron Johnson (R-WI), Chairman, Senate Committee on Homeland Security and Governmental Affairs, to President Barack Obama regarding VA Inspector General nomination, January 22, 2015. http://www.hsgac.senate.gov/media/majority-media/johnson-to-obama-name-an-inspector-general-for-va (Downloaded May 29, 2015)

[17] Donovan Slack, "VA doesn't release 140 vet health care probe findings," *USA Today*, March 8, 2015. http://www.usatoday.com/story/news/politics/2015/03/08/probes-of-veterans-health-care-often-not-released-to-public/24525109/ (Downloaded May 29, 2015)

that the OIG "trusted the VA to correct problems on its own," according to *USA Today*.[18] But the office continues to defend its original decision to withhold its findings from the public, stating that its reports "were technically available if the public or members of Congress submitted a Freedom of Information Act request."[19] This posture—which, unfortunately, is all too common among both acting and permanent IGs[20]—creates the appearance, if not the reality, that the VA's watchdog is shielding the Department from congressional and public scrutiny.

The perception that an acting IG lacks adequate independence can have a chilling effect on the office's natural allies: agency employees and other insiders who are in a position to blow the whistle on agency wrongdoing. One former VA employee recently stated that the IG's office is "not trusted by most employees and usually used in the VA as retaliation," according to a report obtained by POGO through the Freedom of Information Act.[21] Rather than taking steps to restore its credibility with whistleblowers, the IG's office has gone so far as to subpoena POGO for all records provided to us by current and former VA employees about abuses and mismanagement at VA medical facilities.

When the VA IG's office first contacted us asking for the names of whistleblowers and the documents they provided, we offered to sit down with them and share general trends from the whistleblower tips. But we refused to provide information that could be used to identify whistleblowers, especially since so many whistleblowers expressed concerns about the IG and asked to remain anonymous. As we wrote last year, "[s]ome VA employees who contacted POGO and requested confidentiality said they feared retaliation if their names were divulged," and some said they did not have confidence in the VA IG's office.[22] We have and will continue to refuse to comply with the IG office's subpoena in order to protect the identities of those whistleblowers.[23]

Despite these and other concerns that have been raised during Griffin's lengthy tenure as Acting IG, it appears the White House is in no rush to find a permanent replacement. "[T]he administration profoundly respects and admires the work of inspector generals [*sic*] across the administration and throughout various agencies, whether they are Senate-confirmed or not," a White House spokesperson told reporters.[24]

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[18] Donovan Slack, "Newly released VA reports include cases of veteran harm, death," *USA Today*, April 29, 2015. http://www.usatoday.com/story/news/politics/2015/04/29/newly-released-va-reports/26594353/ (Downloaded May 29, 2015) (Hereinafter "Newly released VA reports include cases of veteran harm, death")

[19] Hereinafter "Newly released VA reports include cases of veteran harm, death"

[20] Ray Locker, "'Catch-22' lives on with Pentagon inspector general," *USA Today*, August 15, 2013. http://www.usatoday.com/story/nation/2013/08/15/catch-22-pentagon-inspector-general-investigative-reports/2658523/ (Downloaded May 29, 2015)

[21] Department of the Treasury, Office of Inspector General, *Report of Investigation*, March 12, 2015, p. 7.

[22] Project On Government Oversight, "VA Inspector General Issues Subpoena for POGO Whistleblower Records: POGO Says No," June 9, 2014. http://www.pogo.org/blog/2014/06/va-inspector-general-issues-subpoena-for-pogo-whistleblower-records.html

[23] Project On Government Oversight, "POGO's Response to VA Inspector General's Subpoena for Whistleblower Records," June 9, 2014. http://www.pogo.org/our-work/letters/2014/va-inspector-general-issues-subpoena-for-pogo.html

[24] Susan Crabtree, "Obama fails to name VA watchdog for 437 days," *Washington Examiner*, March 13, 2015. http://www.washingtonexaminer.com/article/2561485 (Downloaded May 29, 2015)

Department of Homeland Security

Former Department of Homeland Security (DHS) Inspector General Richard Skinner resigned at the end of February 2011, leaving his position vacant.[25] President Obama nominated a candidate to fill the vacancy several months later,[26] but withdrew the nomination the following year after Senator Susan Collins (R-ME), then-Ranking Member of this Committee, raised concerns about the nominee's management style.[27]

As the vacancy lingered, then-Deputy IG Charles Edwards assumed the role of Acting IG. His tenure continues to serve as a shining example of all that can go wrong when an IG office is headed for a long time under acting leadership. As you well know, Chairman Johnson, your bipartisan probe with Senator McCaskill on the Financial and Contracting Oversight Subcommittee found that Edwards "jeopardized the independence of the OIG."[28] Among other things, Edwards "did not obtain independent legal advice and directed reports to be altered or delayed to accommodate senior DHS officials," and "also did not recuse himself from audits and inspections that had a conflict of interest related to his wife's employment," according to the Subcommittee's report.[29]

These problems were only made worse by the fact that Edwards was openly auditioning for the role of permanent IG. Ten OIG employees told the Subcommittee "both that Mr. Edwards wanted to be nominated for a permanent IG position and that they had concerns that he threatened the independence of the OIG office."[30] Edwards resigned from his position just days before he was scheduled to appear at a Subcommittee hearing.[31]

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[25] Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=inspector%20general&vacancyActing=&vacancyNominee=&admin=obama&agency=573&subagency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=1661 (Downloaded May 29, 2015)

[26] The White House, "President Obama Announces More Key Administration Posts," July 19, 2011. https://www.whitehouse.gov/the-press-office/2011/07/19/president-obama-announces-more-key-administration-posts (Downloaded May 29, 2015)

[27] Project On Government Oversight, "All Along the Watchtower: One Year Anniversary of DHS Inspector General Vacancy," February 27, 2012. http://www.pogo.org/blog/2012/02/all-along-the-watchtower-one-year-anniversary-of-dhs-inspector-general-vacancy.html; The White House, "Presidential Nominations and Withdrawals Sent to the Senate," June 7, 2012. https://www.whitehouse.gov/the-press-office/2012/06/07/presidential-nominations-and-withdrawals-sent-senate (Downloaded May 29, 2015)

[28] Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Financial and Contracting Oversight, *Investigation into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security*, April 24, 2014, p. 2. http://www.hsgac.senate.gov/download/letter-and-staff-report-from-chairman-mccaskill-and-ranking-member-johnson-to-cigie-regarding-investigation-into-the-former-acting-dhs-ig (Downloaded May 29, 2015) (Hereinafter "HSGAC report")

[29] "HSGAC report," p. 2

[30] "HSGAC report," p. 16

[31] Carol D. Leonnig, "Homeland Security inspector general who was under probe steps down," *The Washington Post*, December 16, 2013. http://www.washingtonpost.com/politics/homeland-security-inspector-general-who-was-under-probe-steps-down/2013/12/16/0aeac5ae-66c8-11e3-8b5b-a77187b716a3_story.html (Downloaded May 29, 2015)

Once President Obama found a candidate, John Roth, to nominate as permanent IG, it still took the Senate another 105 days to confirm him.[32] All told, the vacancy at the DHS IG's office lasted more than 1,100 days before Roth was confirmed in March 2014.

Department of Defense

Former Department of Defense (DoD) IG Gordon Heddell resigned from his post on Christmas Eve of 2011.[33] Lynne M. Halbrooks, then-principal Deputy IG, took on the role of Acting IG the following day.[34]

In June 2013, while Halbrooks continued to serve as Acting IG, POGO reported that her office had been sitting on a finding that former CIA Director and Defense Secretary Leon Panetta disclosed classified information at a 2011 gathering attended by the filmmakers of *Zero Dark Thirty*.[35] The IG's office hadn't released a final report nearly two years after Representative Peter King (R-NY), then-Chairman of the House Homeland Security Committee, asked the office to investigate the possible leak. The week after POGO published the office's draft report, Halbrooks and her colleagues released a final revised version that left out any mention of Panetta's alleged disclosures.[36]

Several months ago, POGO obtained and posted an OIG timeline showing that there was "[r]emoval of CIA information" from the draft report on the same day Halbrooks met with then-Defense Secretary Panetta. POGO also learned that Halbrooks directed her staff not to interview Panetta himself. "There was a staff recommendation that we make a request to interview Mr. Panetta in order to validate what we had already learned…and it is very unusual not to interview the subject of a serious allegation," a member of the OIG investigative team told POGO.[37] During much of this period, Halbrooks was also vying to become permanent IG, lobbying outside stakeholders in her bid for the job.

President Obama ultimately decided to nominate Jon T. Rymer, who was confirmed as permanent IG in September 2013, ending a vacancy that lasted more than 630 days.[38] Halbrooks recently spun through the revolving door and secured a job with a major law firm, leaving many

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[32] Department of Homeland Security, Office of Inspector General, "John Roth." https://www.dhs.gov/person/john-roth (Downloaded May 29, 2015)

[33] Charles Hoskinson, "DOD's Gordon Heddell resigns," *Politico*, November 23, 2011. http://www.politico.com/news/stories/1111/69043.html (Downloaded May 29, 2015)

[34] Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=halbrooks&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=1701 (Downloaded May 29, 2015)

[35] Project On Government Oversight, "Unreleased: Probe Finds CIA Honcho Disclosed Top Secret Info to Hollywood," June 4, 2013. http://www.pogo.org/our-work/articles/2013/unreleased-probe-finds-cia-disclosed-secret-info.html

[36] Project On Government Oversight, "Final Inspector General's Report Cuts References to Panetta's Disclosure of 'TOP SECRET' Info," June 14, 2013. http://www.pogo.org/blog/2013/06/final-inspector-generals.html

[37] Project On Government Oversight, "Exclusive: New Documents in Zero Dark Thirty Affair Raise Questions of White House-Sanctioned Intelligence Leak and Inspector General Coverup," April 16, 2015. http://www.pogo.org/our-work/articles/2015/new-documents-in-zero-dark-thirty-affair-raise-questions.html

[38] Department of Defense, Office of Inspector General, "Leaders." http://www.dodig.mil/about_us/leaders.html (Downloaded May 29, 2015)

questions unanswered about her alleged efforts to suppress details of the collaboration between the government and Hollywood on *Zero Dark Thirty*.[39]

Department of State

A long-standing vacancy at the State Department IG's office started in the last year of the Bush Administration when the former IG, Howard Krongard, resigned amid allegations that he was blocking politically sensitive criminal investigations into contractors operating in Iraq.[40] Later that year, then-Deputy IG Harold Geisel began leading the office in an acting capacity.[41]

In 2010, POGO raised concerns about the relationship between Geisel, a former ambassador and long-time member of the diplomatic corps, and State's Under Secretary for Management, Patrick Kennedy. POGO reported that Geisel had once recused himself from an investigation involving Kennedy because of a perceived conflict of interest. POGO also published an email from 2008 in which Geisel sought direction from Kennedy on the OIG's work in Iraq. "Shall I just call off the inspection or shall I call off the audit?"[42] Geisel wrote. Despite Geisel's assurances that his office's work was not affected by his ties to an agency official, numerous whistleblowers from the State Department had come to POGO "due to a perception within the Department that employees with knowledge of wrongdoing cannot go to the OIG because they believe it to be captured by management."[43]

The Department lacked a permanent watchdog for Hillary Clinton's entire four-year tenure as Secretary of State, the longest vacancy since the position was created in 1957. Representative Ed Royce (R-CA), Chairman of the House Foreign Affairs Committee, told *The Wall Street Journal*, a "permanent IG would have objected to her efforts to circumvent congressional oversight by keeping her emails off the books."[44] The public is also left wondering whether an insider would have felt more comfortable blowing the whistle on the Department's email problems if the IG's office was headed by a permanent leader whose independence was beyond reproach.[45]

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[39] Project On Government Oversight, "Former Pentagon Acting IG Cashes In with No Accountability," May 14, 2015. http://www.pogo.org/blog/2015/05/20150514-former-pentagon-acting-ig-cashes-in-with-no-accountability.html

[40] Warren P. Strobel, "Embattled State Department inspector general resigns," *McClatchy*, December 7, 2007. http://www.mcclatchydc.com/2007/12/07/22736/embattled-state-department-inspector.html (Downloaded May 29, 2015)

[41] Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=geisel&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=341 (Downloaded May 29, 2015)

[42] Project On Government Oversight, "POGO Questions the Independence of the State Department's Inspector General," November 18, 2010. http://www.pogo.org/our-work/letters/2010/go-ig-20101118.html (Hereinafter "POGO Questions the Independence of the State Department's Inspector General")

[43] "POGO Questions the Independence of the State Department's Inspector General"

[44] Byron Tau and Peter Nicholas, "State Department Lacked Top Watchdog During Hillary Clinton Tenure," *The Wall Street Journal*, March 24, 2015. http://www.wsj.com/articles/state-department-lacked-top-watchdog-during-hillary-clinton-tenure-1427239813 (Downloaded May 29, 2015)

[45] Arit John, "One More Question on Hillary Clinton E-Mails: Where Was the Watchdog?" *Bloomberg*, March 24, 2015. http://www.bloomberg.com/politics/articles/2015-03-24/one-more-question-on-hillary-e-mails-where-was-the-watchdog- (Downloaded May 29, 2015)

Once his Administration began, it took President Obama more than 1,700 days to nominate a permanent State IG[46]—and only after Members of Congress, including this Committee, pressured the White House to act.[47] The vacancy at the IG's office lasted a total of 2,071 days—more than five years—before the President's nominee, Steve A. Linick, finally took office in September 2013.[48]

U.S. Agency for International Development

The IG's office at the U.S. Agency for International Development (USAID) became vacant in October 2011 when the former IG, Donald Gambatesa, stepped down from his post. Deputy IG Michael Carroll took control as Acting IG that same month.[49]

Several years later, eight current and former auditors alleged that the IG's office removed critical findings from audits issued between 2011 and 2013, according to a report last year by *The Washington Post*. "In some cases," the *Post* reported, "the findings were put into confidential 'management letters' and financial documents, which are sent to high-ranking USAID officials but are generally kept from public view."[50] The *Post* obtained 12 draft reports prepared between 2011 and 2013, and found that more than 400 negative references were removed between the draft and final versions. Former Senator Tom Coburn (R-OK), then-Ranking Member of this Committee, told the *Post* "[t]his is the worst we've seen," commenting on the number of alterations made to critical findings in draft audits.[51]

President Obama nominated Carroll in June 2013 to serve as permanent IG.[52] "Some auditors said Carroll did not want to create controversy as he awaited Senate confirmation to become the

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[46] The White House, "President Obama Announces More Key Administration Posts," June 27, 2013. https://www.whitehouse.gov/the-press-office/2013/06/27/president-obama-announces-more-key-administration-posts (Downloaded May 29, 2015)

[47] Senate Committee on Homeland Security and Governmental Affairs, "Homeland Security and Governmental Affairs Committee Senators Urge President to Fill IG Vacancies," January 24, 2013. http://www.hsgac.senate.gov/media/homeland-security-and-governmental-affairs-committee-senators-urge-president-to-fill-ig-vacancies-; House Committee on Oversight and Government Reform, "Oversight Committee Makes Bipartisan Call for Appointment of State Department IG," January 24, 2013. http://democrats.oversight.house.gov/news/press-releases/oversight-committee-makes-bipartisan-call-for-appointment-of-state-department-ig; and Office of Senator Ted Cruz (R-TX), "Sen. Cruz to Hold All State Dept. Nominees Until President," June 26, 2013. http://www.cruz.senate.gov/?p=press_release&id=92 (All downloaded May 29, 2015)

[48] Department of State, Office of Inspector General, "Steve A. Linick, Inspector General." https://oig.state.gov/about/IG (Downloaded May 29, 2015)

[49] Government Accountability Office, "Search Federal Vacancies Submissions." http://www.gao.gov/legal/fedvac/searchcurr.html?&vacancyTitle=&vacancyActing=Michael%20Carroll&vacancyNominee=&admin=all&agency=All&status=all&rpp=10&o=0&searched=1&order_by=date&Submit=Search&pk=1689 (Downloaded May 29, 2015)

[50] Scott Higham and Steven Rich, "Whistleblowers say USAID's IG removed critical details from public reports," *The Washington Post*, October 22, 2014. http://www.washingtonpost.com/investigations/whistleblowers-say-usaids-ig-removed-critical-details-from-public-reports/2014/10/22/68fbc1a0-4031-11e4-b03f-de718edeb92f_story.html (Downloaded May 29, 2015) (Hereinafter "Whistleblowers say USAID's IG removed critical details from public reports")

[51] "Whistleblowers say USAID's IG removed critical details from public reports"

[52] The White House, "President Obama Announces More Key Administration Posts," June 10, 2013. https://www.whitehouse.gov/the-press-office/2013/06/10/president-obama-announces-more-key-administration-posts (Downloaded May 29, 2015)

permanent inspector general," the *Post* reported. Carroll withdrew his nomination on the same day the *Post* published its story.[53]

As of today, the IG's office has gone more than 1,320 days without a permanent leader. Last month, President Obama nominated a new nominee to serve in the permanent role.[54]

Department of the Interior

Earl Devaney, the most recent permanent IG at the Interior Department, was appointed Chair of the Recovery Accountability and Transparency Board on February 23, 2009.[55] Devaney took a leave of absence from his position at Interior at that point, leaving Acting IG Mary Kendall responsible for running the office.[56]

It should be noted that the Obama Administration did not have the power to fill the position until Devaney retired from federal service at the end of 2011. Nonetheless, the IG's office has now gone almost six years without a permanent leader, making it the longest-lasting IG vacancy of the Obama Administration.

According to a 2013 report by the majority staff of the House Natural Resources Committee, Kendall's own employees have raised concerns that she was too congenial with the Department's political appointees to provide effective oversight. Kendall has expressed an interest in the permanent IG position, potentially influencing her relationship with the agency, the Republican staff report said.[57]

Then-Committee Chairman Doc Hastings (R-WA) wrote to President Obama in February 2013 calling on him to appoint a permanent IG and "end the decline in trust" of the IG's office.[58] As of today, the President still has not nominated a permanent IG for the position.

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[53] "Whistleblowers say USAID's IG removed critical details from public reports"

[54] The White House, "President Obama Announces More Key Administration Posts," May 8, 2015. https://www.whitehouse.gov/the-press-office/2015/05/08/president-obama-announces-more-key-administration-posts (Downloaded May 29, 2015)

[55] The White House, "Vice President Biden to Oversee the Administration's Implementation of the Recovery Act's Provisions; President Obama Appoints Earl Devaney as Chair of the Recovery Act Transparency and Accountability Board," February 23, 2009. https://www.whitehouse.gov/the_press_office/Vice-President-Biden-to-Oversee-the-Administrations-implementation-of-the-Recovery/ (Downloaded May 29, 2015)

[56] Department of the Interior, Office of Inspector General, *Semiannual Report to the Congress*, April 2009, p. iii. http://www.doi.gov/oig/reports/upload/Semiannual-APR2009SAR.pdf (Downloaded May 29, 2015)

[57] House Committee on Natural Resources, "Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior," February 21, 2013. http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=320559 (Downloaded May 29, 2015) (Hereinafter "Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior")

[58] "Chairman Hastings Calls for President Obama to Appoint Permanent Inspector General for the Department of the Interior"

CONCLUSION AND RECOMMENDATIONS

POGO strongly believes that watchdog offices are in a better position to succeed when led by a permanent, rather than acting, official. Questions about an IG's independence and credibility will inevitably arise whenever the IG is serving for a long period of time in an acting capacity while also auditioning for the permanent role.

But we caution that filling IG vacancies should not come at the expense of identifying highly qualified candidates. A recent probe by the House Committee on Science, Space, and Technology revealed that Department of Commerce IG Todd Zinser—a permanent, Senate-confirmed leader—did not disclose during his confirmation process that he was previously found to have retaliated against a whistleblower.[59] This case highlights the importance of rigorously vetting IG nominees before they take office. It also serves as a reminder that it is sometimes beneficial to initiate a vacancy, especially when it means removing a permanent IG who has abused his position and undermined his office's mission.[60]

We are pleased to see that the number of vacancies at federal IG offices has dropped in recent years. But seven vacancies for presidentially appointed IG positions is still too many—especially when two of those vacancies have languished for more than 1,000 days.

In the early days of the Obama Administration, I was able to speak with senior officials in the White House counsel's office to discuss potential IG nominees. The last time I reached out, it appeared I was dealing with White House interns. My personal experience seems to reflect this Administration's growing ambivalence toward IGs in general.

So what can be done to limit the most harmful effects of IG vacancies?

There have been several legislative proposals in recent years that would force the President to nominate permanent IGs for long-standing vacancies. These proposals may raise concerns about separation of powers, but POGO supports any effort to apply more pressure on the White House to vet and nominate qualified candidates. We were encouraged to see all 16 members of this Committee sign a letter earlier this year calling on President Obama and his agency heads to fill the existing vacancies.[61] Bipartisan oversight, as exemplified by that letter and today's hearing, sends a strong message that Congress wants its watchdogs to be permanent and independent.

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[59] House Committee on Science, Space, and Technology, "Ranking Member Johnson Calls on President to Immediately Remove Commerce Inspector General Todd Zinser," April 1, 2015. http://democrats.science.house.gov/press-release/ranking-member-johnson-calls-president-immediately-remove-commerce-inspector-general (Downloaded May 29, 2015)

[60] POGO and other groups have joined Representative Eddie Bernice Johnson (D-TX), Ranking Member of the House Committee on Science, Space, and Technology, in calling on President Obama to remove IG Zinser. Project On Government Oversight, "Whistleblower Watchdogs Ask President to Remove Zinser," April 9, 2015. http://www.pogo.org/our-work/letters/2015/whistleblower-watchdogs-ask-president-to-remove-zinsler.html

[61] Senate Committee on Homeland Security and Governmental Affairs, "HSGAC Urges the President and His Agency Heads to Appoint Permanent Inspectors General," March 24, 2015. http://www.hsgac.senate.gov/media/majority-media/hsgac-urges-the-president-and-his-agency-heads-to-appoint-permanent-inspectors-general (Downloaded May 29, 2015)

POGO has issued other recommendations to ensure that both acting and permanent IG watchdogs do not become subservient lapdogs. We supported legislation approved by this Committee that would, among other things, require the Government Accountability Office (GAO) to study the impact of prolonged IG vacancies. The Inspector General Empowerment Act of 2015 (S. 579) would also bolster IG independence and accountability by clarifying the authority of IG offices to access agency records, improving the process for investigating allegations of misconduct by senior OIG officials, and requiring more public disclosure of OIG reports and work products.[62]

POGO has offered additional reforms that your Committee may wish to consider. One of our biggest concerns is that the Inspector General Act induces many OIGs to spend a significant amount of time chasing "small-window" projects in order to boost their offices' metrics in semiannual reports (SARs) to Congress. In many cases, if an IG's office can't monetize an issue, the office will often turn a blind eye to it, turn against the whistleblowers who brought it to them, or turn it into a criminal case to boost the office's referral metrics. POGO has started to explore how to revamp these ineffectual reporting requirements so that SARs are more meaningful and reflective of the information that Congress and agencies actually need. Among other things, POGO has also recommended giving the Department of Justice IG's office more authority to investigate misconduct by DOJ attorneys.[63]

Thank you for inviting me to testify today. We look forward to working with the Committee to strengthen IG independence and to ensure that these essential offices function as aggressive watchdogs.

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[62] 114th Congress, *Inspector General Empowerment Act of 2015 – Report of the Committee on Homeland Security and Governmental Affairs*, Senate Report 114-36, May 5, 2015. https://www.congress.gov/114/crpt/srpt36/CRPT-114srpt36.pdf (Downloaded May 29, 2015)

[63] Project On Government Oversight, "POGO's 2015 Baker's Dozen of Suggested Congressional Oversight Priorities and Legislative Reforms," February 11, 2015. http://www.pogo.org/our-work/reports/2015/suggested-congressional-oversight-priorities-and-legislative-reforms.html

TESTIMONY OF DANIEL Z. EPSTEIN, ESQ.
EXECUTIVE DIRECTOR, CAUSE OF ACTION

BEFORE THE HOMELAND SECURITY &
GOVERNMENTAL AFFAIRS COMMITTEE

"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"

June 3, 2015

Dirksen Senate Office Building
Washington, DC 20515
Room SD-342

Good afternoon Chairman Johnson, Ranking Member Carper, and Members of the Committee. My name is Daniel Epstein and I am the Executive Director of Cause of Action, a non-profit government oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.[1] Cause of Action uses various investigative and legal tools to educate the public about the importance of transparency and accountability in the Federal government. We consider our efforts to be a vital form of public oversight that supplements the important efforts of Congress.

Sens. Johnson and Carper recently commented on the findings made and conclusions reached by Department of Homeland Security's ("DHS") *permanent* Inspector General ("IG") John Roth (after more than two years of utilizing an *acting* IG) in connection with the Secret Service incident at the White House.[2] Cause of Action's own investigations support the need to fill IG vacancies with permanent appointments. Indeed, we believe that the use of acting IGs often interferes with and undermines the goal of IG offices to detect and deter waste, fraud, abuse and mismanagement, and creates the potential for conflict of interest. I highlight three such instances: then-acting DHS IG Charles K. Edwards' abuse of his office; the Council of the Inspectors General on Integrity and Efficiency's ("CIGIE") failure to conduct any independent audit or review of acting IGs; and then-acting State Department IG Harold Geisel's failure to assure transparency in connection with then-Secretary of State Hillary Clinton's e-mails.

Cause of Action's Unique Experience with Federal Offices of Inspector General

Since its founding, Cause of Action has worked productively with federal offices of Inspector General by sharing investigative findings that enhance Office of Inspector General ("OIG") efforts to prevent waste, fraud and abuse in federal programs. In 2011, Cause of Action's investigative work led the Neighborhood Reinvestment Corporation (also known as "NeighborWorks") to disclose for the first time in its history the reports of the Office of Special Audit – its equivalent of an OIG – and require those reports to be publicly accessible in perpetuity.[3] In May 2014, the U.S. Department of Housing and Urban Development ("HUD") OIG confirmed that, based on Cause of Action's work, an investigation was opened into whether HUD violated appropriations laws in promoting the Affordable Care Act.[4] For several years, Cause of Action has been in litigation with the Treasury Inspector General for Tax Administration ("TIGTA") concerning the IG's ability to withhold evidence of investigations into IRS misconduct under taxpayer confidentiality laws. Later in 2014, Obama-appointed district judge Amy Berman

[1] CAUSE OF ACTION, http://causeofaction.org/. I would like to acknowledge the staff at Cause of Action for their assistance in preparing this testimony. Further, I would like to briefly honor my son, Felix Aaron Epstein, born May 28, 2015, and whose happy introduction inspired the research and writing incorporated herein.

[2] *See* HSGAC (comments by Sens. Johnson and Carper) (May 14, 2015), *available at* http://goo.gl/mrGQAa; http://goo.gl/Y2mm9V.

[3] *See* NeighborWorks Reinvestment Corporation, Office of Special Audit, *available at* http://www.neighborworks.org/About-Us/Public-Policy/FOIA/Reading-room; Charles C.W. Cooke, *ACORN is up to its old tricks*, National Review (Feb. 2012), http://www.nationalreview.com/article/289948/acorn-its-old-tricks-charles-c-w-cooke.

[4] Ferdous Al-Faruque, *HUD investigated for promoting ObamaCare*, The Hill (May 2, 2014), http://thehill.com/policy/healthcare/205079-hud-investigated-for-promoting-o-care; *see also* Ashe Snow, *Complaint suggests HUD may have inappropriately promoted Obamacare*, Wash. Exam. (Apr. 14, 2014), http://www.washingtonexaminer.com/complaint-suggests-hud-may-have-inappropriately-promoted-obamacare/article/2547168.

Jackson ruled in Cause of Action's favor, ordering TIGTA to disclose certain investigative records, fundamentally changing the rules governing TIGTA's power to withhold information.[5] Most recently, the Health and Human Services ("HHS") IG began "an open and ongoing investigation" into issues concerning lobbying with Affordable Care Act funds based on information obtained by Cause of Action.[6] Even Cause of Action's critics have credited my organization as the reason the HHS IG issued an "early alert" in 2012 on concerns about federal agencies doling out grants to fund the lobbying activities of the recipients.[7]

Cause of Action's work also has motivated requests for IG investigations by members of Congress. In April 2012, based on Cause of Action's investigation on the International Humanities Center ("IHC"), agents from the Department of Energy reached out to Cause of Action in order to further inform a federal investigation on misuse of federal funds.[8] Also in 2012, Congressman John Kline, Chairman of the House Education and Workforce committee, requested a National Labor Relations Board ("NLRB") OIG investigation into concerns about *ex parte* board communications as a result of Cause of Action's investigative findings.[9] Last year, Cause of Action's investigative work of the Federal Trade Commission ("FTC") prompted the House Committee on Oversight and Reform to demand, and the FTC OIG to open, an investigation into whether the FTC's enforcement staff authenticated evidence, later relied upon for purposes of enforcement actions, obtained by third party companies,.[10]

As is most relevant to this Committee's work, from 2012 to 2014, Cause of Action conducted an investigation into then-Acting IG Charles Edwards at the Department of Homeland Security ("DHS"). CoA's investigation of Edwards is telling because it signifies the degree to which non-independent IGs will sacrifice the public interest in order to preserve their own self-interest. Edwards used government resources to issue an official public statement attacking the accuracy of a Cause of Action report and claiming that Cause of Action wrongly accused the OIG of promotional item spending.[11] In response, Cause of Action audited its report and confirmed that the OIG, under Mr. Edwards, had indeed engaged in inappropriate promotional item spending.[12]

Subsequently, two whistleblowers contacted Cause of Action. These individuals not only confirmed the facts set forth in Cause of Action's report but also advised that Mr. Edwards was

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[5] Stephen Dinan, *IRS Inspector General to release documents on privacy probe*, Wash. Times (Nov. 25, 2014), http://www.washingtontimes.com/news/2014/nov/25/irs-inspector-general-to-release-files-on-irs-priv/.

[6] Conrad Wolf, *Feds Investigate Whether Union Misused Obamacare Funds*, Daily Caller (Apr. 12, 2015), http://dailycaller.com/2015/04/12/feds-investigate-whether-union-misused-obamacare-funds/.

[7] Independent Sector, Lobbying with Government Funds, https://www.independentsector.org/lobbying_with_government_funds.

[8] E-mail from Shawn Dionida, Dep't of Energy to Cause of Action (Apr. 26, 2012) (on file with Cause of Action).

[9] *See* Letter from Chrmn. John Kline to IG Berry, NLRB (2012), http://edworkforce.house.gov/uploadedfiles/04-13-2012_kline_letter_to_berry.pdf.

[10] Jaikum Viajayan, *Congressman questions FTC breach probe amid claims of 'corporate blackmail'*, Computerworld (June 19, 2014), http://www.computerworld.com/article/2490974/technology-law-regulation/congressman-questions-ftc-breach-probe-amid-claims-of--corporate-blackmail.html.

[11] *See* DHS OIG, *Report Misrepresents OIG Employee Award Program* (Oct. 11, 2013), https://goo.gl/BU7nX9.

[12] *See* Cause of Action, Report for Public Release: Internal Review of CoA Report re: DHS OIG Expenditures, at 45-47, 77, 80 (Oct. 12, 2012), http://goo.gl/oVq4O0; *see also* Zach Rausnitz, *OIG: 95 percent of criticized spending was for routine bonuses*, Fierce HomelandSecurity,com (Oct. 12, 2012), http://goo.gl/AqVkrM.

concerned that negative publicity would reveal additional inappropriate spending and that a number of complaints for abuse of power had been filed against him. The whistleblowers also disclosed to Cause of Action that, in 2012, Mr. Edwards had instructed the DHS OIG FOIA office to deny FOIA requests seeking records about placing several OIG employees on administrative leave as well as records of the complaints filed against him.[13] There also were allegations that Mr. Edwards abused his position to seek the destruction of such documents. Cause of Action submitted a FOIA request (and was forced to file a lawsuit) seeking, *inter alia,* documents relating to these complaints against Mr. Edwards, but such records were never produced.[14] This Committee's Subcommittee on Financial and Contracting Oversight also sought documents from Mr. Edwards, but he never fully responded before resigning.[15]

Cause of Action's investigation concluded that acting IG Edwards had billed private costs as work expenses, improperly used a government vehicle, engaged in nepotism, disregarded FOIA, removed or destroyed records, and created a toxic environment at DHS OIG, leading to a letter to the President to ask for Mr. Edwards' removal from office.[16] Mr. Edwards continued to use government resources to publicly respond to the allegations.[17] Ultimately, however, the Subcommittee's conclusions confirmed Cause of Action's investigative work,[18] and then-acting IG Edwards resigned in December 2013.[19]

CIGIE's Failure to Review Acting IGs

CIGIE's function is to "continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse."[20] To this end, CIGIE has an Integrity Committee that investigates complaints "that are made against Inspectors General and staff members of the various Offices of Inspector General."[21]

CIGIE claims, however, that it lacks any independent audit or review authority over IGs.[22] In connection with then-acting IG Edwards, Cause of Action obtained records indicating that

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[13] *See* DHS OIG, 2012 Office of Inspector General FOIA Log – Fourth Quarter, https://goo.gl/xWJv8F.

[14] *See* Letter from Stephanie L. Kuehn, Senior FOIA/PA Disclosure Specialist, DHS OIG to Cause of Action (Jul. 2, 2013), http://goo.gl/9PqLQv (on file with Cause of Action).

[15] *See* Stephanie Russell-Kraft, *Senators Push DHS Inspector General To Resign*, Law360.com (Nov. 17, 2013), http://goo.gl/E8c7QQ.

[16] Letter from Cause of Action to President Barack Obama (July 1, 2013), http://goo.gl/84eFbT; Kellie Lunney, *Group Wants Obama to Fire Homeland Security Watchdog*, Gov. Exec. (July 1, 2013), http://goo.gl/S38w4L.

[17] *See, e.g.*, Statement of Deputy Inspector General Charles K. Edwards (July 2, 2013), http://goo.gl/FDtSCf; *see also* Jack Moore, *Embattled DHS IG convinced Senate probe will clear his name*, Fed. News Radio.com (July 23, 2013), http://goo.gl/k9EkVA.

[18] *See* Zach Rausnitz, *Spotlight: DHS IG accused of variety of misconduct*, FierceGovernment.com (July 3, 2013), http://goo.gl/qJn3U7.

[19] *See* Philip Swarts, *IG faced internal complaints at Homeland Security, record show*, Wash. Times (Dec. 18, 2013), http://goo.gl/gLtTql.

[20] 5 U.S.C. App. § 11(c)(1)(A).

[21] *See id.* § 11(d)(1). That Committee is chaired by a senior level official of the Federal Bureau of Investigation, who is designated by the Director of the FBI. *Id.* §§ 11(b)(1)(D), (d).

[22] *See* Jolie Lee, *OGE missed signs of GSA ethics violations, memo says*, Fed. News Radio (Aug. 6, 2012), http://goo.gl/8bGtUO.

internal agency complaints had been referred to CIGIE, which declined to open investigations.[23] Similarly, in late 2013, former Senator Tom Coburn requested a number of records from USAID-OIG concerning allegations that then-Acting Inspector General Michael Carroll had engaged in professional retaliation and altered and removed negative findings from audit reports before releasing them to the public.[24] Records produced to Cause of Action as a result of a FOIA investigation confirmed the allegations and also demonstrated that USAID-OIG had failed to report recommendations from a peer-conducted audit.[25] Relying on information from CIGIE, Mr. Carroll deleted these recommendations, against the advice from his own lawyers.[26]

State Department's Failure to Assure Transparency with Clinton E-mails

The problems associated with acting IGs extends to the State Department, as recently highlighted by the revelations that former-Secretary of State Hillary Clinton exclusively used a private email system for official government business.[27] During Mrs. Clinton's entire tenure, the State Department's acting IG was Harold Geisel, an ambassador under former President Bill Clinton and a donor to President Barack Obama's first presidential campaign.[28]

As a career member of the Foreign Service, Mr. Geisel was prohibited by statute from becoming a permanent IG.[29] Indeed, in testimony before the House Committee on Foreign Affairs, the Government Accountability Office criticized the appointment of acting IGs at the State Department from career foreign service officers because of their inherent lack of independence, and noted in particular that Mr. Geisel had "25 years in senior State Department positions."[30]

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[23] *See id.*; *see also* Letter from Phyllis K. Fong, Chairperson, CIGIE to Cause of Action (June 19, 2012) (attached as Exhibit 1) (CIGIE stating it was "not charged with or allocated independent resources to conduct audits, investigations, or evaluations" in response to Cause of Action's request to investigate GSA).

[24] *See, e.g.*, Scott Higham & Steven Rich, *Whistleblowers say USAID's IG removed critical details from public reports*, Wash. Post (Oct. 22, 2014), http://goo.gl/HNQe0b; *see also* Sean Reilly, *Senator raises questions about USAID inspector general's independence*, Fed. Times (Dec. 9, 2013), http://goo.gl/8RRabn. Mr. Carroll resigned his position at the end of 2014 as a result of these allegations. Scott Higham & Steven Rich, *USAID watchdog Michael Carroll retires in wake of whistleblower claims*, Wash. Post (Dec. 8, 2014), http://goo.gl/kl31zG.

[25] *E.g.*, OIG Responses to Questions in [Sen. Coburn's] 11/12/13 Letter, Enclosure B, at 1-3 (FOIA Production, July 16, 2014) (on file with Cause of Action).

[26] *See id.* at 3; *see also* Letter from Lisa Goldfluss, Legal Counsel to the Inspector Gen., USAID-OIG, to Robert Ross, Assistant Inspector Gen. for Mgmt., USAID-OIG & Tim Cox, Assistant Inspector Gen. for Audits, USAID-OIG (Oct. 16, 2012) (on file with Cause of Action).

[27] *See* Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules,* N.Y. Times (Mar. 2, 2015), http://goo.gl/wma5Jf.

[28] Dep't of State Archive, *Biography, Harold W. Geisel*, http://goo.gl/mj6mVx; OpenSecrets.org, *Donor Lookup, Harold W. Geisel*, https://goo.gl/Z94ZL6.

[29] *See* 22 U.S.C. § 4861(d) ("No career member of the Foreign Service, as defined by section 3903 of this title, may be appointed Inspector General of the Department of State.").

[30] Gov't Accountability Office, Testimony before the H. Comm. on Foreign Affairs, State Department Inspector General: Actions to Address Independence and Effectiveness Concerns are Under Way, at 1 (Apr. 5 2011), http://goo.gl/f0eNwx (noting that "the appointment of management and Foreign Service officials to head the State OIG in an acting capacity for extended periods of time is not consistent with professional standards for independence"); *id.* at 8 ("We found that acting IG positions continue to be used and are filled by officials with prior management positions at the department. Independence concerns surrounding such acting appointments are additionally troublesome when the acting IG position is held for such prolonged periods."); *id.* at 12 ("This use of temporarily assigned State Department management staff to head the State OIG can affect the perceived independence of the entire office in its oversight of the department's operations, and the practice is questionable when compared to the

Nevertheless, during Mrs. Clinton's tenure, the White House never made any attempt to appoint a permanent IG[31] and Mr. Geisel ended up serving as acting IG for more than five years.[32] In 2013, both the Chairman and Ranking Member of the House Committee on Foreign Affairs signed a joint letter sent to newly-appointed Secretary of State John Kerry, as well as another letter to President Obama, noting that the "gap of more than 1,840 days is the longest vacancy of any of the 73 Inspector General positions across the federal government[,]" and urging the appointment of a permanent IG as "an issue essential to the proper functioning of the Department of State."[33]

Earlier this year, Cause of Action sought documents from the State Department OIG and the National Archives and Record Administration ("NARA") regarding Mrs. Clinton's use of a private server to conduct official State Department business.[34] The OIG claimed that there were no responsive documents from Mr. Geisel's time.[35] NARA, however, confirmed that responsive OIG records existed, though it claimed exemption(s) over any such document(s).[36]

Other records produced by NARA show that, as early as 2012, NARA officials were concerned that Mrs. Clinton might alienate federal records from government control.[37] Despite this (and the obligation imposed on NARA by the Federal Records Act), there is no indication that NARA ever notified Department of Justice or Congress about the possible alienation or destruction

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independence requirements of Government Auditing Standards and other professional standards followed by the IGs. Further, career members of the Foreign Service are prohibited by statute from being appointed as State IG. This exclusion helps to protect against the personal impairments to independence that could result when a Foreign Service officer reviews the bureaus and posts of fellow Foreign Service officers and diplomats."); *id.* at 7, Table 1.

[31] *See* White House, *Nominations & Appointments*, https://goo.gl/IeRtIb; Joseph E. Schmitz, *Obama's Inspector General Negligence*, Wall St. J. (June 4, 2013), http://goo.gl/fJaaT1 ("For years, President Obama has neglected his duty to fill vacant inspector-general posts at the departments of State, Interior, Labor, Homeland Security and Defense and at the Agency for International Development. The president has nominated only two candidates to fill any of these six vacancies, and he subsequently withdrew both nominations. All told, an IG has been missing in action at each of those cabinet departments and the AID agency for between 18 months and five years.").

[32] *See supra* note 28 (noting appointment as acting IG on June 2, 2008); Mark Flatten, *IGs form front line of war on waste and fraud, but weak links remain*, Wash. Examiner (Dec. 1, 2014), http://goo.gl/XAj03v (noting that Mr. Geisel served until the current permanent IG, Steve Linick, was confirmed in September 2013); *see also* 5 U.S.C. § 3346 (imposing 210-day limit for interim positions); U.S. Gov't Accountability Office, Violation of the 210-Day Limit Imposed by the Federal Vacancies Reform Act of 1998 (B-326480: Mar 30, 2015), http://goo.gl/o5BnGr (pursuant to 5 U.S.C. § 3349(b), reporting to President a violation of 5 U.S.C. § 3346 at Department of Veterans Affairs with respect to IG position because Acting IG served longer than 210 days).

[33] *See* H. Comm. on Foreign Affairs, Press Release, *Royce, Engel Request Secretary Kerry's Support in Filling Five-year Inspector General Vacancy at State Department* (Feb. 5, 2013), http://goo.gl/Dp8aSE (attaching text of letters, which noted that "[f]or more than five years, since January 16, 2008, the Department has lacked a presidentially-nominated, Senate-confirmed Inspector General").

[34] Letter from Cause of Action to Steve A. Linick, Inspector Gen., Office of Inspector Gen., Dep't of State (Mar. 9, 2015) & Letter from Cause of Action to David S. Ferriero, Archivist of the U.S., Nat'l Archives & Records Admin. (Mar. 9, 2015) (on file with Cause of Action).

[35] *See* Letter from Erich O. Hart, General Counsel, Dep't of State OIG to Cause of Action (May 15, 2015) (attached as Exhibit 2).

[36] *See* Letter from Joseph A. Scanlon, FOIA Officer, NARA to Cause of Action (May 20, 2015) (attached as Exhibit 3).

[37] *See* E-mail from Paul M. Wester, Jr., Chief Records Officer, NARA to Margaret Hawkins, NARA, *et al.* (Dec. 11, 2012) (attached as Exhibit 4); *see also, e.g.*, Sarah Westwood, *National Archives feared Clinton would leave with State Dept. records*, Wash. Examiner (May 21, 2015), http://goo.gl/QQzWuK; Josh Gerstein, *Archives officials worried about preserving Hillary's records*, Politico.com (May 21, 2015), http://goo.gl/FJjzsF.

of federal records. To the contrary, NARA publicly commended the State Department for its record management practices.[38] Indeed, by 2012, the State Department had replaced its outdated cable communication system with the State Messaging and Archive Retrieval Toolset ("SMART"), which "contains an email management component for capturing record email."[39]

And yet, in 2014, the OIG concluded that the Bureau of Conflict and Stabilization Operations "does not have a uniform process for the storage and organization of files. Files and records are stored in several locations, including the bureau's network shared drive, SharePoint document libraries, personal emails, and hard drives."[40] The Bureau also permitted "[c]ontracting officer's representatives [to] keep emails and other materials on their personal computers instead of using shared drives or paper files."[41] And a 2015 OIG report found that "Department of State employees have not received adequate training or guidance on their responsibilities for using those systems to preserve 'record emails.'"[42]

Similarly, since 2009, NARA consistently identified problems with the SMART system as a permanent recordkeeping system at the State Department, but no action was taken to address the issues.[43] Despite this, NARA, under then-acting IG James E. Springs, had the opportunity to secure Mrs. Clinton's emails in July 2014.[44] At the time, NARA was aware of the failures across the State Department to retain record emails.[45] In fact, NARA noted that the "adoption of Google Ap at [Department of the Interior] has almost been a total disaster[.]"[46] And in October 2014,

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[38] *See, e.g.*, Dep't of State, *Open Government Plan*, at 12 (Apr. 9, 2012), http://goo.gl/rx8m7h ("The Department is recognized by [NARA] as 'best in government' for many of its records management practices and procedures.").

[39] Dep't of State, Summary Current State of Records Management at the State Department at 2 (Mar. 27, 2012), *available at* http://goo.gl/jXCv1u. SMART operates such that when "Department personnel send cables and record emails, a copy of the message is automatically sent to the Department's official archive, which is an enterprise-wide electronic repository." *Id.* at 5.

[40] Dep't of State OIG, Inspections of the Bureau of Conflict and Stabilization Operations, at 20 (Mar. 2014), http://goo.gl/pgWsYi.

[41] *Id.* at 25.

[42] Dep't of State OIG, Office of Inspections: Review of State Messaging and Archive Retrieval Toolset and Record Email, at 1 (ISP-I-15-15 March 2015), http://goo.gl/Sq6OuL (noting that State Department personnel only "created 61,156 record emails out of more than a billion emails sent" in 2011 and only "41,749 record emails in 2013").

[43] *See, e.g.*, Email from David Langbart, NARA to Michael Kurtz, NARA (Nov. 2, 2009) (attached as Exhibit 5) (discussing major problems with SMART's technical handling of email attachments); Email from David Langbart, NARA to Michael Kurtz, NARA (Jan. 22, 2010) (attached as Exhibit 6) (discussing problems with State employees not properly using SMART's "record email" retention function); Email from Paul M. Wester, Jr., Chief Records Officer, NARA to Gregory Lepore, NARA, *et al.* (July 1, 2011) (attached as Exhibit 7) (analyzing major technical issues in test transfer on SMART system); Email from Paul M. Wester, Jr., Chief Records Officer, NARA to David Ferriero, Archivist of the U.S., NARA, *et al.* (Mar. 12, 2015) (attached as Exhibit 8) (discussing State OIG's audit of the SMART system, which identified, among other matters, failure of State Department personnel to properly save email records); Letter from Paul M. Wester, Jr., Chief Records Officer, NARA to Margaret Grafeld, Deputy Ass't Sec'y for Global Info. Servs., Dep't of State (May 21, 2015) (attached as Exhibit 9) (describing problems with a test transfer of data from the SMART system).

[44] *See* NARA – State Dep't Meeting Notes, eRSC Meeting (July 17, 2014) (attached as Exhibit 10) (rollout should "move in to [deputy secretary] on to the Office of the Secretary" and "[a]ll submitted to NARA by Dec. 2016"; explaining that senior officials' emails serve as a "catchers mitt" to preserve departing officials emails).

[45] *See id.* (NARA was aware of "program office using gmail with no [recordkeeping] system" and State's emails "must be maintain[ed] in the r/k system *which should be the eRSC*").

[46] *Id.*

NARA had reason to know that the State Department was seeking a legal justification for noncompliance with applicable regulations relating to email records.[47] Given NARA's stated concerns with SMART, its knowledge in 2012[48] and its opportunity in 2014, it either was aware of the failure to preserve Mrs. Clinton's emails or was extremely negligent in its efforts to monitor senior officials' emails.[49]

Then-acting IG Geisel did not identify the material risks of failing to implement the SMART system at the time, or otherwise take steps to assure transparency. And when this story broke in March 2015, it became clear that the then-acting IG Springs did not understand NARA's role in overseeing the government's use of emails.[50]

Conclusions

The evidence obtained by Cause of Action indicates that the time, effort and resources now being utilized to uncover the lack of transparency created by the failure to secure then-Secretary of State Hillary Clinton's emails may have been solved with permanent and independent IGs (both at the State Department and more recently at NARA).

Unlike other federal officials appointed by the President, IGs partner with congressional oversight committees in order to oversee their resident federal agencies. This creates unique incentives for IGs to be more politically accountable to Congress than the President, which serves a democratic purpose rendered impossible when no Senate confirmation takes place.

I thank the Committee for the opportunity to testify on these important issues.

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[47] Email from William P. Fischer, Agency Records Officer, Office of Info. Programs & Servs., Dep't of State to Lisa Haralampus, NARA, *et al.* (Oct. 20, 2014) (attached as Exhibit 11) (Fischer (formerly of NARA) seeking "to ensure that whatever we say is consistent with law and regulation" with respect to a "Draft Email Policy"); Email from Paul M. Wester, Jr., Chief Records Officer, NARA to Gary M. Stern, Gen. Counsel, NARA, *et al.* (Mar. 2, 2015) (attached as Exhibit 12) (Wester forwarding discussions about Clinton's email use, reflecting concerns about Mr. Fischer's attempt to justify what was later to be disclosed as Clinton's potential alienation or destruction of federal records).

[48] *See* Exhibit 4 (discussing concerns that Mrs. Clinton would take federal records with her when she left the State Department).

[49] *See* Email from Gary M. Stern, Gen. Counsel, NARA to David Ferriero, Archivist of the U.S., NARA, *et al.* (Mar. 1, 2015) (attached as Exhibit 13) (discussing NARA's response to *New York Times* reporter questioning Clinton's email practices and revealing NARA was not providing proper oversight); Email from James Springs, Acting IG, NARA to Paul M. Wester, Jr., Chief Records Officer, NARA (Mar. 3, 2015) (attached as Exhibit 14) (following public revelation of Clinton's use of a private emails system for government work, questioning agency's oversight of State Department's email practices).

[50] *See* Exhibit 14.

Testimony of Daniel Z. Epstein, Esq.

Index of Exhibits

Exhibit 1

Council of the
INSPECTORS GENERAL
on INTEGRITY *and* EFFICIENCY

JUN 19 2012

Mr. Daniel Z. Epstein
Executive Director
Cause of Action
2100 M Street, NW, Suite 170-247
Washington, DC 20037-1233

Re: Request for Audit, Evaluation and Investigation

Dear Mr. Epstein:

This responds to your April 20, 2012, letter to Mr. Jeffrey Zients, Executive Chairperson, Council of the Inspectors General on Integrity and Efficiency (CIGIE). In your letter you request that CIGIE "conduct an agency-wide audit, evaluation and investigation to ensure that federal agencies are complying with the federal ethics and whistleblower laws that may have been violated by the [General Services Administration]."

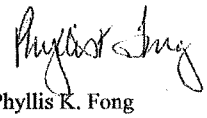
CIGIE was established pursuant to Section 11 of the Inspector General Act of 1978, as amended. CIGIE's statutory mission is to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the Offices of Inspectors General. Functionally, key facets of CIGIE's role are to continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations with respect to fraud, waste, and abuse; and develop plans for coordinated, Governmentwide activities that address these problems and promote economy and efficiency. To that end, CIGIE is not charged with or allocated independent resources to conduct audits, investigations, or evaluations.

CIGIE and the Inspector General community take ethics and whistleblower issues seriously. The significance that Offices of Inspector General place on these issues is reflected through the investigations, audits, and evaluations conducted by Inspectors General who have jurisdiction over such matters within their individual departments and agencies. Additionally, the Director of the Office of Government Ethics and the Special Counsel of the Office of Special Counsel, who are both members of CIGIE, specifically address Federal ethics and whistleblower issues through their work. As such, absent evidence of any pervasive or crosscutting issues that transcend

individual agency issues, there is a well established structure within the Federal Government, outside of CIGIE, for the kind of audits, investigations, and evaluations that you are seeking.

Thank you for your interest in CIGIE and the Inspector General community.

Sincerely,



Phyllis K. Fong
Chairperson

Exhibit 2

United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

MAY 15 2015

Re: OIG FOIA Case No. 15-00054

Mr. Daniel Z. Epstein
Executive Director
Cause of Action
1919 Pennsylvania Ave, NW
Suite 650
Washington, DC 20006

Dear Mr. Epstein:

This is in response to your Freedom of Information Act (FOIA), 5 U.S.C. § 552, request dated March 9, 2015, to the U.S. Department of State's Office of Inspector General (OIG). You requested the following:

1. "All documents referring or relating to, including but not limited to electronic communications involving, Secretary Clinton.
2. All documents referring or relating to communications with NARA.
3. All documents relating to any review, audit, or investigation, whether merely considered, ongoing, or completed, concerning Secretary Clinton's compliance with electronic recordkeeping requirements and use of personal devices for agency business.
4. All documents, including but not limited to electronic communications, including any person at the White House, the U.S. Department of State, the Clinton Family Foundation, and the Clinton Foundation, referring or relating to any document in Item 3 above."

OIG conducted a search and located 18 documents responsive to your request. Six documents are being released to you in their entirety. Ten documents are being released to you with redactions under FOIA exemption (b)(6). Two documents were sent to or generated by the Department of State. We have forwarded those documents to the Department of State's Office of Information Program and Services (IPS) for processing and direct response to you. We have enclosed a separate sheet explaining the exemptions.

Pursuant to published Department of Justice guidance on referrals and consultations:

> When an agency locates records that originated with another agency or component, as a matter of sound administrative practice it should ordinarily refer those records to their originator so that that agency can make a direct response to the requester on those records. The referring agency ordinarily should advise the requester of the referral and of the name of the agency FOIA office to which it was made.
>
> DOJ Guide to the Freedom of Information Act, Procedural Requirements. (http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf).

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may appeal this decision within 60 days to the Chairman of the Appeals Panel of the U.S. Department of State as explained in the enclosed. Appeals should be addressed to: Chairman, Appeals Review Panel, Attention: Appeals Officer, A/ISS/IPS/PP/LC, Room 8100, State Annex 2 (SA-2), U.S. Department of State, Washington, D.C. 20522-8100.

Sincerely,

Erich O. Hart

Erich O. Hart
General Counsel

Enclosures: As stated

Exhibit 3

NATIONAL
ARCHIVES

May 20, 2015

Daniel Z. Epstein
Cause of Action
1919 Pennsylvania Ave, NW
Washington, DC 20006

Re: Freedom of Information Act Request NGC15-159

Dear Mr. Epstein:

This is in response to your Freedom of Information Act (FOIA) request dated, March 9, 2015. You are seeking copies of:

1. All non-archival records created by or in the possession of NARA between January 21, 2009 and February 1, 2013 relating to Secretary Clinton.
2. All non-archival records created by or in the possession of NARA between February 1, 2013 and the present relating to Secretary Clinton.
3. For any record in Items 1 or 2 above, all records referring or relating to the unlawful or accidental removal or destruction of agency records.
4. All records relating to the disposition or recovery of State Department records used by or
possessed by Secretary Clinton, including any relevant communications with the Attorney General.
5. For any record in Item 4 above, all communications with Congress.
6. All records relating to the review or approval of Secretary Clinton's transfer or disposition of agency records to an email server in her possession and control.
7. All records relating to the State Department's State Messaging and Archive Retrieval Toolset (SMART) system, including
    a. SMART's compliance with the Federal Records Act,
    b. Secretary Clinton's compliance with the Federal Records Act, and
    c. Secretary Clinton's use of SMART.

Your request has been assigned the above tracking number.

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION
8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001
www.archives.gov

Regarding items #1, 2, 3, and 4 – there are no responsive records in the custody of NARA.

Regarding items #5 and 6 – there are 43 documents being release to you in full, 14 documents being released to you with redactions pursuant to 5 U.S.C. §552(b)(5) deliberative process/attorney client/attorney work product, and (b)(6) privacy, 6 documents that are withheld in full pursuant to exemption (b)(5). The documents denied in full are:

5 FAM 447 (draft State document)
State Department OIG
Re_ERM_AutoworkGroup_A3
Re_FW_Draft Email policy
Notes_January13
WGAutomated

Please note that NARA has placed a number of records online regarding our official correspondence with the Department of State (see: http://www.archives.gov/press/press-releases/2015/nr15-65.html).

This completes the processing of your request.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal in writing, email, or if you submitted your initial request through FOIAonline you may submit through that web portal. If in writing please address your appeal to the Deputy Archivist (ND), National Archives and Records Administration, College Park, Maryland 20740. If by email please submit your appeal to FOIA@nara.gov addressed to the Deputy Archivist. Please follow the instructions in FOIAonline to appeal any decisions. Your appeal should be received within 60 calendar days of the date of this letter and it should explain why you think this response does not meet the requirements of the FOIA. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." All correspondence should reference the tracking number NGC15-159.

Sincerely,

JOSEPH A. SCANLON
FOIA Officer
Office of General Counsel
(301) 837-0583
joseph.scanlon@nara.gov

Exhibit 4

From: Wester, Paul(Paul Wester)
To: Hawkins, Margaret, Clavelli, Lisa
CC: Reaves, Julie, Brewer, Laurence, Rosen, Donald
Date: 12/11/2012
Subject: State Dept Concern from Tom & Jay

Lisa and Maggie,
Before I forget, when we meet later this week we need to discuss what we know, and how we should delicately go about learning more about, regarding the transition plans for Secretary Clinton's departure from State.

(b) (5)

Tom heard (or thought he heard) from the Clinton Library Director that there are or may be plans afoot for taking her records from State to Little Rock.

Tom then got to asking questions about what we are doing to make sure everyone leaving the Administration does not leave with Federal records.

I told him we are aware of the issue and are working on it. I explained what we did at the last Administration change, how we are updating the current publication right now, and will have something to publish after the 1st of the year (along with a NARA Bulletin and webinar), going into the inauguration season. (John Hamilton and Gary Stern got to asking about this too, today.)

I also told Tom about the numerous agencies - and most of the cabinet agencies - that already have processes in place to deal with this. (Like Susan Sullivan does with our seniors who leave.)

I also described some of the particular issues that I've been personally involved with - like the Bush Administration's attempt to claw back Secretary O'Neill's records (which were actually copies approved for him to have by their GC) after he left service and wrote a critical memoir - to illustrate how "walking off with the records" is sometimes not really "walking off with the records."

Tom seemed to understand all of this, but he and Jay continued to invoke the specter of the Henry Kissinger experience vis-a-vis Hilary Clinton...(b) (5)
(b) (5)

Looking forward to our chat.

Thanks - Paul

Exhibit 5

From: David Langbart
To: Michael Kurtz
Date: 11/02/2009 9:38:22 AM
Subject: State: SMART

The SMART Working Group met on October 29, 2009. I attended for NARA. Lisa Haralampus and Tasha Thian represented IPS and Barry Fulton represented the SMART Program Office. We covered several items on the agenda. The following covers the most important points.

Smart Progress. Rollout continues. Five more posts have gone operational and by the end of this week, there will be another five more at the operational level. The SMART Program Office has a well-oiled procedure for roll-out at post, which takes about 2 weeks at larger posts. They tried a self-rollout, but the results were not good, so they have discontinued that. The SMART Steering Committee gave the "go" for total rollout on October 7, so the Department is now in the deployment phase. The proposed rollout for the Western Hemisphere bureau will take place very shortly and then there will be a "Thanksgiving pause" to check on scalability before moving forward with other bureaus.

Reaction. The SMART Program Office continues to survey its users. They read and analyze all comments, some of which have led to changes. IPS is looking at the "archive" and it is clear that people are using the record email function and people are promoting non-record email to record status when needed. They are still working on training issues to ensure proper and consistent implementation of the guidance.

Memos Issue. This is a huge issue on which there has been little progress. Some people are forwarding memos as attachments, but that leads to metadata problems. IPS is still running the Written Correspondence System (WCS) as part of the Archive. They are still working with the Executive Secretariat on the high-level memos issue. Earlier, it sounded like S/ES was going to rely on SMART, but it now appears that they will be establishing their own recordkeeping system as the follow-on to STARS.

The next meeting is scheduled for December 10, 2009.

CC: Brewer, Laurence; Carlson, Michael; Cummings, Ann; Lake, David; Lepore, Gregory; Margaret Hawkins; Steven Tilley

Exhibit 6

From: David Langbart
To: Michael Kurtz
Date: 01/22/2010 7:32:19 AM
Subject: State: SMART

A truncated SMART Working Group met on January 14, 2010. I attended for NARA and Lisa Haralampus attended for State (IPS).

Lisa provided an update on key points:

1. Deployment Schedule. Overseas deployment continues. All posts in the Western Hemisphere are done and they are now working on posts in Africa. The schedule calls for world-wide deployment to be completed by December 2010. They have received generally positive feedback from posts. Domestic deployment is not going nearly as well, largely due to the complicated nature of the domestic scene. The program has been focused on the cables/email aspect of things whereas headquarters is mich more into the memorandums thing. In addition, the setup of user profiles is much more complicated since the number of profiles in a bureau are greater and of a wider variety. As a result, there is no real schedule for domestic roll-out at this time.

Record email. Users are creating record email, in addition to cables. The ratio to this pint is one record email for every six cables (1 to 6), not the 3-1 ration that had been expected. It is not clear why this is so. There is some suspicion that use of record email is not totally clear or that users need more and better guidance on what is a record. IPS plans to conduct a study by looking at the entire corpus of email (record/non-record) from a post to determine if posts are using the system correctly and to determine steps (such as training and guidance) to ensure proper compliance.

TAGS. IPS is planning to do some revisions to the TAGS.

Test Transfer. IPS now has enough real cables and messages to undertake the test transfer called for by the agreement between NARA and State. They would like to make an initial test in the March 2010 time frame, with the possibility of another, and larger, test at the end of the year. They are willing to send the test message either on CD or to try anon-line transfer. NWME should let me know their preference.

CC: Brewer, Laurence; Carlson, Michael; Cummings, Ann; Lake, David; Lepore, Gregory; Margaret Hawkins; Steven Tilley

Exhibit 7

Fwd: State: SMART evaluation

Date : July 1, 2011, 4:13:22 pm EDT

Size : 126.3 KB

Folder : Kevin DeVorsey:archive-kevin\Cabinet\State_Dept

From : Paul Wester

To : Gregory Lepore <Gregory.Lepore@nara.gov>,Lynn Goodsell <Lynn.Goodsell@nara.gov>,
David Langbart <David.Langbart@nara.gov>,Kevin DeVorsey <Kevin.DeVorsey@nara.gov>

Cc : Ann Cummings <Ann.Cummings@nara.gov>,Susan Cummings <Susan.Cummings@nara.gov>,
Robert Spangler <Robert.Spangler@nara.gov>,Lisa Roberson <Lisa.Roberson@nara.gov>,
Margaret Adams <Margaret.Adams@nara.gov>,Margaret Hawkins <Margaret.Hawkins@nara.gov>

ZL Id : DABBMGHL1JSSY1IRBLX0105SCWOMF1NOA

Type : Exchange ExchangeArchive

David, Lynn, and Greg (and Kevin, for at least one of the questions).
I've looked over this, and it is very thorough. I appreciate the analysis. I have a couple questions, comments, or requests.

(1) On the test transfer, how did the technical evaluation occur? Was eyes on the documents, comparing PDFs to XML documents? I am particularly interested in the answers surrounding the major issues, and the missing text or added coding. Also, how prevalent were these problems? It reads like we found one problem or several problems, and I am not clear how representative these problems are given the body of records. Or, are these glitches with one or two or several files; or systemic problems affecting some large percentage of the test transfer (and presumeably all of the SMART repository), or we don't know for sure?

(2) On major technical issues T-2 and T-3 (and particularly T-3), I am interested in Kevin's perspective on the issue, especially in light of the transfer guidance framework project and the other work. More generally, what are the implications of the staff consensus on T-2, and how do we know the resolution is too low? How representative is the lower scan resolution in the files?

(3) Are the five archival issues major or minor issues? Or are they mainly questions that need answers, which would determine the level of concern? These seem to be questions that are at somewhat different level of concern.

(4) I would like to soften the tone of the beginning and end of the letter, and offer to meet with Peggy's staff to discuss and document the resolution of as many of these issues as possible, and to have a discussion of what the significant additional metadata is needed to accompany a transfer. Do you have any problem with this letter requesting a meeting with Peggy's staff to sort out these latter issues.

I would appreciate your views on this by July 11th, with the goal of finalizing a response and sending something to State by July 18th.

Thanks - Paul

>>> Sharon Thibodeau 6/29/2011 8:50 AM >>>
Paul,

Per our conversation, here - with my endorsement - is the report of NARA's evaluation of the State Department's SMART system and a proposed draft communication with State about the results of this evaluation.

Sharon
Attachments
Enclosed_Message_2.eml(47.2 KB)

Exhibit 8

NATIONAL ARCHIVES

Lisa Clavelli <lisa.clavelli@nara.gov>

Fwd: State Department OIG Audit of SMART and Email Management

1 message

Paul Wester <paul.wester@nara.gov> Thu, Mar 12, 2015 at 4:06 AM
To: Julie Reaves <julie.reaves@nara.gov>, Donald Rosen <donald.rosen@nara.gov>, "Brewer, Laurence" <laurence.brewer@nara.gov>, Gary Rauchfuss <gary.rauchfuss@nara.gov>, Margaret Hawkins <margaret.hawkins@nara.gov>, Lisa Haralampus <lisa.haralampus@nara.gov>, "Clavelli, Lisa" <lisa.clavelli@nara.gov>, Cindy Smolovik <cindy.smolovik@nara.gov>

FYI

Paul M. Wester, Jr.
Chief Records Officer for the U.S. Government
National Archives and Records Administration
301-837-3120

---------- Forwarded message ----------
From: **Paul Wester** <paul.wester@nara.gov>
Date: Thu, Mar 12, 2015 at 3:54 AM
Subject: State Department OIG Audit of SMART and Email Management
To: "Ferriero, David" <david.ferriero@nara.gov>, "Wall, Debra" <debra.wall@nara.gov>, "Bosanko, William" <william.bosanko@nara.gov>, "Stern, GaryM" <garym.stern@nara.gov>, "Hamilton, John" <john.hamilton@nara.gov>, "Trainer, Jay" <jay.trainer@nara.gov>, "Garland, Donna" <donna.garland@nara.gov>

This is the WaPo article and the following is the OIG report itself:

http://oig.state.gov/system/files/isp-i-15-15.pdf

This report is the analysis of the agency-wide issues and outlines the issues with a traditional, user-based approach to performing records management actions on email (SMART).

The report touches on one of the changes State was undertaking to accomplish the M-12-18 goals and that are discussed in the recent State SAO reports; however, the State OIG takes a traditional approach in the recommendations to solving the problem (more staff training and fix SMART), but does not take a broader (more Capstone-like) approach to consider automating more of the process because there is too much decision making on the user.

Coincidentally, our oversight team is conducting an inspection (b) (5)
(b) (5)

Paul M. Wester, Jr.
Chief Records Officer for the U.S. Government
National Archives and Records Administration
301-837-3120

Exhibit 9

May 21, 2015

Ms. Margaret Grafeld
Deputy Assistant Secretary
for Global Information Services (A/GIS)
Suite 8000, SA-2
515 22nd St. NW
Department of State
Washington, DC 20037

Dear Ms. Grafeld:

This letter concerns the recent test transfer of data from the Department's SMART System.

On April 13, 2004, the National Archives and Records Administration signed a Memorandum of Understanding with the Department of State. The subject of the memorandum was to demonstrate the electronic transfer of e-documents to NARA and to explore knowledge management technologies related to the analysis of large quantities of data. NARA has completed evaluation of the test data.

The SMART test transfer arrived at NARA on one DVD in a compressed format. Accompanying the test transfer were a cover letter and the XML Schema Definition, which defines the fields in the XML file. The messages were uncompressed into 24,458 folders, comprising approximately 7 GB of data. Each folder's name comprises 36 characters (i.e. ffb229d1-ea1a-43e0-9509-9eb2badf60cb). Each folder represents one message, and any attachments.

NARA staff performed technical and archival evaluations of the data, examining the records for issues which may affect access, authenticity, or comprehension. These evaluation revealed several major issues, as well as several minor issues, and other questions. The technical issues are prefaced with a "T" and the archival questions are prefaced with an "A".

T-1. Major Issue: Text is missing from PDF (i.e. "10-SAN JOSE-416.eml.pdf"). At least one PDF record had entire sentences missing from the file. This was confirmed by comparing the text in the PDF file to the text in the XML file. This issue is very serious and affects the authenticity of the record.

T-2. Major Issue: Scan resolution is too low for NARA standards in PDF (i.e. "1-Bouterse 1-27-11.PDF.pdf.pdf"). In some cases attachments to

emails were scanned at a resolution of these images below the NARA minimum of 300dpi.

T-3. Major Issue: Scans in PDF use lossy compression (i.e. "1-Bouterse 1-27-11.PDF.pdf.pdf"). According to current NARA Transfer Guidelines, records created from scanned text may not be saved using a lossy compression format.

T-4. Minor Issue: There are possible text encoding issues in PDF (i.e. " 09-FTR-96.eml.pdf"). At least one PDF file, and the accompanying XML file, had question marks replacing letters which contained accent marks.

T-5. Minor Issue: There are possible code snippets in PDF (i.e. " 11-ISLAMABAD-506.eml.pdf.pdf"). Several files were identified which had apparent snippets of code (i.e. <![endif]->) at the beginning of the PDF. The code snippets do not occur in the XML version of the messages.

T-6. Minor Issue: There are multiple file format extensions in PDF file name. As seen above, many of the files have multiple file format extensions in the PDF file names. This may lead to confusion when searching or attempting to identify specific files.

T-7. Minor Issue: There are attachments referenced in many XML files called metadata.dat that do not appear in the record's directory (i.e. "10-FTR-14876.eml.pdf.pdf").

T-8. Minor Issue: PDF versions of several emails indicated the attachment of files which do not appear in the record's directory (i.e. "10-FTR-14876.eml.pdf.pdf").

T-9. Minor Issue: At least one PDF record contained images which were not viewable (i.e. " 11-ISLAMABAD-506.eml.pdf.pdf").

A-1. Why do all XML files have same name? All 24,000 messages were named "manifest.xml". This will cause considerable confusion when attempting to provide reference access to the records. It also makes it very difficult to properly replace a file which has been removed from its directory structure. In addition, the naming of the folders is not intuitive, nor did State provide any finding aid which links a folder name to a specific message.

A-2. Why are there both PDF and XML versions of the records? Which version is considered the record? or does the record consist of both? In the small sample reviewed, it appears a user needs both the PDF and the XML file to understand the record. The XML files include

additional record management and other metadata that is not part of the record material of the record (such as MessageID or hash codes) so it makes sense that such metadata would not be included in a "user friendly" PDF version of the record material of the record. However, it is not clear what information is used to create the "user friendly" PDF version of the record. Are the PDF files generated from the XML files or are both files generated from the message as stored in SMART? Is there a crosswalk for the fields in the PDF files vis-à-vis the fields in the XML files with an explanation for any differences?

A-3. How does the user identify what records are emails versus telegrams versus memos? It is unclear if the XML field MessageType provides this information and it appears there is nothing in the PDF to indicate this.

A-4. How does one identify or maintain the link between the two versions of the message and any attachments? This is especially problematic if all the XML files are names manifest.xml and the attachments do not contain the MRN. If the plan is to transfer the records with a folder for each record containing both versions (formats) of the record and any attachments, that would require maintaining the directory structure for preservation and access.

A-5. Is the MRN the only unique number that appears on both the PDF and XML that can be used to link the two versions?

These technical and archival issues and questions must be resolved before the actual transfer of records is attempted. In addition, significant additional metadata will need to accompany any transfer.

We appreciate the Department's cooperation and look forward to receiving your explanations and answers to the issues and question noted above. We will consider action on the MOU complete when the Department has addressed these issues to NARA's satisfaction.

Sincerely,

PAUL M. WESTER. Jr.
Chief Records Officer

(Please be sure to send cc's of the letter that goes out to Greg Lepore and Lynn Goodsell in NWME and to David Langbart in NWCT.)

Exhibit 10

J

July 17th 2014

NARA | State Dept
eRSC Meeting

eRSC Overview * right now Senior Officials & other related perm. series

SharePoint | shared drive
special collections (Benghazi, Iraq, Task forces)
archival storage classified awaiting declass review
allows for "dirty word searches"
Senior officials email - serves as "catchers mitt" to preserve departing senior officials
FOIA Processing - digital to digital transfer of e-record

Ingest via cd, DVD, and network link (direct transfer)
holding area - CARS (not r/k system)
* e693 complete electronic work flow *
• pdf file conversion completed during pre-processing
* plan to open up to pilot | program offices next couple of months

* Any scheduling implications w| storage of records in the eRSC??

(J)

(2)

1) transfers - file formats & metadata
early in process bust pst file open, convert to PDF-A (which was to dedupe & remove non-record, personal), email itself is then reconnected to attachments.

* Does NARA want pst (native) or pdf format in transfering email?
  -> for Capstone approach pdf is good b/c the non-record is being removed.
  -> pdf-A is good option for long term.
  -> .msg. format is the format where dedupe and non-records are removed.

2) Preaccessioning of CDs - NO
Move data from CARS to the eRSC
CDs will be pst files (email records)

3) Google Aps for Govt. - "adoption of Google Ap at DOI has almost been a total disa
program office using gmail with no RK system -
- Must be maintained in r/k system
which should be the eRSC

(J)

Scheduling Discussion (3)
↳ "Simplified Records Schedules"

Rewriting / modernizing State Dept RM Policy
→ directive
→ M/n
→ reaffirming roles & responsb. at Assist. Sectr.
→ Working at Bureau levels to standardize
→ targeting senior leaders' asserting roles

tested in Office of Policy
now looking to move to a Bureau
wanting to establish Bureau Records Coordinators.
writing a Policy document - each Asst. Sectr.
must assign a BRC.

FAM / FAH full scrub on rm topics.
this BRC aspect would be incorporated

Scheduling

Simplified Records Scheduling
condensing to Bureau level

Enterprise Wide
Admin / Front Office
Senior Level Officials
Geographic Bureaus

(1) (2) Bureau Front Offices

* Will be starting w/ INL - easy
then move on to DS
on to the Office of the Secretary
w/ Principles (7th Floor)
Will be based on Functions

* All submitted to NARA by Dec. 2016 *

Enterprise Wide | Mission Level
- built around Bureaus (consolidated)
- NOT consolidated Bureaus (INL)
-

Training
More Mobile training
ex: links | blackberry trainings
written, supplemented w/ video.
reinventing communication - social media

* MAGGIE - status of template
share fields or anything

INL & Front Office - some time in
Sept | Oct. - FY15

Exhibit 11

NATIONAL ARCHIVES

Paul Wester <paul.wester@nara.gov>

Draft Email Policy

4 messages

Fischer, William P <FischerWP@state.gov> Mon, Oct 20, 2014 at 11:50 AM
To: "lisa.haralampus@nara.gov" <lisa.haralampus@nara.gov>
Cc: "paul.wester@nara.gov" <paul.wester@nara.gov>, "Hackett, John" <HackettJ2@state.gov>

Lisa,

I hope you had a nice weekend. I'm seeking NARA comments on the attached draft email policy. Before seeking Department clearance, I want to ensure that whatever we say is consistent with law and regulation. This is an early draft and not for distribution beyond NARA. Please also limit distribution within NARA to those who have equities in this issue.

If you could manage any comments by the end of the week, I would appreciate it. Nevertheless, I understand you have plenty of other things going on.

Thanks,

Bill

William P. Fischer

Agency Records Officer

Office of Information Programs and Services

U.S. Department of State

202-261-8369

Our mission is to meet the information needs of our customers and the U.S. Government.

SBU
This email is UNCLASSIFIED.

NARA_05.20.15_0056

5 FAM 447 Email.docx

Exhibit 12

27K

Paul Wester <paul.wester@nara.gov> Mon, Mar 2, 2015 at 2:18 PM
To: "Stern, GaryM" <garym.stern@nara.gov>, "Ferriero, David" <david.ferriero@nara.gov>, "Wall, Debra" <debra.wall@nara.gov>, "Trainer, Jay" <jay.trainer@nara.gov>, "Bosanko, William" <william.bosanko@nara.gov>, "Hamilton, John" <john.hamilton@nara.gov>, "Garland, Donna" <donna.garland@nara.gov>, "Kleiman, Miriam" <miriam.kleiman@nara.gov>, "Diachenko, Laura" <laura.diachenko@nara.gov>

The following is additional background to the email Gary just sent on Secretary Clinton's emails from his conversation with State's Deputy Legal Advisor.

On October 10, 2014, Bill Fischer, the Department of State agency records officer, sent the message below, along with a draft email policy (also below or attached) to update State's Foreign Affairs Manual (5 FAM 447), to Lisa Clavelli (the team leader for the appraisal work group that deals with State) and Lisa Haralampus (the head of the RM Policy Team that develops the relevant email and messaging policy), with a cc: to me and Bill's supervisor at State, John Hackett.

(b) (5)

Paul

Paul M. Wester, Jr.
Chief Records Officer for the U.S. Government
National Archives and Records Administration
301-837-3120

---------- Forwarded message ----------
From: **Fischer, William P** <FischerWP@state.gov>
Date: Mon, Oct 20, 2014 at 11:50 AM
Subject: Draft Email Policy
To: "lisa.haralampus@nara.gov" <lisa.haralampus@nara.gov>
Cc: "paul.wester@nara.gov" <paul.wester@nara.gov>, "Hackett, John" <HackettJ2@state.gov>

Lisa,

NARA_05.20.15_0057

I hope you had a nice weekend. I'm seeking NARA comments on the attached draft email

Exhibit 13

National Archives and Records Administration
301-837-3120

On Fri, Feb 27, 2015 at 10:44 PM, David Ferriero <david.ferriero@nara.gov> wrote:

> Fine with me. There is no such thing as off the reccord!
>
> David
>
> David S. Ferriero
> Archivist of the United States
> National Archives and Records Administration
> 700 Pennsylvania Avenue
> Washington, DC 20408
> (202-357-5900)
> www.archives.gov
>
> On Feb 27, 2015 9:42 PM, "William Bosanko" <william.bosanko@nara.gov> wrote:
>
> > No objections from me. Good to help them understand.
> >
> > Jay
> >
> > On Feb 27, 2015 9:32 PM, "GaryM Stern" <garym.stern@nara.gov> wrote:
> >
> > > See query below from NY TIMES reporter for off the record chat re the new law on personal emails. I am happy to talk to him about what the law is (there are no regulations at this time).
> > > Let me know if that makes sense for me to do that?
> > > Thanks.
> > >
> > > Gary M. Stern
> > > General Counsel
> > > National Archives and Records Administration
> > > 301-837-3026
> > >
> > > ---------- Forwarded message ----------
> > > From: "Schmidt, Michael" <schmidtm@nytimes.com>
> > > Date: Feb 27, 2015 7:45 PM
> > > Subject: nyt
> > > To: <garym.stern@nara.gov>
> > > Cc:
> > >
> > > Gary: I'm Mike Schmidt, a reporter with The New York Times. I'm working on a story about government employees who use their personal email addresses to conduct government business. I'm sorry to bother you on a weekend but do you have a second to chat? I'm not looking to talk on the record – I just need some clarification on the regulations. I can be reached anytime at 804.363.6794 or can call you whenever. Thnx, Mike

---

GaryM Stern <garym.stern@nara.gov> Sun, Mar 1, 2015 at 2:20 PM
To: David Ferriero <david.ferriero@nara.gov>, Paul Wester <paul.wester@nara.gov>
Cc: John Hamilton <john.hamilton@nara.gov>, Donna Garland <donna.garland@nara.gov>, Miriam Kleiman <miriam.kleiman@nara.gov>, Jay Trainer <Jay.Trainer@nara.gov>, William Bosanko <william.bosanko@nara.gov>, "Wall, Debra" <debra.wall@nara.gov>

fyi, I just spoke to the reporter. As Paul surmised, he is covering the Benghazi issue, and has learned that when Hillary Clinton was Secretary of State, she apparently used a personal email account to conduct government business, and that the State Department has recovered 50,000 pages of emails relating to government business, 900 pages of which relate to Benghazi, which State has turned over to the House Select Committee investigating Benghazi. He wanted to know if this violated NARA's laws or regulations. I told him

that I could not speak to the specifics of this matter, but could explain the general rules and policies in place at the time, as well as the new legal requirement, which I did. I referred him to the various public hearings on other officials using personal email accounts to conduct government business – e.g., OSTP, EPA, CFTC – and noted that NARA does look into allegations of this type, with our interest being to ensure that the agency recovers any alienated records and has policies in place to ensure prevent such events from occurring again. This case, if true, would present a concern, although it may be the case that the State Department has already taken appropriate action to recover the records. He said his story is likely to be posted online tomorrow, and asked that we not share this information outside of NARA until it runs.
We can discuss further tomorrow, unless you'd like to discuss today.
Thanks,
Gary

Gary M. Stern
General Counsel
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740
301-837-3026 (office)
301-837-0293 (fax)
garym.stern@nara.gov

On Sat, Feb 28, 2015 at 3:19 PM, David Ferriero <david.ferriero@nara.gov> wrote:

> Thanks, Paul.
>
> David
>
> David S. Ferriero
> Archivist of the United States
> National Archives and Records Administration
> 700 Pennsylvania Avenue
> Washington, DC 20408
> (202-357-5900)
> www.archives.gov
>
> On Feb 28, 2015 6:35 AM, "Paul Wester" <paul.wester@nara.gov> wrote:
>
> > In addition to the Chemical Safety Board chairman issue with personal email that we continue to sort through this week, since about mid-day Thursday a staff member from the Special Committee on Benghazi has asked a series of increasingly specific questions related to the records management practices at the Department of State.
> >
> > Two of the specific questions was how did the State Department capture personal emails by senior officials between 2011 and 2012 that did not go through State Department systems, and is there a records schedule that covers this material?
> >
> > Michael Schmidt appears to be a Washington-based political reporter for the NYT, but he has done work on cyber-security and national security issues.
> >
> > In doing some research, I found a September 12, 2012, NYT article where Schmidt was a contributing reporter on a background story about the deteriorating Libyan situation and Ambassador J. Christopher Stevens who had died the previous day in the Benghazi attack.
> >
> > A personal email from Ambassador Stevens to his family and friends in July 2012 figures prominently in the NYT story.
> >
> > Paul M. Wester, Jr.
> > Chief Records Officer for the U.S. Government
> > National Archives and Records Administration
> > 301-837-3120

Exhibit 14

NATIONAL ARCHIVES

Lisa Clavelli <lisa.clavelli@nara.gov>

Fwd: Hillary Clinton email issue

1 message

Paul Wester <paul.wester@nara.gov> Tue, Mar 3, 2015 at 12:56 PM
To: "Clavelli, Lisa" <lisa.clavelli@nara.gov>, "Brewer, Laurence" <laurence.brewer@nara.gov>, Margaret Hawkins <margaret.hawkins@nara.gov>, Julie Reaves <julie.reaves@nara.gov>, Gary Rauchfuss <gary.rauchfuss@nara.gov>, Donald Rosen <donald.rosen@nara.gov>, Lisa Haralampus <lisa.haralampus@nara.gov>

FYI

I will talk to James, hopefully later this afternoon or tomorrow.

Paul M. Wester, Jr.
Chief Records Officer for the U.S. Government
National Archives and Records Administration
301-837-3120

---------- Forwarded message ----------
From: **James Springs** <james.springs@nara.gov>
Date: Tue, Mar 3, 2015 at 11:58 AM
Subject: Hillary Clinton email issue
To: Paul Wester <paul.wester@nara.gov>

Paul

I am sure that you are busy with the subject issue. I just had a few questions that hope you can answer if not maybe you can point me in the right direction. Specifically, who is the NARA liaison with the State department for records management? Were we aware the gov email system was not being used by Ms Clinton. If we were not aware why not. What checks and balances do we have in place to ensure the gov email systems are being used. In your opinion does NARA only responsibility extend to just putting out the gov policy on email. Finally, what are our next steps regarding this issue.

--
James Springs
Acting Inspector General
301-837-3018

The Institute of Internal Auditors

Statement of

The Institute of Internal Auditors

Senate Homeland Security & Governmental Affairs Committee

"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"

June 3, 2015

Chairman Johnson, Ranking Member Carper, and members of the Committee:

Inspectors General play a central role in ensuring taxpayer funds are used responsibly by the various agencies and offices of the federal government. The position is so critical to public confidence in our government that The Institute of Internal Auditors (IIA), by submitting this letter for the record of this important hearing, expresses its strong support of the position that vacancies in the ranks of federal Inspectors General be filled promptly and with highly-qualified candidates who are non-partisan, independent, and aggressive in the discharge of their statutory responsibilities.

The IIA is the recognized world leader in certification, education, research, standards, and guidance for the internal audit profession. With more than 180,000 global members, The IIA is dedicated to supporting quality, professional, and ethical practices across all industries and public enterprises. Among The IIA's over 70,000 members in the United States are many who steadfastly serve the public sector through federal, state, and local government entities.

Inspectors General are a bulwark against mismanagement in government agencies, tasked with combating wrongdoing, deterring and detecting fraud and abuse, and identifying waste and inefficiencies in the operations of government and administration of government programs. As a former Inspector General, I can personally attest that a fully qualified IG makes a material difference in the effective operation of a federal agency or program.

Since 1978, Inspectors General have been a crucial component of government oversight. Their audits and investigations have led to tremendous savings for taxpayers and set in motion processes for holding wrongdoers accountable for their actions. In its Fiscal Year 2013 Progress Report to the President, the Council of the Inspectors General on Integrity and Efficiency reported a potential savings of $37 billion from audit recommendations agreed to by management and another $14.8 billion in potential savings from investigative receivables and recoveries. Vigorous oversight, transparency, and accountability are essential elements to helping Americans maintain trust in their government.

While a given Office of Inspector General can operate for a time with an Acting Inspector General, we believe they are no substitute for a permanent Inspector General. All too often, Acting Inspectors General may be reluctant to be as aggressive as the statute allows and contemplates, especially if they aspire to hold the position themselves and do not want to jeopardize their chances by doing something that might be viewed negatively by the Administration. Permanent IGs undergo significant vetting, especially those requiring Senate confirmation. That process helps instill confidence among stakeholders (Congress, agency officials, and the public) that the Office of the Inspector General is truly independent and its reports are accurate and credible.

For these reasons, The IIA stands in strong support of the institution of Inspectors General and the public's expectation that any vacancy be filled promptly and responsibly with a permanent Inspector General.

Submitted by: *Richard F. Chambers, CIA, QIAL, CGAP, CCSA, CRMA*
President and Chief Executive Officer

OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF VETERANS AFFAIRS
STATEMENT FOR THE RECORD
SENATE HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS COMMITTEE HEARING
"WATCHDOGS NEEDED: TOP GOVERNMENT INVESTIGATORS
LEFT UNFILLED FOR YEARS"
JUNE 3, 2015

The VA Office of Inspector General (OIG) was not among the invited witnesses at the Committee's June 3, 2015, hearing, "Watchdogs Needed: Top Government Investigators Left Unfilled for Years," despite being the subject of undeserved, unfounded, and unsupported criticism. To set the record straight, we are submitting this statement for inclusion in the hearing record. We make this request trusting in the Committee's respect for the principles of transparency and fairness.

STATUS AND INDEPENDENCE OF ACTING INSPECTORS GENERAL

The OIG takes exception to Chairman Ron Johnson's characterization of the job status, independence, and inherent conflict of interest when individuals serve as Acting Inspectors General. Under *The Federal Vacancies Reform Act*, the "first assistant" to a vacant office required to be filled by Presidential appointment with Senate confirmation (PAS) automatically serves in an acting capacity for 210 days. By law the Deputy Inspector General becomes the acting Inspector General for a period of 210 days. In the absence of a nomination by the President, the VA Deputy Inspector General continues to serve in his official capacity as the OIG's Chief Operating Officer without any impairment to his objectivity, integrity, and independence either from the VA Secretary or Congress. Contrary to the Chairman's assertion that "they [Acting Inspectors General] can be removed by the agency at any time," the VA Deputy Inspector General is a career Senior Executive with statutory protections to due process and appeal rights under Title 5, United States Code. Furthermore, since enactment of *The Inspector General Reform Act of 2008*, for purposes of the Senior Executive Service, the VA OIG is considered a separate agency from the Department of Veterans Affairs, and the Inspector General, and not the VA Secretary, is the designated agency head with the functions, powers, and duties to take actions against members of the OIG Senior Executive Service.

HEALTHCARE ADMINISTRATIVE CLOSURES

We also take exception to the Chairman's assertions that the OIG did not release 140 reports to the public and to Congress. The 140 reports in question were administrative closures of healthcare inspections that have been published on the VA Office of Inspector General public website and provided to Congress. We made the decision to publish our healthcare administrative closures to lay out the basis for our decision-making and to show that we had sound reasons in closing these inspections. Furthermore, we made no secret at the time these inspections were closed that a small segment of OIG work efforts did not result in published reports; since 2002, the OIG has listed the total number of healthcare administrative closures in our *Semiannual Report to Congress*, which is sent every 6 months by the VA Secretary to key Members of

Congress involved in Government oversight, including the Chairman and Ranking Member of the Senate Homeland Security and Governmental Affairs. In fact the OIG *Semiannual Reports to Congress* were the original source for media reports on the 140 administrative closures that first generated congressional interest in them.

LEGACY OF OBJECTIVE REPORTS AND TESTIMONY ON PROBLEMS IN VA PROGRAMS AND OPERATIONS

The OIG's history of reports including audits and evaluations, administrative investigations, and healthcare inspections shows that we do not shy away from reporting the facts as they are, no matter what predetermined notions VA, Congress, or the public may have. Within the last 2 months alone, we published two reports on the Philadelphia VA Regional Office, VA's Patient-Centered Community Care Contracts, and improper access of VA networks from foreign countries, which have been characterized as "scathing" by the media and Members of Congress. These reports should lay to rest any questions about our independence from VA and our ability to identify and report problems in VA. In fact, House Veterans' Affairs Committee Chairman Jeff Miller stated that our May 2015 Philadelphia VA Regional Office report "is as bleak as it gets, full of systemic malfeasance and deliberate data manipulation."

On June 11, 2015, OIG officials testified at a hearing before the House Veterans' Affairs Committee on VA's fiduciary program where we warned that veterans and their VA-derived estates are at unnecessary risk. Weeks earlier we told this same Committee that VA's $3.8 billion purchase card program required significant strengthening to prevent further misuse of taxpayer dollars intended to serve veterans and their families. On April 29, 2015, we told the Senate Veterans' Affairs Committee that the Veterans Health Administration (VHA) is at risk of not performing its most important mission of providing veterans with quality health care because VHA leadership has too often compromised national VHA standards to meet short term goals.

The frequency of OIG witnesses at congressional hearings—nine in the past 3 months—is a clear indication of the respect for the quality of our work and independence. With more than 1,900 reports—each of which was shared with the Homeland Security and Governmental Affairs Committee—and more than 70 appearances at congressional hearings in the last 6 years, the VA OIG is among the most prolific in the Inspector General community in terms of transparent reporting on the programs and operations within a Federal Department and making recommendations for corrective action.

ACCESS TO OIG AND VA RECORDS BY CONGRESS

What was described at the June 3rd hearing as "fighting to keep documents from Congress" is more accurately described as a debate over the rights of Congress to obtain Executive Branch records and statutory prohibitions on the release of veterans' private medical records under VA statutes including 38 USC §§ 5701, 7332, and 5705. The plain fact is that when Chairman Johnson's personal staff received allegations in 2011 and 2014 about prescribing practices at Tomah they failed to contact the OIG. The belated contact with the OIG is one of only two contacts on veterans' issues we

have ever received from Chairman Johnson's personal or Committee staff since he assumed office in 2011.

INACCURATE AND UNSUPPORTED PROJECT ON GOVERNMENT OVERSIGHT TESTIMONY

We also take exception to the written testimony of a hearing witness, Danielle Brian, Executive Director, Project On Government Oversight (POGO), which is replete with inaccuracies and assertions supported, not by factual evidence, but by footnotes to media reporting. What POGO expressed during this hearing and in public statements are opinions based on unverified and non-transparent information. One of the best examples is the hotline POGO established in May 2014 to receive allegations relating to waiting times at VA medical facilities.

On May 27, 2014, the Executive Director of POGO was quoted by the *Arizona Republic* as stating that "500 people had contacted a hotline set up for VA whistleblowers a week ago and more than a third were employees." She was further quoted as saying that "many complainants reported manipulation of wait time data, apparently orchestrated by middle managers without any directive from headquarters. POGO refused to provide the information relating to waiting times to the OIG despite the fact that the OIG was conducting a VA-wide review on waiting times and issued a subpoena to POGO for the information.

Less than 2 months after her statements to the *Arizona Republic,* Ms. Brian submitted a 9-page letter to the Acting VA Secretary in which she states that POGO received contacts from "nearly 800 current and former employees." However, Ms. Brian's letter focused entirely on unverified complaints of retaliation from 15 of these nearly 800 individuals, with no mention of complaints related to wait times and possible patient harm. The letter shows that 13 of the 15 individuals were anonymous current or former employees who worked at unidentified VA facilities. As noted in the third paragraph on page 3 of the letter, POGO could not look into the claims of the anonymous complainants but "when their accounts are combined with *stories* from former employees and current employees who did provide contact information, a disturbing picture begins to form." In other words, POGO reported to the Acting Secretary a few unrelated and unverified stories of people who claimed retaliation. The information provided VA was not actionable because it provided insufficient information for VA to take action and effect changes. We sincerely hope that no veterans were harmed by POGO's failure to disclose allegations of poor patient care and wrongdoing by managers with respect to the manipulation of wait times.

Ms. Brian's written and oral statements at the June 3rd hearing were similarly unusable because, as discussed below, they were based on media reports, personal opinion, gossip, and hearsay, not facts and evidence. With no access to VA personnel or records, especially medical records, POGO does not have the capability to evaluate the medical care and treatment provided veterans at VA facilities nor can they verify the stories related by complainants.

Uninformed and Misleading Criticism of OIG Phoenix Health Care System Investigation - Ms. Brian's lack of knowledge of the facts surrounding the OIG's 2014

investigation of patient wait times at the Phoenix VA Health Care System did not stand in her way of criticizing our investigators for not interviewing the former Phoenix Director who allegedly ordered the falsification of patient records. Before repeating this criticism in the future, we direct Ms. Brian to the Fifth Amendment to the United States Constitution that affords American citizens the right to decline to answer questions that might incriminate them in a criminal matter. Ms. Brian also attacked the independence of the OIG when she dismissed our statement that VA does not dictate the final content of OIG reports, and that any changes made to the Phoenix report were part of the standard agency-OIG dialogue during the review and comment process utilized across the Inspector General community. Her statement is based entirely on a quote attributed to the Chairman of the House Veterans' Affairs Committee, published in the *Washington Examiner*. Ms. Brian does not cite any documents or other credible evidence to support her statement and does not appear to have made any effort to obtain corroborating evidence. Neither she nor POGO submitted a request to the OIG under the Freedom of Information Act for records relating to this or any other statement in her testimony. In fact, there is no evidence to support the statement attributed by the *Washington Examiner* to Chairman Miller because it is simply not true.

Mischaracterization of Healthcare Administrative Closures - Another dubious reference in the POGO Director's testimony is a quote from *USA Today* concerning 140 healthcare administrative closures completed by the OIG since 2006, some of which "substantiated complaints of serious harm or death." By our accounting, 52 percent of these healthcare inspections were unsubstantiated, 46 percent were already appropriately addressed by VA, and 4 percent involved Tort Claims where we terminated our work so as to not interfere or impede the VA Regional Counsel's investigation. Had she read the administrative closures posted on our public website, she would have known that none of the closures "substantiated complaints of serious harm or death," that VA had not previously identified and corrected prior to the OIG's inspection. She also ignores the fact that the number of administrative closures has been reported in the OIG's *Semiannual Reports to Congress* since 2002.

Unfounded Claim of Whistleblower Reluctance Refuted by Growing Number of Hotline Contacts - To support her opinion that the presence of acting Inspectors General has a chilling effect on agency whistleblowers coming forward, Ms. Brian proffers flimsy evidence of an unsupported statement from one person, a former VA employee who stated that the OIG is "not trusted by most employees and usually used in the VA as retaliation." Had Ms. Brian familiarized herself with the OIG's December 2014 report, *Review of Allegations Regarding the Technical Acquisition Center's Award of Sole-Source Contracts to Tridec for the Virtual Office of Acquisition*, she would have realized that the source of this quote was the subject of the OIG's report that found substantial wrongdoing by this same person, hardly an objective disinterested party. Neither Ms. Brian nor POGO submitted a request to the OIG under the Freedom of Information Act for the evidence supporting our *Tridec* report. Had they submitted such a request, POGO would have received documents identified in the report that fully support the report's findings and conclusions. Relying on a document by another OIG that explicitly states it did not rely on our evidence is simply irresponsible. In fact, these

same documents were submitted to the Chairman of the House Veterans' Affairs Committee.

We believe the sheer number of contacts received by the OIG Hotline undercuts POGO's notion that people are reluctant to come forward with complaints. As reported in our *Semiannual Report to Congress* for the period of October 1, 2014, through March 31, 2015, the OIG Hotline received over 22,000 contacts. In fiscal year (FY) 2014, the Hotline received over 39,000 contacts. Since FY 2014, over 7,800 of those contacts came from VA employees. Whistleblowers are the lifeline of OIG organizations, and we take great efforts to protect their identities, understand their concerns, objectively seek the truth, and pursue accountability and corrective action from VA.

Unsupported Assertions on Effect of Interim Leadership - Ms. Brian stated that because Inspectors General who occupy PAS positions undergo a rigorous vetting process and are selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability," an Inspector General who survives the confirmation process will typically be more credible in the eyes of agency leaders and employees, congressional overseers, and members of the public. Ms. Brian does not cite any study or review that POGO or any credible entity conducted to support her opinion. It is the work of the organization that renders an Office of Inspector General credible, not any single individual.

Ms. Brian asserts on page 3 of her written statement that a "permanent Inspector General, who enjoys the protections of *The Inspector General Act* and related laws, can devise a long-term strategy to address the most important and, at times, embarrassing problems that confront her agency." This line of reasoning ignores the fact that acting Inspectors General are career Federal employees entitled to due process under Title 5 of the United States Code.

Ms. Brian concludes that "acting IG's are more likely to favor short-term projects that do not rock the boat, essentially serving as a caretaker until a permanent IG takes over." Her opinion is based on what "current and former IG staff have told POGO." Ms. Brian did not identify the employees who made these statements or even the number of employees, the agencies they were associated with, or when POGO obtained this information. More importantly, POGO did not conduct any work to verify the information. At a minimum, POGO could have compared the *Semiannual Reports to Congress* of individual OIGs to determine the validity of these assertions. A review of the *Semiannual Reports to Congress* for the VA OIG will show significant arrests, convictions, audit and inspection reports, recoveries, and other monetary benefits that have not changed since the former Inspector General retired on December 31, 2013.

CONCLUSION

Everyday VA OIG employees put forth their very best effort to help VA deliver on its promises to America's veterans by carrying out independent oversight of the Federal government's second largest Department. To have their work misrepresented as being erroneous or lacking independence disrespects their honest labor and ignores a legacy of reporting that has generated significant improvements in VA's delivery of service to veterans, whether under permanent or interim leadership.

Project On Government Oversight
Response to a Statement by the
Department of Veterans Affairs Office of Inspector General
July 1, 2015

The Project On Government Oversight (POGO) would like to respond to a statement submitted by the Department of Veterans Affairs (VA) Office of Inspector General (OIG) regarding the Senate Homeland Security and Governmental Affairs Committee's June 3 hearing, "Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years."

Several weeks after the hearing, the VA OIG submitted the statement raising concerns about it, and about POGO's testimony in particular. The OIG takes exception to the written testimony of POGO Executive Director Danielle Brian, claiming that her testimony is "replete with inaccuracies and assertions supported, not by factual evidence, but by footnotes to media reporting."[1] It is telling, however, that the OIG could provide almost no relevant or specific evidence to support its own claims or rebut POGO's arguments. Its statement is largely a misguided attempt to dismiss the investigative work of Congress and the press, and to disparage allegations made by whistleblowers who have questioned the OIG's independence. Ultimately, the statement demonstrates that OIG officials do not appreciate how their credibility and independence have been compromised by a vacancy at the top that has languished for more than 540 days.[2]

We would like to highlight in particular the following problems with the OIG's statement:

The OIG mischaracterizes its subpoena of POGO

The OIG asserts that we "refused to provide the information" POGO had received last year related to allegations of manipulated wait time data at VA health facilities, "despite the fact that the OIG was conducting a VA-wide review on waiting times and issued a subpoena to POGO for the information."[3]

This is a blatant mischaracterization of POGO's position. When the VA IG's office first contacted us asking for copies of the whistleblower complaints we received, we offered to share general trends gleaned from the tips, but expressed concern about providing information that could be used to identify any whistleblowers who contacted us, especially since so many had asked that their identities be protected. In a follow-up email, we said we would be "happy to talk

[1] Department of Veterans Affairs, Office of Inspector General, statement regarding the Senate Homeland Security and Governmental Affairs Committee's hearing, "Watchdogs Needed: Top Government Oversight Investigators Left Unfilled for Years," submitted on June 25, 2015, p. 3. (Hereinafter "VA OIG Statement")
[2] Project On Government Oversight, "Where Are All the Watchdogs?" http://www.pogo.org/tools-and-data/ig-watchdogs/go-igi-20120208-where-are-all-the-watchdogs-inspector-general-vacancies1.html
[3] VA OIG Statement, p. 3

to [the OIG] about what we are learning once we have [a] handle on the information that we have received," but reiterated that our disclosure would "not include any information about [our] sources."[4] An hour later, OIG employees showed up at POGO's door with a subpoena in hand.

In addition, the OIG's statement downplays the sheer absurdity of its subpoena. We strongly believe that the OIG's subpoena violates the Constitution by infringing on POGO's freedom of speech, freedom of press, and freedom of association rights as they relate to our sources. Further, the subpoena could have had a chilling effect on whistleblowers who come to POGO as an outlet to expose government malfeasance.[5] In a letter to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Chairman Johnson wrote that the OIG's subpoena was "unnecessary, harassing, and potentially extralegal, or at the very least, highly inappropriate" given that POGO is a "nonpartisan good-government watchdog whose only goal was to assist veterans in improving the VA."[6]

The OIG's statement devalues whistleblowers and downplays substantive investigations conducted by Congress and the press

The OIG says that a 2014 letter from POGO to then-Acting Secretary Sloan Gibson offered nothing more than "a few unrelated and unverified stories of people who claimed retaliation."[7] In addition, according to the OIG, without access to "VA personnel or records, especially medical records, POGO does not have the capability to evaluate the medical care and treatment provided veterans at VA facilities nor can they verify the stories related by complainants."[8]

It will take a concerted effort by watchdogs both inside and outside of the government to right the ship at the VA. To be sure, POGO is not always in a position to access internal agency records or to evaluate individual claims of medical harm. However, after spending countless hours reviewing allegations brought by hundreds of VA whistleblowers—the most tips we've ever received on a single issue—we felt there was an urgent need to inform Department leaders about a "widespread climate of fear and whistleblower intimidation."[9] Although we did receive tips from veterans who made individual claims of medical harm, other tips came from current and former VA employees who sought to expose systemic, long-term problems at the Department.

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[4] Email from Scott Amey, General Counsel, Project On Government Oversight, to Maureen Regan, Counselor to the Inspector General, Department of Veterans Affairs, May 30, 2014.
[5] Project On Government Oversight, "POGO's Response to VA Inspector General's Subpoena for Whistleblower Records," June 9, 2014. http://www.pogo.org/our-work/letters/2014/va-inspector-general-issues-subpoena-for-pogo.html
[6] Letter from Senator Ron Johnson, Chairman, Homeland Security and Governmental Affairs Committee, to Michael E. Horowitz, Chair, Council of the Inspectors General on Integrity and Efficiency, and Joseph F. Campbell, Chairman, Integrity Committee, Council of the Inspectors General on Integrity Efficiency, regarding VA OIG subpoena, June 11, 2015, pp. 1-2.
[7] VA OIG Statement, p. 3
[8] VA OIG Statement, p. 3
[9] Project On Government Oversight, "POGO Letter to VA Secretary About VA Employees' Claims of Fear and Retaliation," July 21, 2014. http://www.pogo.org/our-work/letters/2014/pogo-letter-to-va-secretary-about-va-employees-claims.html (Hereinafter "POGO Letter to VA Secretary")

In at least several cases, we did name and provide on-the-record quotes by whistleblowers who chose to go public with their stories. Our investigative report on Army veteran Steven Massong was supported by thousands of pages of records, including internal VA documents, and hours of on-the-record interviews. (We provided a signed release from Massong authorizing the VA to answer POGO's questions, but we received no response.[10]) In a letter to the VA, we published the results of our investigation into a complaint brought by Stuart Kallio, an inpatient technical supervisor at the Palo Alto VA Health Care System. Kallio agreed to go on the record with documents indicating that his superiors retaliated against him and attempted to silence him after he raised concerns about drug management and medication errors at the hospital. And we conducted an in-depth review of information provided by Thomas Tomasco, a doctor who worked at the Wilkes-Barre VA Medical Center in Pennsylvania. Tomasco described how he faced a series of adverse actions after raising concerns that on-call physicians were literally "phoning it in"—providing consults by telephone rather than coming to the hospital in emergency situations.[11]

In other cases, we made a decision to publish the allegations and sentiments of whistleblowers who did not want to be named. We recognized in our letter that it was "impossible to look into their claims."[12] However, despite the OIG's assertion that our letter contained just a "few unrelated" stories, an alarming number of current and former VA employees who contacted us said they feared or had already experienced retaliation. POGO is hardly alone in raising concerns about a toxic climate for whistleblowers at the VA. "[I]t is clear that the workplace culture in many VA facilities is hostile to whistleblowers," Carolyn Lerner, head of the Office of Special Counsel (OSC), told Congress last year.[13] Then-Acting Secretary Gibson acknowledged that "we've created an environment where opinions of the rank-and-file, those that are doing the hard day-to-day work of caring for our veterans, are not only not listened to, they're not tolerated."[14]

We were pleased to see the Department act on one of our recommendations: getting certified by the OSC for taking steps to educate employees about their whistleblower rights and protections.[15] Although the OIG is not required to get certified, we reiterate our call for the office to take this important step in order to demonstrate its commitment to protecting whistleblowers from retaliation. We would also urge the OIG to spend less time issuing frivolous subpoenas to identify whistleblowers, and more time trying to understand why there is such widespread distrust of the OIG by whistleblowers—an office that is supposed to serve as a safe harbor for whistleblower complaints.

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[10] Project On Government Oversight, "System Failure: One Man's Nightmarish Journey Through the Troubled VA," October 6, 2014. http://www.pogo.org/our-work/articles/2014/system-failure.html

[11] POGO Letter to VA Secretary

[12] POGO Letter to VA Secretary

[13] Testimony of Carolyn Lerner, Special Counsel, Office of Special Counsel, before the House Committee on Veterans' Affairs regarding "VA Whistleblowers: Exposing Inadequate Service Provided to Veterans and Ensuring Appropriate Accountability," July 8, 2014. https://veterans.house.gov/witness-testimony/the-honorable-carolyn-lerner (Downloaded July 1, 2015)

[14] "VA chief pledges end to whistleblower retaliation," *The Seattle Times*, July 22, 2014. http://www.seattletimes.com/nation-world/va-chief-pledges-end-to-whistleblower-retaliation/ (Downloaded July 1, 2015)

[15] Office of Special Counsel, "Agencies That Have Completed the 2302(c) Certification Program." https://osc.gov/Resources/Agencies%20that%20have%20completed%202302c%20certification%20program.pdf (Downloaded July 1, 2015)

On a separate matter, the OIG says we offered "flimsy evidence of an unsupported statement from one person, a former VA employee who stated that the OIG is 'not trusted by most employees and usually used in the VA as retaliation.'"[16] The OIG says the source of this quote was the subject of an OIG report that "found substantial wrongdoing by this same person, hardly an objective disinterested party."[17]

We believe the OIG has its facts wrong. The OIG's report found that Iris Cooper, a former Executive Director of the VA's Office of Acquisition Operations, steered a contract to her friend's company. The OIG also reported that Cooper and Wendy McCutcheon, a former Associate Executive Director at the VA's Office of Acquisition Operations, "engaged in a lack of candor when interviewed by OIG Special Agents."[18]

However, it appears neither of these former VA employees was the source of the quote in question. The quote was included in an investigative report issued by the Treasury Department IG's Office, which conducted its own review at the request of Representative Jeff Miller (R-FL), Chairman of the House Veterans' Affairs Committee.[19] POGO obtained the report and underlying exhibits through the Freedom of Information Act. Although the names of witnesses are redacted in the Treasury OIG's report, the person who said the VA OIG "is not trusted by most employees" is identified as a former procurement analyst and customer advocate at the VA who joined the General Services Administration in December 2014.[20] Based on her listed title, it appears this witness was neither Cooper nor McCutcheon.

The OIG says it was "simply irresponsible" for POGO to rely on the Treasury OIG's report without requesting further documentation.[21] But when officials from the Treasury Department and the Treasury IG's office asked the VA OIG for supporting documentation, the VA OIG denied those requests, citing the Privacy Act and other laws, according to a letter from Treasury IG Eric Thorson.[22] As it stands, the existing record demonstrates that concerns about the OIG do not only come from the subject of a VA OIG investigation, as the OIG asserts.

Elsewhere in its statement, the OIG questions POGO's reliance on oversight and investigative findings by congressional offices and the press.

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[16] VA OIG Statement, p. 4
[17] VA OIG Statement, p. 4
[18] Department of Veterans Affairs, Office of Inspector General, *Review of Allegations Regarding the Technical Acquisition Center's Award of Sole-Source Contracts to Tridec for the Virtual Office of Acquisition*, Report No. 12-02387-59, December 8, 2014, p. 1. http://www.va.gov/oig/pubs/VAOIG-12-02387-59.pdf (Downloaded July 1, 2015)
[19] Letter from Eric M. Thorson, Inspector General, Department of the Treasury, to the House Committee on Veterans' Affairs regarding VA OIG investigation, March 11, 2015. https://veterans.house.gov/sites/republicans.veterans.house.gov/files/Letter%20from%20Treasury%20Dept.%20IG_0.pdf (Downloaded July 1, 2015) (Hereinafter "Thorson Letter")
[20] Department of the Treasury, Office of Inspector General, *Report of Investigation*, March 12, 2015, pp. 6-7 (Hereinafter "Treasury OIG Report")
[21] VA OIG Statement, p. 4
[22] Thorson Letter, p. 1

We noted in our testimony that the OIG and Acting IG Richard Griffin came under congressional and media scrutiny last year in the midst of a scandal at the Phoenix VA Health Care System. A VA doctor, Sam Foote, had alleged that 40 veterans died while waiting for an appointment at a Phoenix VA facility. The OIG's final report on this matter, issued in August 2014, recognized that "[i]nappropriate scheduling practices are a nationwide systemic problem." With respect to Foote's allegation, however, the OIG said it was "unable to conclusively assert that the absence of timely quality care caused the deaths of these veterans."[23]

POGO's testimony raised concerns that the OIG added its statement on Foote's allegation only after Acting IG Griffin conferred with then-Acting Secretary Gibson. Yet, the OIG says our concerns were "based entirely on a quote attributed to the Chairman of the House Veterans' Affairs Committee, published in the *Washington Examiner*"—Chairman Miller told the *Examiner* that the situation, at its worst, "indicates a relationship between VA and its inspector general that is too close for comfort"[24]—and that there is no evidence to support this statement "because it is simply not true."[25]

What the OIG neglected to mention is that the *Examiner* and *USA Today* had obtained and posted a previously unreleased email between Griffin and Sloan that goes to the heart of Chairman Miller's statement.[26] At a September 2014 hearing, Griffin testified that the new language on Foote's allegation "was made by the OIG strictly on our own initiative. Neither the language nor the concept was suggested by anyone at VA to any of my people."[27] However, the email released by the press paints a more complicated picture. After reviewing a draft version of the OIG's report, Sloan—who cordially addressed the Acting IG as "Griff"—said he was "surprised to see no reference to the allegations of 40 deaths."[28] After meeting in person, Griffin emailed back to confirm that language about the "mysterious" 40 deaths would be added to the report. "Thanks on all counts!" Sloan responded. "I appreciate the focus on the 40 deaths."[29]

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[23] Department of Veterans Affairs, Office of Inspector General, *Veterans Health Administration: Review of Alleged Patient Deaths, Patient Wait Times, and Scheduling Practices at the Phoenix VA Health Care System*, Report No. 14-02603-267, August 26, 2014, p. ii. http://www.va.gov/oig/pubs/VAOIG-14-02603-267.pdf (Downloaded July 1, 2015)

[24] Mark Flatten, "VA inspector general was pressured to change report," *Washington Examiner*, November 4, 2014. http://www.washingtonexaminer.com/va-inspector-general-urged-to-alter-report/article/2555647 (Downloaded July 1, 2015)

[25] VA OIG Statement, p. 4

[26] Dennis Wagner, "E-mails: VA secretary sought changes in Phoenix report," *USA Today*, October 31, 2014. http://www.usatoday.com/story/news/nation/2014/10/31/e-mails-va-secretary-sought-changes-in-phoenix-report/18271257/ (Downloaded July 1, 2015)

[27] House Committee on Veterans' Affairs, hearing on "Scheduling Manipulation and Veteran Deaths in Phoenix: Examination of the OIG's Final Report," September 17, 2014. https://veterans.house.gov/hearing/scheduling-manipulation-and-veteran-deaths-in-phoenix-examination-of-the-oig-s-final-report (Downloaded July 1, 2015)

[28] Email from Sloan Gibson, Deputy Secretary, Department of Veterans Affairs, to Richard Griffin, Inspector General, Department of Veterans Affairs, regarding "Meeting Today and Phoenix," August 4, 2014. https://drive.google.com/file/d/0B8ApOtjDlSC2Q2MxSGFUTlgzdzQ/view (Downloaded July 1, 2015) (Hereinafter "VA Email Correspondence")

[29] VA Email Correspondence

Chairman Miller wasn't the only one who questioned the OIG's final report. In addition to Foote—who called the report a "whitewash"[30]—another whistleblower from the Phoenix VA Health Care System, Katherine Mitchell, testified that the "OIG case review overlooked actual and potential causal relationships between health care delays and Veteran deaths."[31] The OSC—a federal agency tasked with investigating allegations of whistleblower retaliation and serving as a safe channel for whistleblower disclosures—saw fit to honor Mitchell with a Public Servant of the Year award in December 2014 for disclosing "critical understaffing and inadequate training in the Phoenix VA medical center's emergency room."[32] However, the OIG's statement says nothing about the concerns raised by whistleblowers such as Mitchell, and seeks to minimize numerous investigations by Congress and the press that raised legitimate questions about the independence of the Acting IG.

The OIG does not address its poor track record on transparency

The OIG says POGO made a "dubious reference" to a story by *USA Today* concerning 140 reports of healthcare inspections completed by the OIG since 2006 that had not been previously released to the public.[33] The OIG's statement seems to suggest there is no cause for concern because, in the newly released reports of inspections that substantiated complaints of serious harm or death, the matter was "already appropriately addressed by VA."[34] Furthermore, the OIG says POGO ignored the fact that "the number of administrative closures has been reported in the OIG's *Semiannual Reports to Congress* since 2002."[35]

It appears the OIG still does not understand the basic problem. Prior to instituting a new disclosure policy earlier this year—and only then in response to congressional and media scrutiny—the OIG had not *publicly released the underlying inspection reports*. Just because the VA had already responded to the OIG's findings in some of these inspections does not eliminate the need for transparency. And providing an aggregate number of cases on a semiannual basis is no substitute for publicly releasing the full reports in a timely fashion. We recognize that these reports often contain highly sensitive personal and medical information, but the OIG could have made all legitimate and legally required redactions before releasing a public version.

What's even more alarming is the OIG's general attitude towards transparency and congressional oversight.

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[30] Testimony of Dr. Samuel Foote before the House Committee on Veterans' Affairs regarding "Scheduling Manipulation and Veteran Deaths in Phoenix: Examination of the OIG's Final Report," September 17, 2014, p. 3. http://docs.house.gov/meetings/VR/VR00/20140917/102650/HHRG-113-VR00-Wstate-FooteMDS-20140917.pdf (Downloaded July 1, 2015)

[31] Testimony of Dr. Katherine L. Mitchell before the House Committee on Veterans' Affairs regarding "Scheduling Manipulation and Veteran Deaths in Phoenix: Examination of the OIG's Final Report," September 17, 2014, p. 3. http://docs.house.gov/meetings/VR/VR00/20140917/102650/HHRG-113-VR00-Wstate-MitchellK-20140917.pdf (Downloaded July 1, 2015)

[32] Office of Special Counsel, "OSC Honors Three VA Whistleblowers with 'Public Servant of the Year' Award," December 3, 2014. https://osc.gov/news/pr14-23.pdf (Downloaded July 1, 2015)

[33] VA OIG Statement, p. 4

[34] VA OIG Statement, p. 4

[35] VA OIG Statement, p. 4

An OIG spokesperson told *USA Today* that, under the office's previous policy (or lack thereof), a Member of Congress would have had to file a FOIA request in order to obtain reports of closed healthcare inspections.[36] At a meeting earlier this year, Maureen Regan, counselor to the VA Inspector General, apparently stated that the "VA OIG had no obligation to report to Congress outside of its semi-annual report," according to a summary of the meeting provided in a letter from Chairman Johnson to Acting IG Griffin.[37] She added that the VA OIG "would need to seek the approval of the VA before producing certain material to the Committee."[38] In response to Chairman Johnson's letter, Griffin said his office is willing to accommodate the Committee's request for records related to an OIG inspection, but only "to the extent possible if the Committee can justify the request."[39] Incredibly, the OIG has cited the Inspector General Act to justify its position,[40] even though, as Chairman Johnson pointed out, the law explicitly states that nothing in the Act "shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof."[41]

We are not surprised that the Committee has now issued a subpoena seeking the OIG's records.[42] Unfortunately, as we stated in our testimony, the OIG's resistance to posting redacted public versions of reports is all too common among both acting and permanent IGs. POGO supports bipartisan legislation approved by the Committee that would require more public disclosure of OIG reports and work products.[43]

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[36] Donovan Slack, "Newly released VA reports include cases of veteran harm, death," *USA Today*, April 29, 2015. http://www.usatoday.com/story/news/politics/2015/04/29/newly-released-va-reports/26594353/ (Downloaded July 1, 2015)

[37] Letter from Senator Ron Johnson, Chairman, Homeland Security and Governmental Affairs Committee, to Richard J. Griffin, Deputy Inspector General, Department of Veterans Affairs, regarding request for records of VA OIG inspection, February 25, 2012, p. 2. http://www.va.gov/oig/pubs/press-releases/VAOIG-whitepaper-20150618TomahOPPI.pdf (Downloaded July 1, 2015) (Hereinafter "Johnson Letter")

[38] Johnson Letter, p. 2

[39] Letter from Richard J. Griffin, Deputy Inspector General, Department of Veterans Affairs, to Senator Ron Johnson, Chairman, Homeland Security and Governmental Affairs Committee, regarding request for records of VA OIG inspection, February 27, 2015, p. 4. http://www.va.gov/oig/pubs/press-releases/VAOIG-whitepaper-20150618TomahOPPI.pdf (Downloaded July 1, 2015) (Hereinafter "Griffin Letter")

[40] Griffin Letter, p. 3

[41] "Inspector General Act of 1978, As Amended," Public Law 95-452, Section 5(e)(3). https://www.ignet.gov/sites/default/files/files/igactasof1010(1).pdf (Downloaded July 1, 2015) (Hereinafter "Inspector General Act")

[42] Senate Homeland Security and Governmental Affairs Committee, "Chairman Johnson Subpoenas VA Inspector General for Tomah VA Medical Center Documents," April 30, 2015. http://www.hsgac.senate.gov/media/majority-media/-chairman-johnson-subpoenas-va-inspector-general-for-tomah-va-medical-center-documents (Downloaded July 1, 2015)

[43] 114th Congress, "Inspector General Empowerment Act of 2015," S. 579, introduced on February 26, 2015. https://www.congress.gov/bill/114th-congress/senate-bill/579?q=%7B%22search%22%3A%5B%22inspector+general+empowerment+act%22%5D%7D; Amendment to S. 579, introduced by Senator Ron Johnson, Chairman, Homeland Security and Governmental Affairs Committee. http://www.ronjohnson.senate.gov/public/?a=Files.Serve&File_id=ccfbeb9f-2afe-4295-88f6-347a94e0c9f5; and Amendment to S. 579, introduced by Senator Tammy Baldwin. http://www.ronjohnson.senate.gov/public/?a=Files.Serve&File_id=a566bbf1-ef50-4501-92a2-dc1fcd7db96d (All downloaded July 1, 2015)

The OIG fails to appreciate the problems created by long-term vacancies

Throughout its statement, the OIG demonstrates a poor understanding of the concerns raised by POGO, the Committee, and others about the structural problems posed by long-term IG vacancies.

The OIG disputes our point that a "permanent IG who enjoys the protections of the Inspector General Act and related laws can devise a long-term strategy to address the most important and, at times, embarrassing problems that confront her agency."[44] The OIG says this "line of reasoning ignores the fact that acting Inspectors General are career Federal employees entitled to due process under Title 5 of the United States Code."[45] While Title 5 protects the rights of individual employees, the Inspector General Act contains unique provisions to bolster the independence and authority of IG offices headed by presidentially appointed, Senate-confirmed officials. For instance, the Act stipulates that permanent IGs be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability."[46] Those provisions do not apply to an acting IG who is, by nature, designated to serve on a temporary basis, and who has not gone through the Senate confirmation process.

Furthermore, it appears the OIG misunderstood our basic point. A permanent leader is typically in a better position to make long-term decisions about an office's hiring, resources, and strategy. Justice Department IG and CIGIE Chair Michael Horowitz echoed this point at the Committee's hearing, noting that a "sustained absence of permanent leadership is not healthy for any office, particularly one entrusted with the important and challenging mission of an IG."[47]

The OIG also takes exception with our argument that acting IGs "are more likely to favor short-term projects that do not rock the boat, essentially serving as a caretaker until a permanent IG takes over."[48] The OIG says "POGO did not conduct any work to verify" this opinion, nor did we "identify the employees who made these statements."[49]

In fact, POGO has conducted years' worth of research on the independence of IG offices, and has testified to Congress several times on the problems posed by long-term vacancies.[50] Our 2008 report on Inspector General independence was based on a survey sent to all statutory IGs, including the VA IG.[51]

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[44] VA OIG Statement, p. 5
[45] VA OIG Statement, p. 5
[46] Inspector General Act, Section 3(a)
[47] Testimony of Michael E. Horowitz, Inspector General, Department of Justice, before the Senate Homeland Security and Governmental Affairs Committee regarding "Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years," June 3, 2015, p. 2. http://www.hsgac.senate.gov/download/?id=3b6a62b9-94a9-4fd8-9ec4-35b9f3164411 (Downloaded July 1, 2015)
[48] VA OIG Statement, p. 5
[49] VA OIG Statement, p. 5
[50] Testimony of Jake Wiens, Investigator, Project On Government Oversight, before the House Committee on Oversight and Government Reform on "Where Are All the Watchdogs? Addressing Inspector General Vacancies," May 10, 2012. http://www.pogo.org/our-work/testimony/2012/go-ig-20120510-inspector-general-testimony.html
[51] Project On Government Oversight, *Inspectors General: Many Lack Essential Tools for Independence*, February 26, 2008. http://www.pogo.org/our-work/reports/2008/go-ig-20080226.html

Our latest testimony included numerous examples uncovered by POGO and others of employees at IG offices who questioned the independence and aggressiveness of acting leaders. Ten employees at the Department of Homeland Security IG's Office said that former Acting IG Charles Edwards "wanted to be nominated for a permanent IG position and that they had concerns that he threatened the independence of the OIG office," according to a bipartisan report by a HSGAC subcommittee.[52] In another example, eight current and former auditors at the U.S. Agency for International Development IG's Office alleged that, under the leadership of former Acting IG Michael Carroll, the office had removed critical findings from reports issued between 2011 and 2013.[53]

Several years ago, POGO obtained and posted an email that revealed cozy ties between Harold Geisel, then-Deputy IG of the State Department, and State's Under Secretary for Management, Patrick Kennedy.[54] In a letter to President Obama, we noted that "[n]umerous State whistleblowers have come to POGO due to a perception within the Department that employees with knowledge of wrongdoing cannot go to the OIG because they believe it to be captured by management."[55]

In addition, employees at the Department of Defense IG's Office raised concerns that their superiors, including former Acting IG Lynne Halbrooks, were sitting on a finding that former CIA Director and Defense Secretary Leon Panetta disclosed classified information at a 2011 gathering attended by the filmmakers of *Zero Dark Thirty*.[56] Earlier this year, when POGO reported that Halbrooks directed her staff not to interview Panetta himself—at a time when she was auditioning for the role of permanent IG—an employee from the IG's office said it was "very unusual not to interview the subject of a serious allegation."[57]

The VA OIG also asserts that "[i]t is the work of the organization that renders an Office of Inspector General credible, not any single individual."[58] To support its point, the OIG says that a review of its semiannual reports "will show significant arrests, convictions, audit and inspection

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[52] Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Financial and Contracting Oversight, *Investigation into Allegations of Misconduct by the Former Acting and Deputy Inspector General of the Department of Homeland Security*, April 24, 2014, p. 2. http://www.hsgac.senate.gov/download/letter-and-staff-report-from-chairman-mccaskill-and-ranking-member-johnson-to-cigie-regarding-investigation-into-the-former-acting-dhs-ig (Downloaded July 1, 2015)

[53] Scott Higham and Steven Rich, "Whistleblowers say USAID's IG removed critical details from public reports," *The Washington Post*, October 22, 2014. http://www.washingtonpost.com/investigations/whistleblowers-say-usaids-ig-removed-critical-details-from-public-reports/2014/10/22/68fbc1a0-4031-11e4-b03f-de718edeb92f_story.html (Downloaded July 1, 2015)

[54] Email from Harold Geisel, Deputy Inspector General, Department of State, to Patrick F. Kennedy, Under Secretary for Management, Department of State, regarding "Big Problems With Baghdad (With However A Good News PS)," August 22, 2008. http://pogoarchives.org/m/go/ig/state-ig-attachment-3.pdf

[55] Project On Government Oversight, "POGO Questions the Independence of the State Department's Inspector General," November 18, 2010. http://www.pogo.org/our-work/letters/2010/go-ig-20101118.html

[56] Project On Government Oversight, "Unreleased: Probe Finds CIA Honcho Disclosed Top Secret Info to Hollywood," June 4, 2013. http://www.pogo.org/our-work/articles/2013/unreleased-probe-finds-cia-disclosed-secret-info.html

[57] Project On Government Oversight, "Exclusive: New Documents in Zero Dark Thirty Affair Raise Questions of White House-Sanctioned Intelligence Leak and Inspector General Coverup," April 16, 2015. http://www.pogo.org/our-work/articles/2015/new-documents-in-zero-dark-thirty-affair-raise-questions.html

[58] VA OIG Statement, p. 5

reports, recoveries, and other monetary benefits that have not changed since the former Inspector General retired on December 31, 2013."[59] In fact, the OIG claims it is "among the most prolific in the Inspector General community," with "more than 1,900 reports—each of which was shared with the Homeland Security and Governmental Affairs Committee—and more than 70 appearances at congressional hearings in the last 6 years."[60]

In raising concerns about OIG's acting leadership, we did not mean to disparage the work of the entire office. For instance, we recognize that the OIG—under both acting and permanent leadership—has long raised concerns about problems with wait times in the VA's healthcare system. Our testimony clearly states that "IG professional staffers often have no problem carrying on their day-to-day work under acting leadership," and that "[s]ome IG offices conduct the same number of investigations and audits under both acting and permanent officials."[61]

At the same time, we have argued that the *quantity* of investigations and audits is far less important than the *quality* of OIG oversight. As we testified, "[o]ne of our biggest concerns is that the Inspector General Act induces many OIGs to spend a significant amount of time chasing 'small-window' projects in order to boost their offices' metrics in semiannual reports (SARs) to Congress"[62]—the very metrics the VA OIG touts in its statement.

Furthermore, CIGIE guidance states that the "IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties."[63] It has become abundantly clear that the VA OIG and Acting IG Griffin do not appreciate how the office's long-term vacancy has damaged its independence, both in fact and appearance.

The OIG's latest statement should serve as further confirmation that the office is in need of a permanent, Senate-confirmed leader who truly understands the importance of IG independence, and can assure the public, VA employees, and veterans that there is an aggressive watchdog in place who will hold the VA accountable and address the systemic problems that have plagued the Department. POGO welcomes the news that Griffin will soon be retiring,[64] and we echo the call from Committee Members on both sides of the aisle who have urged the President to nominate a new IG for the position.[65]

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[59] VA OIG Statement, p. 5
[60] VA OIG Statement, p. 5
[61] POGO Testimony
[62] POGO Testimony
[63] Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Federal Offices of Inspector General*, August 2012, p. 10. https://www.ignet.gov/sites/default/files/files/Silver%20Book%20Revision%20-%208-20-12r.pdf (Downloaded July 1, 2015)
[64] Project On Government Oversight, "POGO Welcomes Leadership Change at VA Inspector General," June 30, 2015. http://www.pogo.org/blog/2015/06/pogo-welcomes-va-ig-change.html
[65] Senator Tammy Baldwin, "Bipartisan Group of Senators Call on President Obama to Take Action on VA Inspector General," June 25, 2015. http://www.baldwin.senate.gov/press-releases/bipartisan-group-of-senators-call-on-president-obama-to-take-action-on-va-inspector-general (Downloaded July 1, 2015)

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

July 16, 2015

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
344 Dirksen Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

I am writing in response to your letter dated June 18, 2015, in which you forwarded questions for the record following the recent hearing on "Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years" before the Committee on Homeland Security and Governmental Affairs. In response to your request, please find the enclosed responses to questions posed by Senator Heitkamp.

Thank you for your support for my Office and the Council of Inspectors General. If you have further questions, please feel free to contact me, or my Chief of Staff, Jay Lerner, at (202) 514-3435.

Sincerely,

Michael E. Horowitz
Inspector General, Department of Justice
Chair, Council of Inspectors General for
Integrity and Efficiency

Enclosure

cc: The Honorable Thomas Carper
Ranking Member, Committee on Homeland Security and
Governmental Affairs
United States Senate

Post-Hearing Questions for the Record
Submitted to the Honorable Michael Horowitz
From Senator Heidi Heitkamp

"Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years"

June 3, 2015

1. In your testimony, you made note that lengthy nomination proceedings "discourage the most qualified individuals from seeking those positions." I would be inclined to agree with you. What's the average length of time for an inspector general nomination?

   Response: Since the Council of Inspectors General on Integrity and Efficiency (Council of IGs or CIGIE) began tracking this information in January 2009, the average number of days from the date of nomination of an Inspector General to the entrance on duty date is 125 days. As of July 15, 2015, there are four nominations for Inspector General positions that are pending Senate confirmation. One nomination has been pending for 183 days, one nomination has been pending for 126 days, one nomination has been pending for 65 days, and one nomination has been pending for 37 days.

   a. Have you seen examples of highly qualified individuals who were nominated or close to being nominated for an inspector general position and then chose to remove themselves from the process based on how long the nominations process can take?

      Response: Since January 2009, four nominees were withdrawn from consideration for vacant IG positions. I am not aware of the reason for such withdrawals; however, the average number of days from the nomination to withdrawal of these candidates was 306 days.

2. The Government Accountability Office has close to an 80 percent completion rate on the recommendations they make to federal agencies. Does the Council of the Inspectors General for Integrity and Efficiency (CIGIE) collect information on how many recommendations by inspectors general are completed by agencies? If not, would collection of such information be helpful?

   Response: The Council of IGs does not currently collect this information regarding open recommendations in a central repository. However, in accordance with the requirements of the Inspector General Act of 1978, individual Offices of Inspectors General report such information in their semiannual reports to Congress. In addition, OIGs often provide such information with regularity to Congressional committees of jurisdiction pursuant to requests. Given these practices, and CIGIE's limited resources, it is not feasible for CIGIE to regularly maintain such a database of information.

a. Does CIGIE track or collect recommendations that could potentially have large scale national security implications if the recommendations remain open? If not, would collection of such information be helpful and are there mechanisms in place to coordinate the collection?

Response: As mentioned above, the Council of IGs does not track or collect OIGs' unimplemented recommendations. And, as mentioned above, CIGIE's limited resources do not make it feasible to regularly collect and track such information.