

Testimony of Danielle Brian, Executive Director  
Project On Government Oversight  
before the  
Senate Homeland Security and Governmental Affairs Committee  
on  
**“Strengthening the Unique Role of the Nation’s Inspectors General”**

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342 Dirksen Senate Office Building

Chairman Lieberman and Senator Collins, thank you for inviting me to testify today. My name is Danielle Brian, Executive Director of the Project On Government Oversight (POGO). POGO is an independent nonprofit that has, for over 25 years, investigated and exposed corruption and misconduct in order to achieve a more accountable federal government.

The subject of this hearing raises a number of timely issues. Inspector General (IG) offices play a tremendously important role in advancing good government practices, but only if they are led by independent and qualified IGs, and those IGs are allowed to do their job. Next year will be the 30<sup>th</sup> anniversary of the 1978 Inspector General Act, and this is the perfect time to determine the strengths and weaknesses of the IG system.

As background, there are 57 statutorily-created federal Inspectors General. Of those, 29 are Presidentially appointed, and are members of the President's Council on Integrity and Efficiency (PCIE). The others are appointed by their agency heads, and are members of the Executive Council on Integrity and Efficiency (ECIE).

The intent of Congress in creating these watchdogs was to have an office within agencies that would balance the natural inclinations of agency or department heads to minimize bad news, and instead give Congress a more complete picture of agency operations. That intention is clearly shown by Congress' decision to break with tradition, and create a dual-reporting structure where IGs would report not only to the agency head, but also directly to Congress itself.

It is this independence from the agency the IG is overseeing that gives the office its credibility. Not only the actual independence, but also the *appearance* of independence allows the IG's stakeholders, including Congress, the agency head, the IG's auditors and investigators, and potential whistleblowers, to have faith in the office.

Over the past year, POGO has held monthly bi-partisan Congressional Oversight Training Seminars for Capitol Hill staff. We regularly tell participants that the IGs at agencies within their jurisdiction can be important allies and sources of honest assessments. Unfortunately, we also have to point out that not all IGs are well qualified or appropriately independent.

I have the honor today of sitting on this panel with model Inspectors General. However, in the past few years, the ranks of the nation's IG community have not always been filled with such stars. Investigations of the current NASA and Commerce IGs, and the former Postal Service and HHS IGs, have substantiated allegations of improper conduct by those offices. Some of the improper conduct included illegal retaliation against IG employees, not maintaining the appearance of independence required of an IG, and interfering with IG investigations.

At the same time, several IGs have suffered retaliation for doing their jobs too well. The Special Inspector General for Iraq Reconstruction, the General Services Administration and Legal Services Corporation IGs, and the former Smithsonian and Homeland Security IGs have all suffered some form of retaliation—ranging from budget cuts by their agencies to personal

attacks and even threats to eliminate their office entirely. The House Committee on Oversight and Government Reform has created a Fact Sheet outlining these instances. I request it be submitted for the record.

While POGO believes improvements can and should be made to the IG system, and we applaud the Committee for holding this hearing, any changes to that system need to be very careful and deliberate. The balance between independence and accountability is a difficult one to maintain. On the one hand, an IG must be afforded the opportunity to pursue audits and investigations without fear of reprisal. On the other hand, there needs to be enough accountability that an IG does not pursue a partisan agenda, or become otherwise ineffective. Every legislative change needs to be considered through both prisms to ensure it does not have unintended consequences.

POGO is in the beginning stages of a major investigation into the Inspector General system to determine best practices as well as weaknesses. There are a number of significant unanswered questions, one of which is “Who is watching the watchdogs?” We look forward to presenting you with our results in the future. There are, however, a few improvements to the system that we have already determined make sense.

The first is to better ensure that people chosen to be IGs are of the caliber of those sitting on this panel. The recent improper conduct to which I referred above has made it clear the process of selecting IGs, unique people who can thrive in the unpopular job of being an Inspector General, needs to be improved. During the Reagan Administration, a small group of IGs from the PCIE recruited and screened IG nominees. They then supplied lists of candidates from which the White House could select. This peer review helped ensure that unqualified or partisan people were not placed in the role of IG. Congress should consider recreating and formalizing that model.

The second improvement is that Presidentially-appointed IGs should have their own General Counsel’s office. While most do, we know of at least one that has not—the Department of Defense IG. As a result, the DOD Office of Inspector General has relied on lawyers assigned to it by the Pentagon’s General Counsel for legal advice. You can see how this would significantly undermine the independence of an IG: a General Counsel’s role is to protect the agency, whereas an IG’s role is to investigate it if need be. Furthermore, General Counsels have the power to undermine IG investigations because they affect such decisions as criminal referrals and what to redact from documents released through FOIA. I realize that for many of the ECIE IGs, having their own General Counsel would double the size of their office and unnecessarily create a new bureaucracy. One solution to this dilemma might be to allow small ECIE IGs to use the General Counsel’s office of a PCIE IG for necessary legal resources, or perhaps to create a General Counsel office to be shared by the smaller ECIE IGs, rather than turning to the counsels at their agency.

Another improvement, and a way to mitigate any possible bias caused by being appointed by the President or agency head, is to create a term of office longer than four years, and to

stipulate that an IG can only be removed for specific cause. This would give IGs some protection if they are operating in an agency whose head is trying to undermine an IG's independence.

A further improvement is to allow IGs to submit their budgets directly to both the Office of Management and Budget and Congress. This would enable Congress to better ensure IGs have resources commensurate with the size of the agency they are overseeing, and that their budgets are protected from agency retaliation. In the case of ECIE IGs, some of their budgets are not even line items in their agency's budget. At the very least, Congress should be made aware of the total amount budgeted for each ECIE IG.

Finally, it is clear that IGs need to be paid in accordance with their position of responsibility. There are a number of problems with the pay system for both PCIE and ECIE IGs. For instance, unlike Senior Executive Service civil servants, IGs cannot and should not accept performance-based bonuses. (Such bonuses, based on the approval of the agency head, are antithetical to the independence of an IG.) For this and other reasons, taking on the difficult job of IG is tantamount to being financially penalized. It appears fixing the pay problems would be more akin to housekeeping than significantly changing policy, and should be addressed quickly so that these issues do not dissuade good, qualified people from becoming IGs.

Legislation introduced by Senator Collins, Senator Claire McCaskill, and Representative Jim Cooper all are important steps toward making the IG system stronger. Even with the perfect legislation, however, the IGs will only thrive when the relevant Congressional committees are actively engaged with their offices, and regularly ask them to report on their findings. I look forward to presenting you with POGO's investigative findings once they are complete, and to working toward implementing our recommendations.