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OVERSEEING THE OVERSEERS: COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY @ 10 YEARS

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

OF THE

COMMITTEE ON OVERSIGHT AND REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 18, 2019

Serial No. 116–61

Printed for the use of the Committee on Oversight and Reform

Available on: *http://www.govinfo.gov*
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U.S. GOVERNMENT PUBLISHING OFFICE

37–973 PDF WASHINGTON : 2020

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OVERSEEING THE OVERSEERS: COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY @ 10 YEARS

Wednesday, September 18, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
Washington, DC.

The subcommittee met, pursuant to notice, at 11:01 a.m., in room 2154, Rayburn Office Building, Hon. Gerrald Connolly, (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Norton, Plaskett, Khanna, Raskin, Meadows, Massie, Hice, Grothman, Norman, Steube, and Jordan.

Mr. CONNOLLY. Good morning. Thank you, and welcome to our hearing on "Overseeing the Overseers: The Council of Inspectors General on Integrity and Efficiency."

Among the most important and misunderstood jobs in our Federal Government is that of Federal inspectors general. These unique Federal employees straddle the executive and legislative branches and serve as critical components of effective oversight.

IGs, better known by the public as Federal watchdogs, help Congress uncover waste, fraud, and abuse at Federal agencies and they help agencies to find efficiencies that can improve service to the American public.

IGs have served in this sometimes unpopular role for more than 40 years. In Fiscal Year 2017 alone, the IGs identified $32.7 billion in potential savings across the Federal Government as documented in the nearly 4,000 reports released.

IGs have also recovered $21.9 billion from settlements and civil judgments resulting from nearly 22,000 investigations. For American taxpayers that means that for every dollar we invest to fund these offices we can expect a $22 return.

And IGs do more than save the Federal Government money. They improve agency safety, call balls and strikes on agencies that fail to follow established and fair processes and procedures, and they perform work that has the potential to save lives like the Agency for International Development and its work examining the lessons learned from the agency's Ebola response efforts.

Today's hearing examines the role of the Council of Inspectors General on Integrity and Efficiency, and the role it plays in continuously improving the IG community.

This interagency IG council, known as CIGIE, serves as a hub of oversight professionalization and information sharing across the IG community.

Eleven years ago, Congress established CIGIE by merging a council for the smaller IGs and one for the larger IGs, and CIGIE began operations in 2009, making this CIGIE's 10-year anniversary.

The progress CIGIE has made over the last decade is commendable. CIGIE has tapped talented work forces to create oversight.gov, a one-stop shop for all reports issued by any of the 74 Offices of Inspector General.

This online tool allows the public and Congress to look across agency boundaries and identify top management challenges across the government.

This tool also allows for real-time identification of issues that plague the Federal Government and give us, as Congress, a chance to generate enterprise solutions.

We are here today to find ways to help CIGIE build on these successes and examine ways to further explore efficient community wide solutions that increase the independence of the IG community.

After all, the community whose mission is to find efficiencies across government should challenge itself to find those same opportunities at home. I believe that CIGIE's leadership can advance these goals.

Most importantly, this hearing will probe whether CIGIE is effectively performing its most important function—watching the watchdogs.

The unique nature of the IG position makes oversight of the IGs complicated but essential. Currently, the Integrity Committee, which operates within CIGIE, is charged with investigating allegations of wrongdoing against IG officials.

The Integrity Committee has at times operated without transparency, which is in contrast with the values of the IG community itself, whose greatest strength is sunlight.

I often say that IGs, the overseers of agencies, need to be as pure as driven snow because if they are not all of their work is tainted, and that is critical.

The IG has to be respected by both sides of the aisle, by both bodies here in Congress, and by, more importantly, the public.

I have also got particularly concerns about Offices of Inspectors General who share their IT service with agencies that they oversee.

Congress deliberately created the IGs 40 years ago to be independent from the agencies they oversee. While we trust agencies would never inappropriately access investigative materials created by their IGs, I am concerned that even the appearance of potential impropriety is a risk to IG independence.

I think CIGIE has been working in this area and could play a pivotal role in finding a collaborative cross-community solution to the problem.

I also believe that CIGIE needs to be more transparent. I have had my own personal experience several years ago and was left far from being satisfied.

When two members of the committee filed a complaint, we witnessed the process firsthand and it was a dismissive process. It was not a transparent process and it raised real concerns.

And I know, Mr. Horowitz, you and I met about that at the time and I know that you were not unsympathetic to the concerns raised and I am eager to hear what progress we are making and need to make as we proceed.

In celebrating 10 years of CIGIE, we should also examine CIGIE's role in filling IG vacancies by helping the president, agency heads, and Congress to find qualified candidates for vacant IG positions.

Today, we will examine whether those responsibilities need clarification or reinforcement. Too often administrations do not understand the role of the inspector general and attempt to infuse politics into the selection process for a new IG, or worse, and again, that taints the process and compromises the integrity of the IG.

Finally, this hearing will examine recent transparency measures CIGIE and its Integrity Committee have adopted in its periodic reporting and explore options for codifying these reforms.

We seek to ensure that the watchdog's watchdog remains above reproach by increasing the transparency and access to the Integrity Committee operations.

And with that, I call upon the distinguished ranking member for his opening statement.

Mr. MEADOWS. Thank you, Mr. Chairman, and thank all of you for the work that you do.

When I came to Washington, DC, I wanted to make sure that government was accountable not only to the constituents of mine in North Carolina but to all of America, and it is the hardworking American taxpayers' dollars that we have to make sure that we protect and, certainly, the Offices of the Inspectors General play a critical role in doing just that.

As I came to Congress, I didn't know what an inspector general was and now I have come to learn that it is the frontline defense on making sure that waste, fraud, and abuse are not pervasive within our Federal Government.

Your independence is key and, certainly, our Councils of Inspectors General for Integrity and Efficiency, also known as CIGIE—we work in acronyms around here—are crucial to help providing the IGs with their support for that mission.

And, Mr. Horowitz, let me just say that, you know, your name probably gets invoked more by both sides of the aisle than you would care and it is not normally in your CIGIE role that it does that.

But I appreciate you being here and, certainly, all of you in the role. Some of you, this is not your first rodeo on being here. In fact, I don't think it is your first rodeo for any of you here today.

And no matter how partisan this committee gets—no matter how partisan it gets, I am confident that we can all agree that your role in the roles of the inspectors generals' mission is more important than ever.

We must make sure that the inspector generals have the statutory authorities, the resources necessary to fully carry out their investigations, their audits, their reviews, allegations of misconduct.

And there are often times when at a subcommittee level or the full committee level where I find that the chairman and I are looking at those recommendations that the IGs make and whether an

administration, whether it is under the previous administration—under the Obama Administration or under the Trump administration, whether they are actually acting appropriately.

And so you are critical in that role and so as we look at this on this 10th anniversary of the creation of CIGIE I think the CIGIE's mission transcends individual government agencies.

It is all about making sure that you have the tools. I, for one, as a fiscal conservative hate to spend money on just about anything that does not provide a return.

You don't have to say amen, and so but on this particular thing, making sure that you are well funded and that you have the tools, there is not a dime's worth of difference between the chairman and I in terms of making sure that you are well equipped.

It is crucial that we work together to examine the systems that would actually provide real IG reform and just as recent, I think, as yesterday the chairman and I were working together on a piece of legislation that actually goes a little bit further in making sure that that independence is truly there and that we have objective oversight.

I want to thank all of our witnesses being here today. I want to regress just a little bit. I need to make—mention something that the chairman and I have talked about.

It has been a longstanding committee policy that we allow minority witnesses and, in fact, the House rules provide for those. And, Mr. Chairman, we asked for the inspector general for WMATA, of which we have had a number of hearings, to be here.

And for that particular inspector general, who is not a member of CIGIE but also is something that we need to examine in terms of the tools that they have to do what truly is important because WMATA—we have had a number of hearings where deaths and injuries have been reported where it has been critical to this committee and for us to not be in a position to have that inspector general here is certainly something that we don't agree with.

We would encourage us working in a bipartisan manner as we go forward to, hopefully, highlight that important testimony that needs to come forward.

And I yield back.

Mr. CONNOLLY. I thank my friend and I thank him for how he has approached that issue.

Let me just assure my friend—and, apparently, there was some miscommunication—I would never knowingly deny my friend or anyone on this side of the aisle their right to have a minority witness.

That happened to us and I know how it felt. So I would never knowingly do that. I, honestly—I honestly felt that this hearing was about Federal IGs. The Metro IG is not a Federal official, and this was about CIGIE, and by not being a member—a Federal official neither is he a member of CIGIE.

And I—so I saw this as sort of a good government, fairly narrow in scope kind of hearing. Important, but narrow in scope.

And as my friend knows, we have the Metro IG scheduled as a witness on a hearing dedicated to Metro on October 22 and I felt that, plus the request of the IG of Metro to look into the matter of Mr. Evans and the ethical questions that have been raised by

documents made available both to the minority and the majority that we had—we had met the concerns you raised.

And so as we move forward, I hope you and I can make sure that our lines of communication are what they need to be so that we don't have a misunderstanding.

But I want to assure my friend there was no intent by this chairman or by our side of the aisle to deny the minority its rights and I absolutely am committed to those rights because I remember another former chairman, Mr. Issa, being denied those rights, in effect, and it didn't feel good and I would never inflict it on my friend or members of the minority.

So with that assurance, we will move forward and do better.

The distinguished ranking member of the full committee is with us. Mr. Jordan, did you have anything you wanted to say?

Mr. JORDAN. Thank you, Mr. Chairman.

I just associate myself with the remarks from the ranking member and the remarks from—opening statement from the chairman and I appreciate the chairman's statement relative to the witness issue that was raised.

But mostly I want to thank the witnesses who are here today for the good work they do and for taking the time to appear before us today and I look forward to asking questions a little later.

Thank you, Mr. Chairman.

Mr. CONNOLLY. Thank you, Mr. Jordan.

And now let me introduce our three witnesses. We are joined by Michael Horowitz, who is the inspector general of the Department of Justice.

He has appeared before this committee in the past and is a great example, I think, of why integrity and transparency are so important because he has had some very difficult assignments and has been well received by both sides of the aisle despite the politically charged nature of some of those assignments, and that is because you were trusted on both sides and I think that trust is just critical for the effectiveness of your job.

And he also serves as the chairman of the Council of Inspectors General on Integrity and Efficiency, relevant to today's topic.

Kathy Buller is the inspector general of the Peace Corps and we are delighted to have you. She is also the executive chair of the Council of CIGIE Legislative Committee. Welcome.

And Scott Dahl is the inspector general of the Department of Labor. He is chairman of the CIGIE Integrity Committee, an important committee for CIGIE.

If all three of you would rise and raise your right hands. It is our tradition to swear in our witnesses.

[Witnesses were sworn.]

Mr. CONNOLLY. Thank you. Let the record show the witnesses have answered in the affirmative, and as we begin, without objection I want to assure you that your full written statement will be made part of the full record and we would ask you to summarize your testimony in a five-minute timeframe.

And we will begin with you, Mr. Horowitz. Welcome.

STATEMENT OF MICHAEL HOROWITZ, INSPECTOR GENERAL, DEPARTMENT OF JUSTICE, ON BEHALF OF CHAIRMAN, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Mr. HOROWITZ. Thank you.

Thank you, Chairman Connolly, Ranking Member Meadows, members of the subcommittee. Appreciate the invitation to testify today.

Inspectors general play a critical role in keeping the public informed about how their government operates and in ensuring that taxpayer money is used effectively and efficiently.

The chair recognized the tens of millions of dollars—tens of billions of dollars in potential savings that IGs identify each year and the strong return on investment we provide to the taxpayers.

As you noted, we call balls and strikes and the facts as they are, whether popular or unpopular. I can tell you it is mostly unpopular.

But as I like to say as a graduate of Brandeis University, quoting former Justice Brandeis, "Sunlight is the best disinfectant," and we find that, as inspectors general.

The Council of Inspectors General, or CIGIE, which I chair and which Congress created 10 years ago, has played an important role in assisting IGs in these oversight efforts.

CIGIE has fulfilled its mission by vigorously advocating for IG independence, which is a perpetual challenge for us in the IG community, developing top tier training academies, creating quality standards for our work, performing regular peer reviews, conducing cross-cutting reviews on issues that affect multiple Federal agencies, and implementing a system of effective oversight of alleged misconduct within the IG community since we assumed responsibility for it from the FBI in 2017.

I know we have talked before, as you noted, Mr. Chairman, about this issue and we are certainly committed to continuing to work with you and the ranking member on the legislation you have introduced to figure and think about how we can further transparency efforts.

In addition, as you noted, in October 2017, we launched oversight.gov where the public can go to see all of our work in one place. They can also follow us and follow oversight.gov on Twitter at #oversight.gov.

By signing up they will learn when new reports are issued across the IG community. We are proud that over 20,000 followers now on that—on oversight.gov and CIGIE, which is more than all but three of the 70 Federal IGs, in just two years. So it has proven to be very popular, way to get our information out to the public.

And thanks to the funding provided by Congress we have several initiatives underway to try and enhance oversight.gov including an open recommendations data base and a website service for IGs to try and help them gain greater independence from their organizations.

We also, earlier this summer, launched a first-ever whistleblower website as part of oversight.gov in furtherance of that effort.

We have done all of this at CIGIE with all of 23 employees, including detailees. That is the total work force at CIGIE to deal

with training, to deal with all of the other related work that we are statutorily told to do including Integrity Committee operations.

We have done this, but we need a better funding mechanism because right now the way CIGIE is funded is through the voluntary contributions of 73 member organizations, which means we don't know what money and funding we are getting until all 73 of them go through the congressional appropriations process for those that are appropriate through Congress, which, as you know, is a tedious laborious process that isn't necessarily resolved by October 1 of each fiscal year.

That is a challenge for us and something we look forward to talking about with this committee and thinking about how we can improve our future operations in that regard.

We also have concerns about the impact on IG oversight when shutdowns occur. During shutdowns, OIG auditors are generally furloughed.

But what happens with already ordered grants and contracts, that work continues and so you have situations where tens or hundreds of billions of dollars in Federal funding is out there, continuing to be used but with no OIG oversight during a shutdown period.

We also have IG vacancy issues. There are currently 12 of the 73 IG positions vacant. As you noted, those need to be filled and we need those nominations that need to occur to happen promptly.

We have several legislative priorities that my colleague, IG Buller, will talk about, one of them being testimonial subpoena authority.

A challenge we have regularly faced is getting witnesses who are no longer at the Justice Department to speak to us including in whistleblower retaliation and sexual misconduct cases.

Finally, I just want to thank this committee for passing legislation that would allow my office to investigate alleged misconduct by department attorneys when they act as lawyers in that capacity.

Earlier this year, thanks to this committee's efforts, the House passed the Inspector General Access Act, co-sponsored by Chairman Cummings, Congressman Richmond, Congressman Hice, and Congressman Lynch, and hopefully, that will be given swift consideration in the Senate.

That—I thank you again for your support for our work and look forward to answering your questions.

Mr. CONNOLLY. Thank you, Mr. Horowitz.

Ms. Buller?

STATEMENT OF KATHY BULLER, INSPECTOR GENERAL, PEACE CORPS, ON BEHALF OF EXECUTIVE DIRECTOR, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY LEGISLATION COMMITTEE

Ms. BULLER. Chairman Connolly, Ranking Member Meadows, and distinguished members of the subcommittee, thank you for inviting me to appear before you today to discuss the work that CIGIE and inspectors general do to promote integrity and efficiency.

As both the inspector general for the Peace Corps and the chair of the CIGIE legislation committee, my testimony underscores how

our community has provided effective oversight of the Federal Government not only through our work as individual IGs but also through our shared efforts at CIGIE.

For more than 40 years, IGs have held Federal agencies accountable and helped Congress make informed decisions. In my 33 years in the IG community, we have transformed from a loose grouping of IGs into an oversight community that coordinates work, shares resources and guidance, and collectively provides better oversight.

I was appointed as IG just months before CIGIE was established. As a new IG, I benefited from having CIGIE as a resource. In turn, as Legislation Committee chair, I am proud to further CIGIE's capacity to support the IG community.

Since 2009, the Legislation Committee has typified one of CIGIE's roles in the community. Each IG has its own relationship with Congress.

However, on community wide issues, we are more effective when we speak with one voice and better achieve one of CIGIE's core missions to address integrity, economy, and effectiveness issues that transcend individual government agencies.

For example, the IG community came together to help Congress pass the Inspector General Empowerment Act of 2016. The Act restored inspector general access to all agency records, addressing the most significant threat IGs faced to our ability to provide independent oversight.

The Legislation Committee continues to advise Congress on future reforms that would benefit government oversight or address common challenges facing IGs.

Each Congress we issue legislative priorities, our top reform proposals to strengthen government oversight or resolve challenges that IGs face under current law.

While I have outlined our legislative priorities in my written remarks, the three priorities I would like to highlight are testimonial subpoena authority, reforming the Program Fraud Civil Remedies Act, or PFCRA, and protecting IG security vulnerability information.

First, the inability to compel the testimony of critical witnesses can significantly hamper oversight. For example, if a Federal employee under investigation for misconduct or whistleblower retaliation resigns, most IGs would lack any authority to require the now former Federal employee to cooperate with the investigation.

Testimonial subpoena authority would help IGs answer critical questions that would otherwise go unanswered and hold bad actors accountable.

The House unanimously supported testimonial subpoena authority for IGs during the last two Congresses and the initiative has received bipartisan support in the Senate.

We look forward to further engaging on this issue and hope for continued bipartisan support.

Second, PFCRA's well-studied flaws have prevented agencies from holding small-dollar fraudsters accountable. Known as the Many False Claims Act, PFCRA has been underused for more than 30 years.

Its cumbersome ambiguous requirements place unnecessary hurdles on agencies trying to recover from small-dollar fraud or false claims.

For example, the dollar threshold set in 1986 should be increased and agencies should be allowed to retain the defrauded funds they lost.

Several straightforward changes to PFCRA would make it the viable tool it was intended to be.

Third, we need to strengthen protection over IT vulnerability information under FOIA. Agencies and IGs study Federal IT systems and produce detailed reports identifying exploitable weaknesses.

Malicious entities could use that information to infiltrate and harm government IT systems. While FOIA protects classified and law enforcement information, no single exemption covers all IT security vulnerability information.

A focused narrowly tailored exemption would protect information that hackers could use to harm Federal IT systems.

Finally, I would like to thank the members and staff of this subcommittee and the full committee for supporting the IG community.

In particular, two of our priorities were recently addressed in legislation that would protect employees of subgrantees from whistleblower retaliation and to ensure IG independence by requiring congressional notification when an IG is placed on non-duty status.

We look forward to continuing to be an important resource to you as you pursue your oversight and legislative work. I would be happy to answer any questions.

Mr. CONNOLLY. Thank you very much.

Mr. Dahl?

STATEMENT OF SCOTT DAHL, INSPECTOR GENERAL, DEPARTMENT OF LABOR, ON BEHALF OF CHAIRMAN, COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Mr. DAHL. Quis custodiet ipsos custodies, a Latin phrase that, roughly, translates to "Who will watch the watchers," or as the chairman framed it, "Who will watch the watchdogs."

This timeless question was answered for the inspectors general as government watchdogs decades ago with the creation of the Integrity Committee, which investigates IGs for wrongdoing.

I want to thank the subcommittee for calling this hearing and, in particular, the chairman for his abiding interest in protecting this central value of integrity in our community.

Indeed, integrity is in CIGIE's name. The Integrity Committee under CIGIE has worked to improve transparency in our processes and accountability in the IG community.

But we recognize that more needs to be done. We know that we must vigilantly attend to these important issues to maintain the credibility with our stakeholders, as the chairman noted.

The purpose of the Integrity Committee is to serve as an independent and objective body to evaluate and investigate allegations of wrongdoing by IGs, designated senior OIG officials, and top officials of the Office of Special Council.

The Empowerment Act of 2016 transferred IC's leadership and program responsibilities from the FBI to CIGIE. As the elected committee chair, I have had the responsibility with the committee of managing this transition, including, for example, enacting new procedures directed at improving accountability and timeliness and transparency.

We have worked to increase transparency by scheduling meetings with Members of Congress and their staff to go over our work and providing greater detail in our 30-day status letters and annual reports to Congress.

We have also improved transparency with other stakeholders, including the public, through a more interactive and informative website that makes it easier for the public to submit complaints about IGs.

And we have also conducted multiple training sessions with IGs on our—on our policies and procedures. But even with these improvements, the committee acknowledges that additional progress needs to be made on transparency.

At the same time, we must assiduously adhere to our statutory obligation to protect the identity of confidential complainants, witnesses, and whistleblowers.

We and Congress rely on these individuals for vital information and we do not want to discourage them from bringing their allegations forward.

Beyond the Integrity Committee, individual IGs—we have the responsibility of promoting accountability and transparency in our larger departments and I want to briefly highlight an effort that we have recently made in my office to further accountability at the Department of Labor.

In July, we launched the OIG recommendation dashboard on our website to highlight the recommendations that have not been implemented by the department, some dating back several years.

We followed the lead of the Department of Transportation OIG and others in developing this dashboard. DOL leadership has embraced this new tool and the dashboard has substantially improved accountability.

Indeed, since alerting DOL leadership about the dashboard, DOL agencies have reduced the number of unimplemented recommendations by 44 percent.

Mr. Chairman, stakeholders look to the Integrity Committee to provide fair, timely, and impartial disposition of the allegations against senior OIG officials.

We will continue to work with this subcommittee and other committees in Congress to strengthen the integrity of the IG community and to improve our processes to be more timely and transparent.

I want to publicly thank my fellow committee members for their dedicated service and for the substantial time they devote to this—these important work, and I thank you for the opportunity to testify.

Mr. CONNOLLY. Thank you, Mr. Dahl, and we thank you all for your testimony.

I am going to call on the gentleman from California, Mr. Khanna. I know you have got another commitment so why don't you go first with your five-minute question?

Mr. KHANNA. Thank you, Mr. Chairman. Thank you for convening this hearing.

Mr. Horowitz, as you know, the Whistleblower Protection Act does not cover whistleblowers in the intelligence community.

There is a separate law, the Intelligence Community Whistleblower Protection Act, that allows whistleblowers to disclose information to the inspector general for the intelligence community. Is that correct?

Mr. HOROWITZ. Yes.

Mr. KHANNA. And this law is critical because it provides a protected channel for whistleblowers in the intelligence community to expose unlawful behavior, waste, fraud, or abuse even if it involves classified information.

Is that correct?

Mr. HOROWITZ. That is correct.

Mr. KHANNA. And in the past, administrations have always complied with sending this information of the complaint over to Congress. Some of them have not made a determination to send over classified information.

But is it correct that in the past every administration has, within seven days, transferred the complaint itself to Congress?

Mr. HOROWITZ. I couldn't speak to every single instance. We have had one and in that instance it went forward per the statutory requirements.

Mr. KHANNA. Is it true that you could forward the complaint to Congress without disclosing classified information per the statute?

Mr. HOROWITZ. Depending on the facts you could. It depends on the situation.

Mr. KHANNA. You could redact anything—you certainly could redact anything that was classified and put the——

Mr. HOROWITZ. In theory, yes.

Mr. KHANNA [continuing]. complaint forward. And is it your understanding that the law requires the Director of National Intelligence to forward this information to Congress within seven days?

Mr. HOROWITZ. It is my understanding that the leader that gets the report—in my case, it would be the attorney general is required to send it. In the DNI circumstance, it would be the DNI.

Mr. KHANNA. And do you understand the word "shall" in the statute going back to Marbury v. Madison as requiring—meaning, "shall" means "must?" Is that correct?

Mr. HOROWITZ. As a general rule, when I look at a statute if I see "shall" I understand that to be "must."

Mr. KHANNA. Why is it important that inspector generals have the ability to make independent decisions about whistleblower complaints and have that authority?

Mr. HOROWITZ. Well, there are a slew of reasons. But that is one of the reasons why we have created this website for whistleblowers.

They provide us with critical information and in the intelligence world they need to go through proper channels because of the classified information and the statute provides that proper channel.

Mr. KHANNA. And why is it important in the intelligence community whistleblowers that they have a protected process to disclose information to both the inspector general and Congress?

Mr. HOROWITZ. Precisely because it is classified information and my understanding of this statute is it was created in response to other disclosures that didn't occur in the orderly way and this Congress passed the law to make sure whistleblowers had a way that they could legally send information and provide information to Congress about matters they thought were improper.

Mr. KHANNA. So if there is a whistleblower who has sent something to the inspector general and the inspector general has sent it to the Director of National Intelligence saying that it should be transmitted to Congress, do you see any reason for the Director of National Intelligence not to transmit the complaint itself to the Congress?

Mr. HOROWITZ. I will speak to it in my understanding, since I have not dealt directly with the DNI—the Director of National Intelligence.

We would expect the attorney general to follow through on a similar matter that we would provide to him in this case if it had been him and to follow through on the statute.

Mr. KHANNA. What would you say if the attorney general didn't? Just said, I don't believe we need to follow the law and I am not going to transmit this to Congress? What would you tell the attorney general?

Mr. HOROWITZ. In that situation, I would probably figure out a way pursuant to the Inspector General Act following the law to notify Congress about my concerns of a failure to follow the law.

Mr. KHANNA. What do you think should be the consequence for an executive branch official who just fails to follow the law? Just says, I don't need to follow the law?

Mr. HOROWITZ. Well, I spent several years up here on access issues that I was having, advocating for a change in the law and for some mechanism to move forward and we succeeded ultimately in that.

Obviously, what we are supposed to do as IGs is follow the law and get you and our leaderships the information the law requires us to get them and then it should be the system that works through and follows the law from there forward.

Mr. KHANNA. Thank you. Thank you, Mr. Chairman.

Mr. CONNOLLY. I thank the gentleman.

The chair now recognizes the gentleman from Kentucky, Mr. Massie, for five minutes.

Mr. MASSIE. Thank you, Mr. Chairman.

Thank you all for the work you do. Mr. Horowitz, you said you call balls and strikes whether it is popular or unpopular, and more than not often it is unpopular.

I might say that should be a measurement of how well that inspector general is doing is how unpopular the information is inside of Washington, DC.

But the information you provide is crucial outside of Washington, DC. and it is appreciated there.

It is the tenth year of the Council of the Inspectors General but it is also the eighteenth year of the war in Afghanistan. So I want

to highlight some of the work that one of the inspectors general has done overseeing the spending there for Afghan reconstruction.

A serious metric of the work of an inspector general might be the amount of money that you save the taxpayer and there is one program in Afghanistan where we provided UH–60's—these are Blackhawk helicopters—and it was a boondoggle, and we have already saved $200 million over there because the inspector general highlighted that program.

Another thing I learned from that inspector general that we have not been able to fix yet is we have spent $8 billion eradicating drugs in Afghanistan—$8 billion on that program alone—and they have doubled poppy production.

These are things that I wouldn't know about. We wouldn't have been able to save money here in Congress if it weren't for the inspector general there.

So I want to say whether you think we should still be in Afghanistan or not be in Afghanistan, hopefully, we can all agree here today that the last person to leave Afghanistan shouldn't be a soldier.

It should be the inspector general if we are spending billions of dollars over there. I mean, until we turn the lights off over there, we should—do you agree, Mr. Horowitz?

Mr. HOROWITZ. I am not sure that the IG for Afghan reconstruction would appreciate me saying he should be the last person left in Afghanistan.

[Laughter.]

Mr. MASSIE. Okay. An IG. Maybe not Mr. Sopko.

Mr. HOROWITZ. But to my point on shutdowns, we should be integrated into spending to make sure—because I agree with you completely—that that spending is done wisely. The taxpayers expect that.

Mr. MASSIE. And one of the things—whether this was in Congress's wisdom or they just didn't think about this is they gave that IG a sort of whole of government, you know, mandate where any branch of the government that spends money he can investigate if it is being spent on—money there in Afghanistan.

I think that is what has led to some of these good results and I hope we do more of that not by accident but by intention.

But there is a troubling trend that I think we are running up against in Afghanistan and that is—you know, this meeting is about transparency.

We are running into a problem with transparency for Afghanistan. They no longer report for the Afghan soldiers the desertion rates, the amount of territory controlled, the population that is under control, the Taliban, the casualties of Afghan soldiers, the capabilities of the Afghan military.

Some of that is just not collected and some of it is now classified. So even the IG can't provide it or get it and I think that is a troubling trend that I hope your council will look into for us over there.

So switching gears a little bit, I have got a more specific question about the DOJ and this is—this is timely, I think, because Congress is discussing background checks.

The last year that there was a report of DOJ prosecutions for people who failed a background check was 2010, and I think this

is information that we need to know and I will tell you why I think we need to know it.

In 2010, the last year we had this information from the DOJ, over 72,000 applications were denied. Yet, there were only 62 charges brought.

Out of—over 72,000 denials there were only 62 charges brought by Federal prosecutors on those denials, and that would be falsified information when buying a firearm, possession of firearm by a convicted felon. By the way, there were only 11 of those out of 72,000.

So I would like to see this report done again. It was done for five years from 2006 to 2010. I think one of the reasons they quit doing the report is it actually shows that a lot of these denials were false denials and/or we are not prosecuting the criminals.

So I would love to see that report done again. I know you can't guarantee that here but do you have any thoughts on that?

Mr. HOROWITZ. Let me go back. I believe we have touched on this issue in one of our reports on some more recent data. So let me check and we can get back in touch with you on what that is.

We have identified in our reports some of the concerns on the NICS system as it is managed by the FBI in both regards, both false positives and false negatives.

Mr. MASSIE. Any employer who had this many false positives when doing a background check on employees would be sued out of existence and so that is one of the reasons I think we need to look into the background check system.

And I would appreciate maybe the IGs could do that. But appreciate your work and I yield. And do you have any comments and——

Mr. HOROWITZ. No. I was just going to say let me followup and see what the work is that we have done on that and get that to you.

Mr. MASSIE. Thank you all for showing up today and for the work you do.

Mr. CONNOLLY. I thank the gentleman and I associate myself with his remarks. I think—especially what has happened in Afghanistan and Iraq, and that was a great example where special inspectors general have done a great job in trying to highlight an enormous amount of money with very little payoff, and in some cases negative payoff, apparently.

The chair now recognizes the gentlelady—Mr. Jordan, did you have an intervention? No. Okay.

The gentlelady from the District of Columbia, Ms. Norton? Five minutes.

Ms. NORTON. Thank you very much, Chairman Connolly.

I want to thank you for this hearing. It may not seem the most scintillating of hearings. It may be among our most important because of the importance of the IG and CIGIE itself.

I want to congratulate Mr.—Chairman Horowitz on the whistleblower website. I think that will, perhaps more than anything else, educate the public on what is possible.

I am interested in what appears to be a flaw or a vacuum in oversight. But let me begin, Chairman Horowitz, Chairman Buller, Chairman Dahl, by thanking you for this important work that is so important to all the work we do.

Everybody knows that if there is a IG report, particularly considering the polarization in Congress, that is where people look to to see what the real facts and real circumstances are.

So your work becomes more and more important the more the body of the Congress itself is and, of course, Congress relies very heavily on you—both sides. No matter where we are from, we all bow to IG when it comes to reports you submit.

Now, the gap that we may have discovered is in assuring accountability of an IG who may be accused of wrongdoing. Under current law, the special counsel may refer a whistleblower to an agency head to investigate it.

That is the way it is always done, and if there is substantial likelihood that there may be a violation of law or waste, fraud, or abuse, safety—public safety or health endangered, the agency must then conduct an investigation of the disclosure and then submit that report—I hate to sound bureaucratic here but this is how it works—to the—to the special counsel who then investigates it to see if the findings are reasonable. That is the process.

Now, given that process, let me cite to you a real-life example. The special counsel attempted to refer to CIGIE a disclosure of wrongdoing by the Department of Defense IG a few years ago—a couple of years ago, actually—and withholding information from the secretary of defense—sorry, that the secretary of defense had leaked classified information with respect to something called the "Zero Dark Thirty" movie.

The special counsel referred the disclosure to CIGIE to avoid a potential conflict of interest in having the DOD IG investigate the matter.

As I understand it, CIGIE refused to investigate it, claiming that the Inspector General Empowerment Act of 2016 stripped the Office of Special Counsel of any authority over CIGIE itself.

Now, it looks like there is nobody to investigate or that some kind of loophole or vacuum is created if that is the case. So let me ask you, all of you, perhaps.

If the special counsel—if the special counsel has the authority to refer disclosures to agencies and require them to investigate, is there any reason why we cannot impose the same requirement on IGs and, if not, who is to watch the government watchdogs if any of them is accused of wrongdoing?

Mr. HOROWITZ. So let me take that first and then Mr. Dahl can jump in.

Mr. CONNOLLY. You may answer the question but the gentlelady's time is about to expire.

Mr. HOROWITZ. The issue becomes a challenging one because the Office of Special Counsel, I just want to clarify for those watching, it is not the special counsel that people may generally be familiar with Mr. Mueller.

We are talking right now about the Office of Special Counsel that exists to deal with whistleblower complaints. Their statute currently—as currently written requires reports, as you mention, to go to agency heads and even if it involves an IG or an employee of the IG we have worked through this issue with the current head of the Office of Special Counsel to try and arrange a process by which allegations against IGs are investigated by either the Integ-

rity Committee in appropriate cases or inspectors general as the IG Act provides.

So we are, in fact, trying to deal with that situation and understand the concern. There can't be a gap in who investigates alleged wrongdoing, whether it is——

Ms. NORTON. Could I just ask, do you need more legislation? Would legislation help in this regard?

Mr. HOROWITZ. It might. But so far, we have been able to work through these issues.

Mr. Dahl, myself, have worked with the special counsel, Mr. Kerner, and our staffs to put in place or to try and reach an MOU so that we can work through the statutory I will call it potential tension between the whistleblower statute and the IG Act.

We think we can work it out. We think there is a process. We think, frankly, the IG Empowerment Act transferring jurisdiction to CIGIE has helped that process so that we can manage it as opposed to working through the FBI on that issue.

And then Mr. Dahl?

Mr. CONNOLLY. So the gentlelady's time has expired. But I assure you there will be legislation in your future. Mr. Meadows and I introduced a bill yesterday and our hope is it will be marked up in an expeditious fashion, Ms. Norton, and we will double check to make sure the issue you have raised has been addressed.

The gentleman from Georgia, Mr. Hice, is recognized for his five minutes.

Mr. HICE. Thank you, Mr. Chairman. Thank you all for being here.

Mr. Horowitz, I know there is probably limited conversation you can have on this regarding the FISA report, and I am not going to try to go too deeply but just some questions for understanding.

I know this is something the president wants as much as possible to be known to the public and I think the American people deserve to know how all this debacle began.

But I also know that a lot of it was classified. Can you—can you just generally say percentage wise about how much of that report is classified?

Mr. HOROWITZ. I am not going to get into percentages of reports at this point. I will just say as we wrote to our oversight committees, including this committee and Ranking Member Jordan, we have provided a draft of our report for classification marking purposes.

So what the percentage is precisely will depend on what the attorney general and the department and the FBI decide after they evaluate it and that is the process it is in right now.

Mr. HICE. Okay. Are you working with the Department of Justice to have some of that declassified?

Mr. HOROWITZ. Right now what we have done is meet with the folks at the Justice Department and the FBI to tell them what we have done so far. They have the draft of the factual information that we have developed.

We have talked through the classification issues with them. But it is ultimately up to them to decide what is going to be marked and how it is going to be marked or how it is not going to be marked.

That is normal process. That is how it would occur. We may weigh in once we see it back as to what our views are——

Mr. HICE. Okay.

Mr. HOROWITZ [continuing]. as to any disagreements that might——

Mr. HICE. So there could be a point that you would weigh in and——

Mr. HOROWITZ. That is correct.

Mr. HICE. Okay.

Mr. HOROWITZ. That is the usual process. These are—these rarely go in a one straight line process.

Mr. HICE. Okay. Gotcha. Regarding attorney John Durham, are you all in any discussions about what he is finding and what you have found?

Mr. HOROWITZ. I am going to defer to him and the attorney general on that issue as to what they are doing. I have had communications with him but it is really a very separate entity that is——

Mr. HICE. Okay.

Mr. HOROWITZ. He is working under the direction of the attorney general. I am, obviously, independent.

Mr. HICE. Do you know if he has found any of the same concerns that you were concerned about?

Mr. HOROWITZ. You would have to ask him on what he has found. I am not in a position to speak for him.

Mr. HICE. Okay. Well, let us go over to the Comey report that did come out, if we can. You had mentioned that—I mean, obviously, he failed in some of his responsibilities to protect some sensitive information and you referred to his actions at one point as a dangerous example.

Can you elaborate a little bit of what you meant by that term that he set a dangerous example?

Mr. HOROWITZ. We were particularly focused on the providing of information in the memo that was really a recording of his meeting—investigative meeting to a journalist to put in the newspaper.

That was not classified information. That particular memo didn't have classified information. Our concern there and why we referred to it that way is we have instances in the—my office.

I have had those examples of Federal prosecutors in corruption cases previously where the law enforcement agents you are working with or who have worked on a matter may think a decision was not made for the right reasons and our concern was empowering FBI directors or, frankly, any FBI employee or other law enforcement official with the authority to decide that they are not going to follow established norms and procedures because, in their view, they have made a judgment that the individuals they are dealing with can't be trusted.

Mr. HICE. So the fact that he was in the highest position of the FBI would add to your level of concern?

Mr. HOROWITZ. Correct.

Mr. HICE. Now, you actually referred criminal prosecution to the Department of Justice for Comey, correct?

Mr. HOROWITZ. We are required by the IG Act to send information that we have identified that could plausibly be criminal to the department and we——

Mr. HICE. That is pretty monumental. Do you know of any FBI director who in the past has ever had a criminal prosecution referral?

Mr. HOROWITZ. I wouldn't know as I sit here today.

Mr. HICE. Or any other head of any Federal agency?

Mr. HOROWITZ. I do, actually.

Mr. HICE. Okay.

Mr. HOROWITZ. So I—but I will keep that——

Mr. HICE. All right. And the same type referral applied to McCabe as well, right?

Mr. HOROWITZ. Same issue. Right. The IG Act requires me to expeditiously report to the attorney general when I see evidence that could be considered criminal and we follow the law.

Mr. HICE. Okay. Thank you very much.

Mr. CONNOLLY. I thank the gentleman.

The gentleman from Maryland, Mr. Raskin, is recognized for his five minutes.

Mr. RASKIN. Mr. Chairman, thank you.

Inspector General Horowitz, the committee is investigating efforts by the Department of Education to interfere with the integrity of its inspector general office and its operations.

On December 17 last year, Education Committee Chairman Bobby Scott requested that the IG examine education—at the Department of Education examine the department's decision to restore recognition of the accreditor for several failed for-profit universities and the Education Department was apparently unhappy with the IG's subsequent decision to conduct this investigation.

The leadership was apparently so perturbed and threatened by the IG investigation that they tried to shut it down.

On January 3 of 2019, Deputy Secretary of Education Mitchell Zais wrote a letter to the Acting Inspector General, Sandra Bruce, asking her to drop the investigation and if she refused, demanding that she change its scope by having it take a deeper historical dive into the Obama Administration.

When Ms. Bruce responded to the department's request, naturally, by asserting her institutional independence as the inspector general, the deputy secretary ordered her to step down from the position.

The department apparently planned to replace her as independent IG with an agency insider, the deputy general counsel currently at the department.

Were these actions by the Department of Education appropriate?

Mr. HOROWITZ. No, we were—I was very concerned about it when I heard about it from Acting IG Bruce and I worked with her to address the issue and which successfully occurred.

Mr. RASKIN. Have we seen similar kinds of assaults on the independence and integrity of inspector generals in other departments?

Mr. HOROWITZ. Frankly, over time there have been. As I mention in my opening, it is a perpetual challenge for us. Agencies always—aren't always enamored with our oversight efforts.

Mr. RASKIN. Was there anything wrong with or is there anything wrong with committees in Congress or Members of Congress writing to inspectors generals urging them to investigate this or that alleged misconduct?

Mr. HOROWITZ. Not at all. I get those pretty frequently.

Mr. RASKIN. After this committee urged the White House to reverse course in firing Ms. Bruce, the department reinstated her as the acting inspector general.

But the department is refusing to make individuals available for interviews about how and why the decision was made to fire her in the first place.

Ms. Bruce has been serving as the acting IG for over nine months. President Trump has still not appointed an individual to fill this position on a permanent basis.

Mr. Horowitz, when you testified before this committee last November there were 14 vacant IG positions and 12 of those were Presidentially appointed Senate-confirmed positions.

As you stated in your testimony, there are still 12 vacancies. Why is this a problem for the government?

Mr. HOROWITZ. Frankly, and again, this has been a perpetual challenge for us, IGs are not a priority—don't seem to be a priority, I should say—when considering vacancies in the government and that is true, frankly, when nominations—in terms of nominating people and also, frankly, getting them confirmed promptly.

Mr. RASKIN. And what is the impact of all of these vacancies on public policy?

Mr. HOROWITZ. It is a significant problem. Acting IGs like Acting IG Bruce do an outstanding job. There was a 15-month vacancy at the DOJ between Mr. Fine leaving and me getting the position, and the acting IG, who was the deputy, did a fine job.

But you don't have the ability to push back when that independence issue comes up in quite the same way. I am Senate confirmed. Ms. Bruce's predecessor was Senate confirmed.

There is a certain authority that comes with that when you come before Congress or when you deal with Congress and when you deal with your leadership because they know you are there.

They know they can't remove you. It has to be and it can only be the president. The attorney general has no authority of me. The secretary of education had no authority over Ms. Bruce's predecessor. That is a big difference.

Mr. RASKIN. The president hasn't even nominated a candidate for nine of these positions including the Departments of Education, Defense, Treasury, HHS, and the EPA.

The Department of Defense with a budget of more than $700 billion has not had a permanent IG since January 2016. What can be done to put this on the radar?

Mr. HOROWITZ. Well, one of the things that was done is last week on the Senate side the Homeland Security Committee there, which handles IG nominations, wrote a bipartisan letter of the entire committee—I think it was the entire committee—it was a bipartisan letter to the president saying, you need to nominate people and we in the Senate need to do a better job moving those nominations.

Both of those problems have existed and they have been existing, frankly, for many years. It has been something in four years as chair of this committee—as chair of CIGIE. I have talked about it with the president personally in the prior administration, in this

administration. We just got an Interior IG confirmed finally after almost eight years of vacancies.

Mr. RASKIN. Well, I agree with your sense of urgency about the importance of this issue and I think we stand ready in this committee to help however——

Mr. CONNOLLY. I thank the gentleman, and I certainly agree we need to move these confirmations in the Senate. In fact, maybe if we spent more time confirming IGs instead of Federal judges we would all be better off.

[Laughter.]

Mr. MEADOWS. If the gentleman would——

Mr. CONNOLLY. Of course.

Mr. MEADOWS. Perhaps, since it is independent, maybe we work on a bipartisan piece of legislation to make it where it is not Senate confirmed. I mean, actually, those appointments—if we could truly make it where it is not Senate confirmed move it through where you have the IG community. Let us at least see if we can work on it.

Mr. CONNOLLY. Fair enough.

The gentleman from Florida, Mr. Steube, is recognized for his five minutes.

Mr. STEUBE. Thank you, Mr. Chairman.

And, Mr. Horowitz, I am going to kind of pick up where Mr. Hice left off. He was asking you about the fact that Comey had been referred criminally by your report, and that is correct?

Mr. HOROWITZ. That is correct.

Mr. STEUBE. You also referred Andy McCabe for Federal prosecution. Is that correct?

Mr. HOROWITZ. I was—we made the same referral pursuant to the IG Act as with Mr. Comey as we do whenever that provision applies.

Mr. STEUBE. And that is a criminal referral?

Mr. HOROWITZ. That is as the IG Act requires us to do, yes.

Mr. STEUBE. And so was McCabe the acting director when you referred him?

Mr. HOROWITZ. I am not going to get into the precise timing, actually, of it. But the answer would be no—actually, I can say that he—by the time the issue came to be was after August 1, which is I think the August 1 of 2017, which is I think the date of Director Wray's installation.

Mr. STEUBE. Okay. And why did you refer him for criminal prosecution—McCabe? Why was he referred?

Mr. HOROWITZ. We made a—as the public report—I will still to what is public. The public report—we found a lack of candor, which means we didn't find that he provided us truthful information and when we made a determination under Section 4 of the IG Act that we thought that had occurred we were required by the law to report it expeditiously to the attorney general.

Mr. STEUBE. So, in other words, he lied. I mean, you say lack of candor.

Mr. HOROWITZ. We make a lack of candor finding. I am going to defer to the prosecutors. In a report last year we criticized the FBI director for usurping the authority of the attorney general to make prosecutorial decisions. I am not going to do that today.

Mr. STEUBE. Okay. And you also found that McCabe failed to safeguard FBI information. Is that correct?

Mr. HOROWITZ. Well, what we found was, just to be clear, that he had provided information to or authorized a employee to provide information to a reporter that was FBI information.

Mr. STEUBE. So we have two heads of the FBI—one director, one acting director—we think close around to the timeline both referred for criminal prosecution. Is that—I am saying that correctly?

Mr. HOROWITZ. Pursuant to the IG Act, we made referrals in both instances.

Mr. STEUBE. So I want to point out how profound that is for those sitting at home and for the American people that we have two back to back heads of the FBI both referred for criminal prosecution.

Both of these heads of the FBI failed to safeguard sensitive FBI information. Is that correct?

Mr. HOROWITZ. In both instances, they disclosed to reporters information that was protected FBI information—sensitive law enforcement.

Mr. STEUBE. And I want to move quickly to the latest report on Comey and I am going to just read from Page 52.

"In this analysis section, we address whether Comey's actions violated department and FBI policies or the terms of Comey's FBI employment agreement. We determined that several of his actions did. We conclude that the memos were official FBI records rather than Comey's personal documents.

Accordingly, after his removal as director Comey violated applicable policies and his employment agreement by failing to either surrender his copies of Memos 2, 4, 6, and 7 to the FBI or seek authorization to retain them.

By releasing official FBI information records to third parties without authorization and by failing to immediately alert the FBI about his disclosures to his personal attorneys once he became aware in June 2017 that Memo 2 contained words that were classified at the confidential level."

Did I read that accurately?

Mr. HOROWITZ. I don't have it in front of me but it certainly sounds like that is accurate.

Mr. STEUBE. So you previously faulted the FBI director in your report of last year. In your report on Comey's memos, you wrote, "We have previously faulted Comey for acting unilaterally and inconsistent with department policy." That was the Clinton email IG report?

Mr. HOROWITZ. Correct.

Mr. STEUBE. In your report on the FBI's investigation of the Clinton emails you wrote, in quote, "We found that it was extraordinary and insubordinate for Comey to conceal his intentions from his superiors, the acting—the attorney general and deputy attorney general for the admitted purpose of preventing them from telling him not to make the statement and to instruct his subordinates in the FBI to do the same." Is that correct?

Mr. HOROWITZ. Yes, I don't have the language in front of me but——

Mr. STEUBE. It is Page——

Mr. HOROWITZ [continuing]. certainly—I certainly recall that generally.

Mr. STEUBE. It is Clinton Email IG Report Page 241.

You used the words extraordinary and insubordinate. You are not exactly someone who would make such bold characterizations.

In that—in that case, you found his misconduct merited these conclusions?

Mr. HOROWITZ. Yes.

Mr. STEUBE. You found Comey's conduct this year just as troubling, correct?

Mr. HOROWITZ. We found it troubling. I am not going to make a relative judgment as to which was more troubling.

Mr. STEUBE. Well, you wrote, and I quote, "Comey's unauthorized disclosure of sensitive law enforcement information about the Flynn investigation merits similar criticism," Page 61, Comey memo report.

Mr. HOROWITZ. Correct. Merits similar criticism. Agreed.

Mr. STEUBE. I want to thank you for your time here today and I just think it is beholden to the American people that they get to read this information and it becomes public.

Mr. CONNOLLY. I thank the gentleman, and perfect timing. Congratulations.

Mr. STEUBE. I tried to wrap it up there right at the end.

Mr. CONNOLLY. You did it perfectly.

Mr. Jordan, did you wish to be recognized?

Mr. JORDAN. Unless the ranking member wanted to go——

Mr. CONNOLLY. He is deferring to you.

Mr. JORDAN. Okay. Thank you, Mr. Chairman.

Mr. Horowitz, let me pick up right where the gentleman from Florida was.

I appreciate the letter you sent to the chairman and ranking member last Friday on the upcoming FISA report that is now with the attorney general.

But let me—let me go first to what Mr. Steube just talked about. Have you been asked to testify by the chairman—by Chairman Cummings or Chairman Nadler about the Comey IG report you released three weeks ago?

Mr. HOROWITZ. No, I have not.

Mr. JORDAN. Have you been approached at all by the chairman of those respective committees?

Mr. HOROWITZ. Personally, I have not. I can check with anybody else in my organization. But I am not aware of any.

Mr. JORDAN. Have they even asked you about it?

Mr. HOROWITZ. Oh, I am sure they have asked about it. I am sorry—talking about scheduling about a hearing.

Mr. JORDAN. But, I mean, asked about you—asked about you testifying and answering questions about that specific report.

Mr. HOROWITZ. About a hearing I don't believe there have been discussions.

Mr. JORDAN. No hearing?

Have you had any discussions with Chairman Cummings or Chairman Nadler about the upcoming FISA report, particularly subsequent to this letter or even before this letter, about the FISA report when you might testify in front of either committee?

Mr. HOROWITZ. We haven't had, to my knowledge, discussions about testimony or a hearing.

Mr. JORDAN. But you would——

Mr. HOROWITZ. We had a discussion generally about the report and timing but not about——

Mr. JORDAN. I think in your—in your letter you pointed out you talked to over a hundred interviews, over a million records your team examined.

You spent a lot of time on this report. This is pretty significant. You would anticipate testifying in front of both the House Oversight Committee, which has jurisdiction over the inspector generals, and the House Judiciary Committee. Is that right?

Mr. HOROWITZ. I guess I am—I would say as to any of my reports I always am available and willing to testify. I am not sure I would want to advocate for being in four hearings—two here and two on the Senate side. So——

Mr. JORDAN. Well, we combined them last year—a year and a half ago on one.

Mr. HOROWITZ. Yes.

Mr. JORDAN. We did that. So all I know is I think, as Mr. Steube said, this is important information and, frankly, the American people would like to see it.

Let me go, if I could, to the recent IG report about Mr. Comey's leaked memos and I want to—I want to read from it. I am talking about on Page 17 of your report, January 7, 2017, Memo Number 1, when you say Comey first—Comey's first one-on-one meeting with President Trump occurred on January 6, 2017. Is that right?

Mr. HOROWITZ. That is right.

Mr. JORDAN. And before briefing President—I am reading from your report—"Before briefing President-Elect Trump, Mr. Comey met with senior leaders at the FBI—Jim Rybicki, Andy McCabe, Jim Baker, and supervisors of the FBI's investigation." Is that right?

Mr. HOROWITZ. Again, I don't have it in front of me but that is my recollection.

Mr. JORDAN. Yes. So he has a pre-meeting. They are going to go up to brief President-Elect Trump——

Mr. HOROWITZ. Right.

Mr. JORDAN [continuing]. January 6, 2017. So it is President-Elect Trump at the time. They have a pre-meeting to figure out how this is going to go and, actually, even more of a pre-meeting they have with Mr. Clapper and Mr. Brennan to figure out how exactly the briefing for the president-elect is going to happen. Is that right?

Mr. HOROWITZ. And who is going to do it and——

Mr. JORDAN. And who is going to do what. Right. And they break it into two parts. All of them brief the president-elect on general assessment, intelligence assessment, the ICA. And then they all leave and Mr. Comey sits down with the president. Is that right?

Mr. HOROWITZ. That is my recollection, yes.

Mr. JORDAN. So Mr. Comey sits down with President-Elect Trump and talks to him about what?

Mr. HOROWITZ. Again, I don't have the report in front of me. But my recollection is what we were told is it is about the—what has

come to be known as the salacious and unverified reporting about certain events in Moscow.

Mr. JORDAN. Witnesses interviewed by the OIG also said they discussed Trump's potential responses to being told about the salacious information in the dossier, including that President Trump might make statements about or provide information of value to a pending Russia interference investigation. Is that right?

Mr. HOROWITZ. That is my recollection.

Mr. JORDAN. Yes. So Comey stuck around and briefed him on the dossier——

Mr. HOROWITZ. Well, on that—on that one piece is my recollection.

Mr. JORDAN. Understand. Understand.

So what I am interested in is, is we always thought that this meeting was to give the president the intelligence assessment and fill him in and give him a briefing. He is president-elect.

But it now looks like, based on what you wrote at the bottom of Page 17, that they included trying to get information on the pending Russia interference.

So it wasn't just information going one way. They were actually trying to get information from the president as well. Is that right?

Mr. HOROWITZ. That is what we have reported.

Mr. JORDAN. That is different. That is different. That is something I don't think we knew before. Multiple FBI witnesses recall agreeing ahead of time that Comey should memorialize this event after it happens, right?

Mr. HOROWITZ. Right.

Mr. JORDAN. So he gets in the car on the way home and he immediately starts memorializing what took place. It is interesting.

One of the things that he said, the reason they did this was because they thought the president-elect might misrepresent what happened in the encounter. Remember that from the report?

Mr. HOROWITZ. Vaguely.

Mr. JORDAN. Yes.

Mr. HOROWITZ. Again, I would have to——

Mr. JORDAN. It says it on Page 18. I think that is—that is amazing to me because the irony was the only one misrepresenting anything, it seems to me, was Mr. Comey because all the while he is trying to get information from the president about the pending investigation he has been telling the president he is not even under investigation.

Mr. CONNOLLY. I thank the gentleman.

If, Mr. Horowitz, do you want to respond?

Mr. HOROWITZ. No, I have no—nothing further to say. I would stand by our report.

Mr. JORDAN. Could I ask one question, Mr. Chairman?

Mr. CONNOLLY. Yes.

Mr. JORDAN. Mr. Horowitz, was President Trump under investigation at the time that this all happened on January 6?

Mr. HOROWITZ. I don't know that I am in a position to say one way or another. I have read what the memos say and what Mr. Comey in the memos reported he represented to the president that the president was not or the president-elect at the time had not——

Mr. JORDAN. He had, in fact, been told by the very guy who had to memorialize this conversation and was trying to get information from the president that he wasn't in fact under investigation by that very individual.

Mr. CONNOLLY. I thank——

Mr. HOROWITZ. And all I can speak to is what is in the memo.

Mr. JORDAN. What he said. I understand.

Mr. HOROWITZ. I don't know what was said. I don't know independently what was going on in the investigation at that time.

Mr. CONNOLLY. Thank you. I thank the gentleman.

The distinguished ranking member is recognized for his five minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Mr. Horowitz, I am going to followup a little bit on where Mr. Jordan just said. But before I do that, I want to say this.

The chairman and I were talking about we appreciate your professionalism. The fact that he can't influence you and the fact that I can't influence you may frustrate both of us. But we both appreciate the fact that we can't actually affect your independence, and here is—if your IG community at DOJ shared information with the media the way that you found in your inspections would that undermine your overall objective in terms of sharing information with the media?

Mr. HOROWITZ. If anyone on my staff did that——

Mr. MEADOWS. Yes.

Mr. HOROWITZ [continuing]. there would be serious consequences because it would have a significant effect on our work.

Mr. MEADOWS. And so wouldn't you draw the same conclusion that sharing information under ongoing investigations within the DOJ and FBI is not a practice that we should actually embrace?

Mr. HOROWITZ. Absolutely.

Mr. MEADOWS. Did you find that in some of your inspector generals' report on what has already been published with relationship to Director James Comey?

Mr. HOROWITZ. We did.

Mr. MEADOWS. Multiple times?

Mr. HOROWITZ. Well, we have in that report, the one instance where it occurred through Mr. Richman to the press.

Mr. MEADOWS. All right. Do you—once you have a report that is out and once we have read the report, do you go back and look at congressional testimony to correlate between what you were told under oath by witnesses versus testimony that has been given to Congress to make sure that those two come together?

Mr. HOROWITZ. If we are aware of it and it relates directly to it, yes. But, obviously, we are not up to date on all the different testimoneys that occurred. So usually we rely on the referrals coming in from Congress.

Mr. MEADOWS. Right. And so that is where I am kind of going to this because we have taken now your report and we have put it side by side congressional testimony that James Comey made before the joint Oversight and Judiciary hearing, and I am finding just a number of irregularities.

So would it be appropriate if Chairman—I mean, Ranking Member Jordan and I were to refer those inconsistencies to the IG and if we did that would the IG look at those inconsistencies?

Mr. HOROWITZ. It is certainly appropriate for us to get a referral about a then employee of the department, which is, I think, the hearing you are probably referencing, and then we would assess it and, as you indicated before, we would make an independent assessment of whether it is appropriate for——

Mr. MEADOWS. Well, I will give you one example. Mr. Gowdy was asking, said, did you initiate an obstruction of justice investigation based on what the president said. It was a very clear question. Mr. Comey said, I don't think so. I don't recall doing that so I don't think so.

However, on Page 13 of your IG's report it said that Comey purposely leaked the memo so that they could have a special counsel appointed to investigate obstruction of justice. So two of those cannot be true. They are at opposite dynamics in terms of what they are constructing. And we have dozens of examples where that has happened. Is that something that would be important for the American people to know and for you to look into?

Mr. HOROWITZ. I guess I would say as in any situation we would want to get the referral, the testimony, and so we could make——

Mr. MEADOWS. So we will be referring those inconsistencies to you today, Mr. Horowitz, and I think that it is important that the American people get to look at this.

My understanding is from reports that—and from your letter that you have officially given the FISA abuse work that you have done over to be reviewed by the appropriate parties at DOJ.

Is that correct?

Mr. HOROWITZ. So we have given our factual findings to the department for their marking. What we then do once we get it back, whether we have to go back and forth on the markings is one issue.

Mr. MEADOWS. Right.

Mr. HOROWITZ. Once those are final we then take that and try and write our public report from that.

Mr. MEADOWS. Right.

Mr. HOROWITZ. Because we want to make as much of this public, sometimes we will have to either redact information or write around it. But that would be the next stage after this. So we are not quite final yet.

Mr. MEADOWS. So—right. So at this point, can you rule out the fact that there will be any criminal referrals as it relates to this new FISA abuse report that is coming out? Can you rule that out?

Mr. HOROWITZ. I am not going to speak to that issue one way or the other.

Mr. MEADOWS. All right. I yield back.

Mr. CONNOLLY. I thank the gentleman.

The gentleman from Wisconsin, Mr. Grothman, is recognized for five minutes.

Mr. GROTHMAN. Yes. For Mr. Horowitz, I want to direct your attention to conclusions involving Comey failing to safeguard the FBI's Flynn investigation, which is going on at the time.

You wrote Comey's senior—closest senior FBI advisors were shocked when they learned the former FBI director instructed the

release of his memo containing information about the ongoing FBI investigation, right?

Mr. HOROWITZ. That is correct.

Mr. GROTHMAN. What specifically did they say to your office?

Mr. HOROWITZ. I don't have the report in front of me but I remember them saying words like shocked, surprised—those kinds of words—when they learned that he had released the information through Mr. Richman to a reporter.

Mr. GROTHMAN. And they were unsolicited reactions?

Mr. HOROWITZ. Yes. They were during testimony under oath that were recorded.

Mr. GROTHMAN. Why do you think they were shocked or stunned?

Mr. HOROWITZ. Well, it was completely inconsistent, as we wrote in the report, with department policy and how we expect and I think they expect FBI employees to handle law enforcement information.

Mr. GROTHMAN. Okay. One advisor used the term disappointed to describe Comey's misconduct. Can you explain why they would be disappointed in the FBI director?

Mr. HOROWITZ. Well, I am not going to speak to what was in their mind when they said the words. But I can say, again, I think there is a general understanding in the department and within the FBI that when you have law enforcement information you don't disclose it to the press when there is an ongoing criminal investigation, which there was at the time.

Mr. GROTHMAN. Okay. Comey discussed or showed contents of the memos with people outside the FBI, correct?

Mr. HOROWITZ. Correct.

Mr. GROTHMAN. Okay. Then Acting DEA Administrator Chuck Rosenberg saw the Comey memo, right?

Mr. HOROWITZ. I don't have the report in front of me. I think that is correct. I think they either talked about it or he showed it to him.

Mr. GROTHMAN. Okay. I will tell you what I am going to do. I right now have a vote in another committee so I am going to yield the rest of my time to Congressman Jordan.

Mr. JORDAN. I thank—I thank the gentleman for yielding.

Mr. CONNOLLY. The gentleman is recognized.

Mr. JORDAN. Mr. Horowitz, I want to go back to Page 17, where we were a few minutes ago.

Before briefing President-Elect Trump, Comey met with senior leaders of the FBI including Chief of Staff Jim Rybicki, then FBI Deputy Director Andy McCabe, then FBI General Counsel Jim Baker, and the supervisors of the FBI's investigation of the Russian interference in the 2016 Presidential election.

So he meets with his key players, key team—the people heading the investigation—and the top people at the FBI. Goes up to Trump Tower, has the meeting—his one-on-one meeting with the president where he briefs him on the dossier.

That meeting is done. He immediately comes back out and starts recording what took place, memorializing the conversation with the president-elect, right?

Mr. HOROWITZ. Correct.

Mr. JORDAN. Multiple FBI witnesses recalled agreeing ahead of time that Comey should memorialize this meeting. So the same people that he met with in the pre-meeting said, hey, when you go talk with the president-elect, soon as you come out we are going to have a secure laptop. You write it all down.

Mr. HOROWITZ. Right.

Mr. JORDAN. And you need to write it all down because we think the president-elect might misrepresent something later on, right?

Mr. HOROWITZ. If I recall correctly, that was one of the reasons.

Mr. JORDAN. One of the reasons. All right.

Even though the very guy who was in there giving the briefing is misrepresenting a fundamental fact to the president of the United States, telling him he is not under investigation when they are actually trying to set the president up, in my opinion—get information from the president.

So he goes back out, he memorializes this, and then you say in the next paragraph down, he memorialized Memo 1 and he had it that way until he arrived at FBI's New York field office where Comey gave a quick download of his conversation with the very same people who he had the pre-meeting with—Mr. Rybicki, Mr. McCabe, Mr. Baker, and supervisors of the FBI "Crossfire Hurricane" investigation.

Is that all accurate?

Mr. HOROWITZ. That is my recollection.

Mr. JORDAN. Okay. So you used three names twice—Rybicki, McCabe, and Baker—and then instead of saying other names you say supervisors. Are those supervisors the people who I suspect they are, the people who ran the "Crossfire Hurricane"? Are those supervisors Peter Strzok and Lisa Page?

Mr. HOROWITZ. I don't recall as I sit here. I would have to go back and look at it, and if we can—with all of these issues we have to look at the Privacy Act and other laws to see what we can do.

But I will go back and check. I am not sure that is the case. So let me go back and check.

Mr. JORDAN. Could it be a bigger number than those two? If it is not those two it could be other two? It could be——

Mr. HOROWITZ. Or it could be others.

Mr. JORDAN. It could be others as well or could be——

Mr. HOROWITZ. Yes.

Mr. JORDAN [continuing]. those two plus others?

Mr. HOROWITZ. I don't know, as I sit here, who were those individuals.

Mr. JORDAN. Is it likely that Peter Strzok is one and knowing that he was the guy who led the "Crossfire Hurricane" investigation?

Mr. HOROWITZ. I actually have no idea if that is likely or not because I am not sure that is entirely accurate that—your reference to what his role was at various times.

Mr. JORDAN. Okay.

Mr. CONNOLLY. I thank the gentleman. Thank you for your responsiveness, Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Horowitz.

Mr. CONNOLLY. The chair now recognizes himself for his five minutes and I am going to ask questions quickly and ask you to answer quickly so I can fit them all in.

I am going to start with you, Ms. Buller, for a change. Have you had difficulty at EPA—I mean, at Peace Corps with your agency in terms of access to information and a responsiveness to requests made?

Ms. BULLER. Access—we have had a couple of little issues but they have been worked through. We have had other issues, however, in dealing with general counsel interpretations of our policy that tried to limit the people who can come to us to report things and also try to limit the way that we conduct our criminal investigations relating to volunteer drug use.

Mr. CONNOLLY. And what is your redress? When that happens what can you do?

Ms. BULLER. We have so far been working with the agency and to try to resolve the issue and, hopefully, we can do that. But as with the access issue, we do understand that we can come to Congress if we—if we——

Mr. CONNOLLY. Please do.

Ms. BULLER. Thank you.

Mr. CONNOLLY. Because I think on a bipartisan basis we are committed to making sure you can do your job.

Mr. Horowitz, one of the things that has come to our attention is, you know, allegations of wrongdoing and sexual harassment within the Federal judiciary.

And what we discovered was, however, the Administrative Office of the Courts does not have an IG. Does—as chairman of CIGIE, do you all have an opinion about whether we ought to establish an IG for the Administrative Office of the Federal Courts of the United States?

Mr. HOROWITZ. I am not going to weigh in on what should happen with another branch of government because, obviously, it raises various kinds of——

Mr. CONNOLLY. How very careful.

Mr. HOROWITZ. But I will say that, speaking of our own work in the department, we have played a very important role in addressing sexual harassment, sexual misconduct in the Justice Department and I am not confident that would have occurred in the absence of an inspector general.

Mr. CONNOLLY. Right. And so, therefore, inferentially one would conclude from that statement that we all benefit from having IGs and presumably another branch of government might benefit, too?

Mr. HOROWITZ. I think there is a value in having independent oversight in whatever form it takes and it has been my concern——

Mr. CONNOLLY. Right.

Mr. HOROWITZ [continuing]. and why I appreciate the issues of prosecutorial——

Mr. CONNOLLY. I would just say to my friend, the distinguished ranking member of the subcommittee, I think this is an issue we want to look into because I think the legislative branch could benefit just like the—I mean, the judicial branch could benefit just like both the executive and legislative branches have benefited.

Mr. Dahl, transparency—my own experience and that of a former colleague of this committee was not felicitous with respect to transparency and communication when we presented to CIGIE an issue of professional behavior and ethical behavior.

And putting aside who and the merits, I am focused on process. What has happened—I mean, you indicated in your testimony you want to protect whistleblowers and people who come forward and so forth, and we agree.

But on the other hand, we also want to make sure that a legitimate complaint or allegation brought to you is also respectfully managed and adjudicated as opposed to we found no merit—thanks for calling us.

Can you address that a little bit in terms of what has happened in the last four or five years to improve how we handle legitimate concerns brought to your attention? Because this is a delicate matter, investigating a colleague, and you are a small community.

We understand that. We have that problem up here, trying to look at the ethics of a colleague. Very difficult and very painful.

But if you don't do it, who will? And so I am interested in not how you proceed in the investigation but once it is completed or judgment is made, how do you dispose of it with respect to the complainant?

Mr. DAHL. We share your—that this is a legitimate interest for the complainant, and the transparency has to be there, as the chairman noted, for us to have that credibility with the public and with Congress.

And so we have endeavored in our policies and procedures to build into those a communication mechanism both to Congress—certainly, it is in the Empowerment Act now—that we would inform Congress and at Congress's request we can provide that kind of level of detail to the complainants.

We look carefully at those and identify what information we can relate to the—to the complainant at the same time protecting, as I said before, the confidentiality of the whistleblower.

Mr. CONNOLLY. And if I may interrupt, the other thing you are trying to protect—and I understand that and I think we are totally on board with you—is protecting someone's innocent reputation.

Anyone can make a complaint about anything at any time. That doesn't mean it is legit and it certainly means we need to be careful with that kind of thing because raw data about complaints does not tell you anything and there may not be any merit to it. We want to respect that.

But on the other hand, as I said, where a legitimate complaint about behavior by an IG comes to your attention we have got to have confidence that it has been carefully vetted and adjudicated and a rational explanation that is more than, we looked at it and there is nothing there, certainly, when it comes to Congress.

But even somebody within an agency or the public, as you pointed out, I think is entitled to more than that kind of dismissive answer.

Mr. Horowitz—and then my time is up—did you want to comment?

Mr. HOROWITZ. Yes, just briefly. As I said, this was one of the first issues we talked about. In January 2015 when I became chair of CIGIE——

Mr. CONNOLLY. That is right.

Mr. HOROWITZ [continuing]. the issue had already been pending and I was, as we talked about, surprised at the response you got or the lack of response you got.

I think there is a significant—there has been a significant change since then with two intervening events, one, Congress passing the IG Empowerment Act and the second being the change in chairmanship of the committee so that CIGIE owns the process now.

Not that the FBI didn't care about the process or be part of it. They did. The problem is the FBI has 35,000 employees and a lot of significant issues on their plate and IG oversight probably isn't the highest priority on their——

Mr. CONNOLLY. And there was also sort of a built-in bias, wasn't there? Not a negative thing to say. They are a law enforcement agency. So they are looking at illegal behavior, criminal behavior. Well, we are looking at broader than that.

Mr. HOROWITZ. Right. Agreed.

Mr. CONNOLLY. We are looking at be purer than driven snow.

Mr. HOROWITZ. Right. Yes, I had this discussion with them when I came on board also. I get it. I worked with FBI agents. They have no authority to handle noncriminal administrative matters as part of their day jobs.

Mr. CONNOLLY. That is right.

Mr. HOROWITZ. This was a collateral duty for them. We, obviously, understand the significance of it for all the reasons you have articulated and how to do them.

And so I think there has been an important change with both the shift in management of it but also the policies and procedures put in. We very much look forward to continuing with the dialog with you.

We couldn't agree more that the public, Members of Congress, all of our stakeholders have to be confident in what we do.

It is one of the reasons on the whistleblower side we have put so much effort into reaching out to the community, the stakeholders there, set up the webpage, done that work, because they need to know they can trust us and come to us. Same here.

We want—if there is real misconduct, actual misconduct, we also want to hear about it. We want to be the ones to find it. We want to be the ones to investigate it.

We have—and I appreciate your comment about the numbers because if anyone looks at just the incoming complaints versus the actual numbers, they might wonder how do you get from a thousand or more to 10 or 20 or five.

But we have a similar issue at our DOJ IG. I get 10,000-plus complaints a year. That—a lot of those shouldn't belong with us and don't belong with us.

Mr. CONNOLLY. Yes.

Mr. HOROWITZ. And here we have the added situation of it being easy to make a retaliatory complaint against an IG for doing their

jobs and then complaining that somehow we were corrupt in what we did.

Mr. CONNOLLY. Or biased. Yes.

Mr. HOROWITZ. Or biased. Now, that is not an unfair matter to come to us. To be clear, I am not saying those—that never could be the case. But the risk is it is coming to us solely because we did our jobs.

Mr. CONNOLLY. I thank you so much.

We are going to be submitting additional questions for the record and if you could, you know, expeditiously but thoughtfully try to answer those, and anybody who wants to submit additional questions please feel free to send them to the chair and we will forward them.

And before I adjourn the hearing, I want to thank all three of you for being here. I want to call on the ranking member for any additional comments he may have.

Mr. MEADOWS. Thank you, Mr. Chairman, for your leadership on this and, again, thank you. You know, the great thing about the inspectors generals is that whether there is a Democrat in the chair or a Republican in the chair, the value remains the same.

And so I just want to thank all of you for your work. I would say this. The chairman has just introduced a piece of legislation that is very meaningful and I think it would be important for us to get it to markup as quickly as possible, get that through the markup process and to the floor for a vote.

Additionally, you all have now hit on an area that is critically important. We can sit back and we look at IGs and we give them a thumbs up or a thumbs down or, you know, equivocate kind of mark based on a set of criteria that is very ambiguous.

You know, whether it is you, Mr. Dahl, or you, Ms. Buller, or you, Mr. Horowitz, I mean, when we look at all of this we judge you based on a standard that may not be fair. And so to the extent that we can work with you where we can say this is what true independence is about.

This is what true integrity is about. This is what happens when you don't get the information or you don't act upon it.

I think the chairman and I are willing to work in a bipartisan way to make sure that you have all the tools that you need and the financial resources as well.

Mr. CONNOLLY. Well said, and I thank my friend for his continuing leadership and interest in these issues.

As Ms. Norton said, they may not be headline issues but they are about building a stronger government and more integrity within that government that better serves the American people and I thank my friend for his collaboration.

With that, this hearing is adjourned.

[Whereupon, at 12:36 p.m., the subcommittee was adjourned.]

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