

1 front of us.

2 I want to thank our witnesses for joining us today and
3 for their ongoing work that brings greater oversight,
4 accountability and transparency to the Federal Government.

5 I can tell you that folks back in Montana are a bit
6 skeptical about the way things work in Washington. I hear
7 about it every weekend when I go home.

8 So they see news coverage of lavish retreats and of
9 conferences hosted by government agencies on the taxpayer
10 dime. They read about millions wasted on construction
11 contracts in Afghanistan that are not needed or cannot be
12 sustained. They hear about the latest infringement of their
13 privacy by government programs carried out in the name of
14 national security.

15 And so I do not blame them for being a bit wary of what
16 is going on here in Washington, D.C. In fact, I often feel
17 the same way.

18 Today, over two million men and women make up our
19 Federal workforce. They administer programs and initiatives
20 that touch upon every aspect of our lives.

21 And we know that good oversight comes with the
22 executive and legislative branches working together. We
23 need partnerships within the executive branch. Without
24 independent voices of oversight within the Federal agencies,
25 including the folks that are here today, we have no hope for

1 accountability or transparency, and we certainly have no
2 hope of maintaining the public trust in our government.

3 As I told the Council of Inspectors General earlier
4 this year, they, along with our privacy officers,
5 comptrollers and oversight officials, have some of the
6 toughest jobs in government.

7 I know that when you call an agency head or division
8 chief, they do not often sprint to the phone to pick it up,
9 and you frequently have to fight for access that you need to
10 do your jobs. And I get that.

11 It is critical that you let us know when impediments
12 prevent you from performing effectively your roles of
13 oversight, whether it is a lack of authority or resources.

14 Earlier this year, in the wake of Edward Snowden leaks,
15 the Subcommittee held a hearing on security clearance
16 reforms. At that meeting, we learned that the Inspector
17 General of the Office of Personnel Management was precluded
18 from using funds from the OPM's revolving fund for audits
19 and oversight. This is a \$2 billion fund that finances
20 background investigations as well as other OPM programs such
21 as human resource solutions and USAJobs.

22 Because the OPM IG is unable to access these funds,
23 rigorous oversight is not being performed and a financial
24 audit on the fund in its entirety has never happened. So I,
25 along with Senators Portman and McCaskill, Senators Johnson

1 and Coburn, subsequently introduced a bill to provide the
2 OPM IG's office with the access that it needed to those
3 funds.

4 The SCORE Act has now passed the Senate, and we are
5 closer to seeing the level of oversight of this fund that
6 should have been performed a long time ago. But it is good
7 news where we are at today for taxpayers, and I think it is
8 good news for our national security. We need our House
9 colleagues to move forward on the SCORE Act.

10 The point is that we can be productive partners with
11 the oversight workforce to effect change. All that is
12 required is an open and frank line of communication. We are
13 here to help, but we often need folks like you to serve as
14 our eyes and our ears within the agencies. Whether it is
15 reining in wasteful spending, holding individuals and
16 agencies accountable for wrongdoing, shining a light on
17 government operations or protecting the privacy rights of
18 law-abiding Americans, we want to empower you and your
19 efforts.

20 Today, with this hearing, we hope to examine the
21 various roles currently played by our Federal oversight
22 workforce, to explore some of the challenges that you
23 confront and to identify ways to overcome those challenges.
24 And I look forward to the discussion today.

25 With that, I want to welcome Senator Portman, Ranking

1 Member of this Committee, and turn it over to him for his
2 opening statement.

3 OPENING STATEMENT OF SENATOR PORTMAN

4 Senator Portman. Thank you, Mr. Chairman. I
5 appreciate it.

6 Thank you all for being here today.

7 As you know, this Committee, and specifically this
8 Subcommittee, relies on you, and we love to drag you up here
9 and have you join other expert witnesses to tell us what is
10 really going on in your agencies.

11 We are concerned, frankly, with the vacancies, and that
12 is one reason we wanted to have this hearing today. We
13 think Inspectors General and their oversight offices are key
14 as the watchdogs of the Federal Government.

15 We are looking at fraud and abuse, efficiency and
16 effectiveness even outside of fraud and abuse. We like to
17 get your input on pending legislation and regulations. And
18 we have all got a big, big task. So we need the independent
19 oversight professionals like yourselves.

20 On the vacancy issue, since early 2009, we have had a
21 real issue here. At its height of this problem of lack of
22 IGs, in the 12 cabinet departments and major Federal
23 agencies, we were without a permanent IG. That was the
24 worst that it has been as far as we can tell in the history
25 of IGs.

1 In fact, at the State Department, as some of you know,
2 we had a vacancy there that went over 1,400 days, not having
3 a permanent IG at the State Department really for the whole
4 first term.

5 Such vacancies leave these offices without proper
6 leadership, and as a result, we have seen allegations of
7 political influence and suppression of the IG office at the
8 Department of State, and allegations of abuse of power and
9 misconduct at the Homeland Security IG Office.

10 So we also want to be sure that we can have trust in
11 our oversight professionals because when you cannot there is
12 a serious breakdown in the management of any organization,
13 let alone such large and important Federal agencies.

14 So, with the current financial status of the Federal
15 Government and our now \$17 trillion debt, we certainly owe
16 it to our constituents to ensure their tax dollars are being
17 spent in the right way--the most efficient and effective way
18 possible. And it is the oversight workforce, you all, who
19 are on the front lines to ensure that happens. So we want
20 to continue to find ways to support and empower IGs and the
21 oversight community.

22 So thank you, Mr. Chairman, for holding this hearing
23 today. I look forward to the testimony as we move forward
24 together to achieve that goal.

25 Senator Tester. Thank you, Senator Portman. I

1 appreciate your words.

2 Senator Johnson, do you have an opening statement?

3 Senator Johnson. No.

4 Senator Tester. Okay. Well, what I will do is, first
5 of all, I want to welcome you all once again to the hearing
6 today. We are very, very fortunate to have such a great
7 panel of witnesses. I will introduce you all right now, and
8 then we will start with Peg and just go right down the line.

9 Peggy Gustafson is the Inspector General of the United
10 States Small Business Administration, otherwise known as
11 SBA. As Inspector General of SBA, she heads up the audit
12 and investigative programs that seek to identify fraud,
13 waste, abuse and mismanagement in programs at SBA.

14 She also is the head of the Legislation Committee for
15 the Council of Inspectors General on Integrity and
16 Efficiency, more commonly known as CIGIE. CIGIE members
17 include 72 IGs from the executive and legislative branches
18 of government as well as 6 senior administration officials
19 with related portfolios and responsibilities.

20 Welcome, Peg.

21 We have Michael Horowitz, who is the Inspector General
22 for the United States Department of Justice. He oversees an
23 oversight workforce of approximately 450 special agents,
24 auditors, inspectors, attorneys and support staff. Their
25 mission is to detect and deter waste, fraud and abuse and

1 misconduct in DoJ programs and personnel, and to promote
2 economy and efficiency in the Department's operations.

3 Welcome, Michael.

4 Carolyn Lerner is the head of the Office of Special
5 Counsel, an independent investigative and prosecutorial
6 Federal agency. Among other missions, the OSC protects the
7 merit system for 2.1 million civilian Federal employees,
8 provides a channel through which whistleblowers can report
9 waste, fraud and abuse, and enforces the Uniform Services
10 Employment and Reemployment Rights Act, which upholds the
11 employment rights of our Service members.

12 Carolyn, thank you for being here.

13 Karen Neuman was recently named as Chief Privacy and
14 Freedom of Information Act Officer for the Department of
15 Homeland Security. She leads the first statutorily mandated
16 privacy office in any Federal agency. That office is tasked
17 with protecting Americans by embedding and enforcing privacy
18 protections and transparency in all DHS activities.

19 Once again, welcome, Karen.

20 Wendy Ginsberg is an analyst in American National
21 Government of the Congressional Research Service. She
22 received her Ph.D. from the University of Pennsylvania in
23 2011. We are very happy to have her historical perspective
24 on all things oversight today.

25 I want to welcome you, Wendy.

1 And thank you all for being with us today.

2 It is custom to swear in all witnesses who appear
3 before this Subcommittee. So, if you do not mind, please
4 stand and repeat after me.

5 Do you swear that the testimony you are about to give
6 before this Subcommittee will be the truth, the whole truth
7 and nothing but the truth; so help you, God?

8 Ms. Gustafson. I do.

9 Mr. Horowitz. I do.

10 Ms. Lerner. I do.

11 Ms. Neuman. I do.

12 Ms. Ginsberg. I do.

13 Senator Tester. Let the record reflect that the
14 witnesses answered in the affirmative.

15 We will start with you, Peg. You can start with your
16 presentation.

1 TESTIMONY OF THE HONORABLE PEGGY GUSTAFSON,
2 INSPECTOR GENERAL, SMALL BUSINESS ADMINISTRATION,
3 AND CHAIR, LEGISLATION COMMITTEE, COUNCIL OF THE
4 INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY
5 (CIGIE)

6 Ms. Gustafson. Good afternoon, Chairman Tester,
7 Ranking Member Portman and members of the Committee. On
8 behalf of the Chair of the Council of Inspectors General on
9 Integrity and Efficiency, I am honored to represent the
10 Federal Inspector General community this afternoon to
11 discuss our work and recent accomplishments as well as some
12 of the challenges we face in carrying out our oversight
13 duties.

14 I want to begin by thanking the Subcommittee on behalf
15 of the IG community for your continuing support of our
16 mission and your interest in our work. The support of the
17 Subcommittee has been longstanding and bipartisan, and we
18 very much appreciate that.

19 I am pleased to report that the Inspector General
20 Reform Act of 2008 is working as intended. CIGIE serves a
21 leadership role and is the core of the IG community.
22 Together, the work of the IG community has resulted in
23 significant improvements to the economy and efficiency of
24 programs government-wide, with potential savings totaling
25 approximately \$46.3 billion in fiscal year 2012. With the

1 IG community's aggregate budget of approximately \$2.7
2 billion in that year, these potential savings represent
3 about a \$17 return on every dollar invested in the IG
4 community.

5 Notwithstanding these results, IGs do face certain
6 challenges as they work to improve the efficiency and
7 effectiveness of government programs. Our principal
8 challenges pertain to independence concerns and timely
9 access to information that we need to perform our duties.
10 In recent years, we have been advocating for some additional
11 tools to alleviate these challenges.

12 For example, CIGIE feels strongly that Offices of
13 Inspector General should be exempted from the Computer
14 Matching and Privacy Protection Act relative to using
15 electronic means to identify those who improperly receive
16 Federal assistance and payments and, subsequently, seek
17 removal of those persons from the program after verification
18 of this information, of course, and due process is applied.
19 This would improve program efficiency throughout the
20 government.

21 Similarly, CIGIE has recommended that the Paperwork
22 Reduction Act be amended to exempt Federal IG Offices. The
23 PRA requires that information collection, such as surveys
24 that we may want to do of a certain community, be subject to
25 approval from a senior official of the agency, not the IG

1 Office but a Federal agency, and also from OMB.

2 While changes have been made to the PRA to exempt
3 independent regulatory agencies and the Government
4 Accountability Office remains exempt from the PRA, all laws
5 have been silent as to the application of the PRA to IGs.
6 We believe that if these exemptions could be provided to IG
7 Offices, it would enhance our independence and remove
8 lengthy processes that are hampering our ability to do our
9 job.

10 In the last few years, the IG community has been hit
11 especially hard by the uncertainty in the budget process and
12 cuts to operating budgets. Offices of Inspector General, by
13 nature, are comprised principally of people. We do not have
14 programs. We are simply salaries and expenses, and our
15 budget is dedicated to funding the same.

16 A recent survey of the IG community by the Association
17 of Government Accountants has found that more than two-
18 thirds of IGs identified budget resources as a top
19 challenge. Many of our offices have undertaken hiring
20 restrictions, hiring freezes and limited new investments in
21 order to operate under the current budget levels.

22 To highlight this finding, right now in my office, we
23 are suffering an approximately 17 percent vacancy rate in
24 positions that we simply have not been able to fill in order
25 to maintain the current--to stay within the current spending

1 levels.

2 I am grateful that IGs across the government have a
3 voice through CIGIE and have access to training and other
4 resources that have been provided to them in the IG Reform
5 Act. In conjunction with that, our training academy has
6 trained--while still in its infancy, has trained last year
7 1,677 IG employees, representing a 17 percent increase of
8 students from our previous year.

9 In addition, and in accordance with CIGIE's primary
10 mission, over the past several years, the IG community has
11 identified and addressed a number of issues that transcend
12 individual agencies through cross-cutting projects, as
13 talked about and mentioned and suggested in the IG Reform
14 Act.

15 For example, CIGIE has issued reports on such topics as
16 cybersecurity, the use of suspension and debarment
17 throughout the Federal Government, the use of new media, the
18 effectiveness of the CFO Act, disaster preparedness programs
19 in the various agencies, international trade and
20 competitiveness, as well as things like our hotline
21 operations and whistleblower protections. All of these
22 reports are public and available on CIGIE's web site.

23 In conclusion, I would just like again to emphasize
24 that I am very proud and pleased to represent the IG
25 community. I am very happy to be back in this hearing room,

1 where I have spent a lot of time in my previous iteration.

2 And I am grateful for the chance to take your questions.

3 Thank you.

4 [The prepared statement of Ms. Gustafson follows:]

1 Senator Tester. Well, thank you, Peg. And the fact
2 that your testimony ran 20 seconds short of 5 minutes shows
3 that you are not new to this party; you have been here
4 before.

5 And we appreciate it because I forgot to tell you up
6 front that you have five minutes for your oral statement and
7 your entire statement will be put in the record.

8 With that, thank you.

9 Michael, you are up to bat.

1 TESTIMONY OF THE HONORABLE MICHAEL HOROWITZ,
2 INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

3 Mr. Horowitz. Thank you, Chairman Tester, Senator
4 Portman, members of the Subcommittee. Thank you for
5 inviting me to testify at today's hearing.

6 The need for strong and effective independent oversight
7 over agency operations has never been more important. I am
8 pleased to highlight for you examples of our oversight work
9 as well as some obstacles we face in conducting that
10 independent oversight.

11 During my 18 months as Inspector General of the
12 Department of Justice, our office has issued reports ranging
13 from our review of ATF's operations, Fast and Furious and
14 Wide Receiver, to our interim report on the Department's
15 handling of known or suspected terrorists in the Witness
16 Security Program to our audit of ATF's income-generating
17 undercover operations. We issued 90 audit reports in this
18 past year which will help make the Department's operations
19 more effective and efficient.

20 Our Investigations Division had dozens of arrests and
21 convictions during that same period of time and investigated
22 allegations that resulted in more than 250 administrative
23 actions against Department employees.

24 Additionally, we conducted extensive oversight of the
25 Department's use of its national security-related

1 authorities. For example, we issued reports on the FBI's
2 activities under Section 702 of the FISA Amendments Act and
3 the FBI's Foreign Terrorist Tracking Task Force's sharing of
4 information.

5 And we expect to issue, in the near future, reviews on
6 the FBI's use of national security letters, Section 215
7 orders and pen register and trap-and-trace authorities under
8 FISA, as well as on the management of terrorist watch list
9 nominations.

10 The oversight we conduct routinely produces measurable
11 benefits for taxpayers. Over the past 10 fiscal years, we
12 identified over \$900 million in questioned costs, far more
13 than our budget during that same period.

14 In addition, we identified nearly \$250 million in
15 taxpayer funds that could have been put to better use, and
16 our criminal and administrative actions resulted in more
17 than \$118 million in various recoveries.

18 And I am particularly proud of having instituted our
19 office's first ever whistleblower ombudsperson program. I
20 have seen firsthand the important role whistleblowers play
21 in advancing our mission, and whistleblowers should never
22 suffer reprisal for coming forward with what they reasonably
23 believe to be evidence of waste, fraud, abuse and
24 misconduct.

25 Let me turn now to some of the challenges we faced in

1 conducting our oversight.

2 As we all know, these are difficult budgetary times
3 across the government, including for Inspectors General, and
4 sequestration is having a real impact on our office. The
5 substantial budget reduction for our office in FY 2013,
6 combined with the uncertain budget situation for FY 2014,
7 has caused me to lower our staffing levels by approximately
8 8 percent, or 40 FTEs, since I took office in April 2012.

9 Further reductions in our staffing will inevitably
10 require us to reduce the number of audits, investigations
11 and reviews that we conduct, and it may also impact how we
12 proceed with those that we do conduct. It may impact on the
13 scope of those reviews and cause us to overemphasize the
14 importance of budgetary decisions in choosing those audits,
15 investigations and reviews.

16 However, let me say, despite those financial issues, I
17 am confident the dedicated professionals in our office and
18 in all OIGs will continue to provide the extraordinary
19 service to the American public that they have demonstrated
20 over the years.

21 I want to address the issue mentioned earlier, which is
22 access to documents. For any OIG to have the ability to
23 conduct effective oversight, it must have complete and
24 timely access to all records in the agency's possession.
25 This principle was codified by Congress in Section 6(a) of

1 the Inspector General Act.

2 Most of our audits and reviews are conducted with full
3 and complete cooperation. However, there have been
4 occasions when our office has had access issues due to the
5 Department's views regarding access and being limited by
6 other laws.

7 Such issues arose in Fast and Furious and our current
8 review of the Department's use of material witness warrants
9 in connection with grand jury and wiretap records. In both
10 of those instances, the attorney general and deputy attorney
11 general came forward and provided us with written permission
12 to gain access to those records, and they both indicated
13 they will continue to do that in the future.

14 But the issue is that having an inspector general have
15 to go to its agency head to get approval and to get that
16 permission--that impairs our independence, and it conflicts
17 with the core principles, in our view, of the Inspector
18 General Act.

19 And I understand from speaking with several other
20 Inspectors General that they have had similar issues.

21 My view--and I believe the view of my colleagues in the
22 Inspector General community--is straightforward and follows
23 from what is explicitly stated in the IG Act. An Inspector
24 General should be given prompt access to all relevant
25 documents within the possession of its agency.

1 Finally, I have outlined another limitation in my
2 testimony, which is unique to my OIG, which is we do not
3 have oversight authority over all misconduct in our agency.
4 We have authority over non-attorneys, but we do not have
5 authority over attorneys whose misconduct is alleged to have
6 occurred in the course of their litigating authority. That
7 is an anomaly of history, as I outline in my testimony. It
8 is something we believe should be corrected. Other IGs
9 across the Federal IG community have that authority, and we
10 think we should have that authority as well.

11 Thank you, Mr. Chairman.

12 [The prepared statement of Mr. Horowitz follows:]

1 Senator Tester. Thank you, Michael. Appreciate your
2 testimony.

3 Carolyn, you are up.

1 TESTIMONY OF THE HONORABLE CAROLYN LERNER, SPECIAL
2 COUNSEL, U.S. OFFICE OF SPECIAL COUNSEL

3 Ms. Lerner. Chairman Tester, Ranking Member Portman,
4 Senator Johnson--

5 Senator Tester. We probably need you to turn your mic
6 on, please. Push the button.

7 Ms. Lerner. Sorry; I thought it would go on
8 automatically.

9 Senator Tester. That is all right.

10 Ms. Lerner. All right, let's try that again.

11 Senator Tester. Yes.

12 Ms. Lerner. Chairman Tester, Ranking Member Portman,
13 Senator Johnson, members of the Committee, thank you for the
14 opportunity to testify.

15 The Office of Special Counsel, or OSC, protects the
16 merit system for over two million Federal civilian
17 employees. We have a very broad mission. We provide a safe
18 and secure channel for whistleblowers to report government
19 wrongdoing. We protect employees from prohibited personnel
20 practices, especially retaliation for whistleblowing. We
21 enforce the Hatch Act. And we protect the employment rights
22 of veterans and Service members employed by the Federal
23 Government.

24 We do all this with 110 employees and the smallest
25 budget of any Federal law enforcement agency. While our

1 staff is more efficient and effective than at any point in
2 OSC's 35-year history, our capacity for improving government
3 is limited by serious resource challenges.

4 OSC's caseload is historically high. It has nearly
5 doubled in the last five years. But our staffing is at the
6 same level as it was 10 years ago. And, despite the
7 increases in our workload, OSC's already flat budget took a
8 dramatic hit with sequestration. The combination of high
9 caseloads and a shrinking budget threatens OSC's oversight
10 potential.

11 The good news is that Congress and the Administration
12 recognized that the status quo is not sustainable. The
13 President's fiscal year 2014 budget request for OSC provides
14 for an increase of approximately \$1.7 million, which both
15 the House and Senate Appropriations Committees have
16 approved. I am very hopeful that the final spending bills
17 for 2014 will include this total.

18 With that overview, I want to provide a little bit more
19 detail on OSC's recent successes.

20 The last two years have been a record-setting period.
21 By nearly every statistical measure, OSC achieved the most
22 positive results in its history, and these successes result
23 in greater confidence in OSC. However, such confidence can
24 be a double-edged sword as it directly correlates to our
25 skyrocketing caseload.

1 Our increased efficiency helps us manage this growing
2 caseload, and it also translates into real savings. In the
3 last five years, OSC's cost to resolve a case dropped by 40
4 percent. So we are doing a lot more, more efficiently.

5 And we are getting more favorable actions for
6 whistleblowers, such as back pay or reinstatement for
7 victims of retaliation, as well as disciplinary actions
8 against supervisors who retaliated or engaged in other
9 prohibited conduct. In 2012, our staff achieved a
10 remarkable 89 percent increase in favorable actions from the
11 prior fiscal year, far surpassing the number achieved in any
12 previous year in history, and the total number of favorable
13 actions rose again last year.

14 But the numbers do not tell the whole story. Our
15 efforts often stop the immediate problem and spark systemic
16 reforms that prevent wasteful, inefficient or unsafe
17 practices, and we save the government money.

18 For example, two weeks ago, we issued a report
19 detailing serious overtime abuse by the Department of
20 Homeland Security, costing the government tens of millions
21 of dollars annually. Thanks to this Subcommittee and
22 others, reform is already underway, and I look forward to
23 returning on December 10th to testify a little bit more
24 about our report in that case.

25 Also, in the past year, OSC worked with whistleblowers

1 at the VA Medical Center in Jackson, Mississippi.
2 Physicians and other employees raised concerns about
3 unlawful prescriptions and unsterile medical equipment among
4 a range of other issues affecting patient safety. OSC's
5 efforts in that case have resulted in greater oversight by
6 the Administration and Congress.

7 In the last two years, OSC also successfully carried
8 out its expanded role to protect the rights of veterans and
9 Service members under the Uniform Services Employment and
10 Reemployment Rights Act, or USERRA. We have always
11 prosecuted USERRA cases before the merit system's protection
12 board, but under a three-year pilot project mandated by
13 Congress, OSC is also investigating half of all Federal
14 sector USERRA claims while the Department of Labor continues
15 to investigate the other half.

16 We resolve many of our cases through alternative
17 dispute resolution--a low cost and highly effective
18 approach. It is particularly effective in USERRA cases
19 where we have a 100 percent success rate.

20 OSC is also implementing the Whistleblower Protection
21 Enhancement Act which became law in 2012. We are the
22 primary agency responsible for enforcing this law, and we
23 are seeing a significant increase in claims. In the first
24 quarter after the Act was passed, we had the highest number
25 of filings in our entire history.

1 The Congressional Budget Office conservatively
2 estimated that we would need about \$1 million more each year
3 to successfully implement the WPEA. However, under
4 sequestration, our resources have actually been cut by about
5 a million dollars since the enactment of the WPEA.

6 Investing in OSC is one of the most cost effective
7 methods of promoting good government and preventing
8 violations of the merit system laws. Whether we are
9 enforcing the Hatch Act, USERRA, the Whistleblower
10 Protection Act or the laws protecting employees from
11 prohibited personnel practices, OSC provides a high return
12 to the Federal Government and the public.

13 I thank you for the opportunity to testify today, and I
14 look forward to hearing your questions.

15 [The prepared statement of Ms. Lerner follows:]

1 Senator Tester. Thank you, Carolyn. Appreciate your
2 testimony.

3 Karen Neuman, you are up.

1 TESTIMONY OF KAREN NEUMAN, ACTING CHIEF PRIVACY
2 AND FREEDOM OF INFORMATION ACT OFFICER, U.S.
3 DEPARTMENT OF HOMELAND SECURITY

4 Ms. Neuman. Thank you.

5 Good afternoon, Chairman Tester, Ranking Member
6 Portman, Senator Johnson and members of the Subcommittee. I
7 am very pleased to be here today to discuss the DHS Privacy
8 Office and our oversight responsibilities.

9 I joined the Department of Homeland Security as the
10 Chief Privacy Officer just under one month ago. In this
11 short time, I have experienced firsthand the broad
12 responsibilities borne by this small, but critically
13 important, office and the commitment of the staff to
14 ensuring that privacy is embedded throughout the
15 Department's programs. Our holistic approach to privacy
16 protection reflects our statutory policy, compliance and
17 oversight responsibilities.

18 I would like to address some of the specific questions
19 you raised in your invitation to testify today.

20 You asked about privacy and transparency. In addition
21 to my duties as Chief Privacy Officer, I am also the
22 Department's Chief FOIA Officer, and I understand the
23 importance of transparency in that respect.

24 Transparency is also central to our mission to protect
25 privacy. It is the first of the Fair Information Practice

1 Principles that guide the work of my office. Transparency
2 lets the public understand what information we collect from
3 them, how we use it across our vast mission set, how long we
4 will keep it and who we might share it with.

5 To promote transparency, the Privacy Office has
6 published hundreds of privacy impact assessments, or PIAs,
7 and system of record notices, or SRNs, on our public web
8 site. Our PIAs are often the fullest description to the
9 public of how DHS activities and programs collect and use
10 information and the specific measures we take to provide a
11 high level of privacy protection.

12 The Privacy Office is able to provide this level of
13 protection because we operationalize privacy throughout the
14 Department. Our privacy and compliance teams work with DHS
15 programs and system owners at the earliest stage of
16 development, planning and implementation to identify
17 potential privacy risks.

18 For example, the compliance team may identify risks
19 associated with a particular program and help craft
20 corrective measures whereas the policy team identifies
21 complex or novel privacy issues that may have department-
22 wide implications which can be addressed through DHS-wide
23 directives or policies.

24 I think from what I have seen in the short time I have
25 been here that our efforts to operationalize privacy have

1 been very, very effective.

2 You also asked about oversight. The Privacy Office
3 implements its oversight authority through a new oversight
4 team within the office that was established by my
5 predecessor. The team uses a suite of tools for reviewing
6 the Department's use of personally identifiable information,
7 each with the goal of improving data stewardship. These
8 tools include collaborative privacy compliance reviews,
9 privacy investigations, privacy incident response and
10 privacy complaint handling and redress.

11 The oversight team has forged close working
12 relationships with other oversight authorities, including
13 the DHS Office of Inspector General, GAO, OMB and the
14 Privacy and Civil Liberties Oversight Board.

15 I believe this layered approach has been extremely
16 effective at avoiding duplication of effort while leveraging
17 the highly specialized expertise of the Privacy Office.

18 You also asked how well our incident response program
19 is functioning. We have a great working relationship with
20 the component privacy offices and security staff and the DHS
21 Security Operations Center, who are the privacy incident
22 first responders.

23 The Privacy Office provides guidance and oversees the
24 process to ensure that breaches or other incidents are
25 properly mitigated and remediated, and if we have questions

1 about the adequacy of the response, we may reach out to the
2 components involved to ascertain facts and work toward an
3 effective resolution.

4 DHS policy requires staff to report known or suspected
5 privacy incidents, and reporting has consistently improved
6 over the years as incident response training has
7 intensified. I believe this program is working well.

8 I would like to share a few examples with you where we
9 have integrated privacy policy compliance and oversight to
10 provide clear benchmarks for evaluating adherence to DHS
11 privacy policy. These areas include our review of some of
12 the Department's screening rules, Privacy Office clearance
13 of certain intelligence products, and our review and
14 evaluation of major systems' privacy compliance in
15 preparation for the Department's annual budget submission.

16 Finally, you asked about the office's role in the
17 budget and policy process. My office reviews and evaluates
18 major systems' privacy compliance in preparation for the
19 Department's annual budget submission. More broadly, the
20 Privacy Office has meaningful input into this submission in
21 order to carry out all of our functions.

22 Budget reductions and sequestration have resulted in an
23 inability to backfill key positions that have been vacant.
24 That we are meeting our obligations really speaks to the
25 commitment and professionalism of the Privacy Office staff.

1 Maintaining and strengthening our workforce is a key
2 priority of mine in order that our mission does not suffer.

3 In closing, I would like to thank you again for your
4 invitation to address you this afternoon, and I look forward
5 to taking your questions.

6 [The prepared statement of Ms. Neuman follows:]

1 Senator Tester. Thank you very much, Karen, for your
2 comments.

3 Wendy Ginsberg.

1 TESTIMONY OF WENDY GINSBERG, PH.D., LIBRARY OF
2 CONGRESS, CONGRESSIONAL RESEARCH SERVICE

3 Ms. Ginsberg. Chairman Tester, Ranking Member Portman,
4 Senator Johnson, thank you for the opportunity to testify
5 before you today on technology's effects on Federal
6 oversight.

7 In 1885, Woodrow Wilson said that Congress should use
8 every means to oversee the executive branch. Otherwise, he
9 argued the country would remain in embarrassing, crippling
10 ignorance of the very affairs which it is most important it
11 should understand and direct.

12 In this testimony, I make three broad points. First,
13 evolving technologies can assist in oversight. Second, the
14 use of these technologies has advantages and disadvantages.
15 And, finally, technology must be thoughtfully and carefully
16 implemented if it is to assist Federal oversight.

17 To my first point, that technology can assist
18 oversight, it is important to first note that oversight
19 lacks a precise definition. In fact, it is not mentioned in
20 the Constitution. Yet, oversight is an implicit obligation
21 of Congress.

22 It can be performed in various ways to meet many
23 objectives. Congress has created a variety of tools to
24 assist its oversight function. Among these tools are
25 hearings, reporting requirements, general management laws

1 and the creation of an oversight workforce, which includes
2 institutions like the Government Accountability Office and
3 the 72 offices of Inspectors General.

4 Additionally, Congress and the President have employed
5 new and evolving technologies to increase information access
6 and, arguably, have facilitated greater public participation
7 in the oversight process.

8 One example of such an initiative is the Obama
9 Administration's Open Government Initiative, which employs
10 four core strategies: first, publish government information
11 online; second, improve the quality of government
12 information; third, create and institutionalize a culture of
13 open government; and fourth, create an enabling policy
14 framework for open government.

15 Private sector reviews of the initiative suggest that
16 agencies varied in their open government achievements.
17 Perhaps to address some of these criticisms, the
18 Administration began promoting what it called smart
19 disclosure, which requires agencies to release complex
20 information and data in standardized, machine-readable
21 formats that enable consumers to make informed decisions.

22 Another transparency-related oversight mechanism was
23 the establishment of the web site, Recovery.gov. It was
24 created in compliance with the American Recovery and
25 Reinvestment Act of 2009. The public-facing web site

1 includes information about the Recovery Act and the
2 distribution of Federal funding related to the Act. It,
3 arguably, allowed taxpayers to be in a better position to
4 hold their government accountable.

5 Similar technology was used to create other public-
6 facing web sites, including USASpending.gov, Data.gov and
7 Performance.gov.

8 Additionally, the 72 offices of Inspectors General have
9 employed technology in a variety of ways to assist Federal
10 oversight. The variance in department and agency missions,
11 however, prompts variety in how Inspectors General conduct
12 oversight and, therefore, disparate adoption of technologies
13 within the Inspector General community.

14 A 2011 survey conducted by the Council of Inspectors
15 General on Integrity and Efficiency found that only 26 of
16 more than 70 Inspectors General reported using any form of
17 new media.

18 Next, to my second point that use of technology has
19 advantages and disadvantages, employing technology and new
20 media can assist Federal oversight but can complicate
21 information security, privacy, legal oversight and records
22 collection. Continued use of large databases and new media
23 may require investments in training, equipment, personnel
24 and other resources. Additionally, existing statutes,
25 regulations or policies may need to be revisited to

1 determine whether they encumber IGs, the public or other
2 entities from effectively using online tools and data to
3 assist oversight.

4 Technology can assist in government oversight. It can
5 provide new information and allow overseers to use data in
6 innovative ways.

7 Technology and use of new media can assist in
8 investigations and facilitate public input on agency
9 actions. Providing interested stakeholders access to
10 information can allow them to track where Federal dollars
11 are spent, can provide context on the methodology used to
12 rate the most effective child safety seat or can provide
13 data on the spread of the flu virus. This access may help
14 uncover fraud, improve safety or even save lives.

15 And my final point, agencies must determine which
16 technologies to employ based on their mission and their
17 resources. Technology must be thoughtfully implemented, and
18 sensitive data and information must remain protected.

19 Mr. Chairman, this concludes my opening statement.
20 Thank you for the opportunity to testify, and I look forward
21 to your questions.

22 [The prepared statement of Ms. Ginsberg follows:]

1 Senator Tester. Thank you, Wendy.

2 And I want to thank everybody who testified here.

3 We will put seven minutes on the clock for questions,
4 and we will just kind of go down the line.

5 Peg, you are first. In your testimony, you reported
6 that two-thirds of the Inspectors General list budgetary
7 resources as their primary challenge in oversight. At the
8 same time, you testify that in FY 2012 there was a \$17
9 return on every dollar that our government invested in IGs.

10 Well, first of all, this looks like a way to fix a
11 national debt. How long does this go on before the return
12 becomes less?

13 In other words, has anybody put any metrics to that to
14 find out how much you are underfunded?

15 Ms. Gustafson. Right. I do not think anybody has
16 certainly put any metrics to effect.

17 I think, you know, just speaking for my office, we have
18 ways to go before we start seeing diminishing returns. For
19 example, you know, I think I am considered a mid-size
20 office. Were I fully staffed and not subject to
21 sequestration, I think I could have about 100 people.

22 In the meantime, the SBA loan portfolio is \$100
23 billion, and small business contracting is, of course, 23
24 percent of all Federal contracts. And so, you know, I
25 think, you know, just off the top of my head, 100 of us

1 overseeing that is small.

2 Senator Tester. Okay. This is for anybody who wants
3 to answer. It is kind of a lengthy question because it is
4 multiple choice. Okay?

5 When it comes to agency budgets for IGs, you must ask
6 yourself, why are you being underfunded?

7 Now is it because you do not have a seat at the table
8 when agencies submit their budget?

9 Is it a matter of not placing a high enough priority on
10 IGs' duties when the budget is being formed compared to
11 other resources?

12 Is there a conflict because some of the folks you are
13 requesting oversight from will be part of the folks that you
14 are tasked to do oversight on?

15 Or, is it a matter of Congress not providing
16 appropriate amounts of funding? You send the request in.
17 We whack it and send it back at a lower level.

18 As with all these, I mean, let us know where it is at.

19 I mean, who wants to respond to that?

20 Ms. Gustafson. Well, let me tackle it first--

21 Senator Tester. Sure.

22 Ms. Gustafson. --especially as a member of the
23 executive council and Chair of the Legislation Committee.

24 I have to say one of the things that Congress did for
25 IGs that was a tremendous benefit--and I hate to say that

1 because I worked on the bill--was the IG Reform Act of 2008
2 because what that does for us, which is tremendously
3 helpful, is Congress does get visibility into what the IGs
4 are requesting for their budgets.

5 And so the way that the IG Reform Act is supposed to
6 work is you will see what we believe--what we are asking for
7 from the President and from Congress for our budget. It may
8 not be the number that the President's--if it is the
9 President's budget--may be. It may be a different number.
10 But you will get both numbers, which I think is tremendously
11 helpful.

12 We also have the ability to note if we believe that the
13 number actually requested for us is too low for us to
14 perform the functions of our job. We are allowed to--the
15 President--we are allowed to note that, write a letter, and
16 that gets attached to the budget.

17 Quite frankly, the immediate issue that we have all
18 been facing in the last few years has been the lack of an
19 appropriation. I think what many of us have found is when
20 you look--to get a little inside the Beltway, when you look
21 at the marks that we are getting and when we look at the
22 committees are offering us, those tend to be much better
23 than what we are getting under a CR, under a continuing
24 resolution, under a straight line and certainly under
25 sequestration because, again, we are mostly salaries and

1 expenses.

2 Just very, very briefly, the basic breakdown of my
3 budget--and that is very similar to all IGs. Eighty-four
4 percent of my budget goes to salaries and expenses. Ten
5 percent is a fixed price contract for my financial statement
6 audit of the agency. And 6 percent is everything else,
7 which is every time my investigator needs to go somewhere to
8 investigate a crime.

9 So, when you take 10 percent off the top, you are
10 taking people.

11 And we have been in that position for a while now.

12 Senator Tester. Okay. Does anybody else want to
13 respond to that?

14 Go ahead.

15 Mr. Horowitz. Just briefly, I have only been on 18
16 months, so I am only here on my second budget cycle. But,
17 last year, what happened is we got the same 5 percent cut as
18 everybody else did. So there was no distinguishing between
19 IGs' budgets and other budgets.

20 As a result, that hits us for the reasons Peg
21 mentioned. It is basically all salaries. It is hard to
22 find other savings. We cannot just walk out of our rent
23 space, you know, our space, and all of a sudden save money.

24 The other is, also as Peg mentioned, even though our
25 House mark and what we have requested is higher than '13,

1 and the House mark was higher, on a CR, I cannot hire at
2 this point based on the hope that something will come
3 through. I am either going to go maybe up on the House
4 mark, maybe down if sequestration hits.

5 So, as a manager, I have got to understand what my
6 budget is, frankly, before I can start making hiring
7 decisions.

8 Senator Tester. Okay.

9 Ms. Neuman. And, Mr. Chairman, may I answer that also?

10 Senator Tester. Yes.

11 Ms. Neuman. The best way I can answer that is by just
12 talking about our budget. If you take sequestration into
13 account--

14 Senator Tester. Yes.

15 Ms. Neuman. --the Privacy Office's fiscal year 2013
16 enacted funding level was \$7.793 million, which is \$614,000
17 below the level appropriated in fiscal year 2011.

18 And the main result of this has been our inability to
19 backfill key positions that have been vacated due to
20 attrition. And it has resulted in the loss of 4 privacy
21 professionals, leaving 20 in my office and a backlog of--a
22 FOIA backlog.

23 It is important to note we do not have a separate
24 budget for oversight. We have--our Privacy Office gets one
25 budget that goes to policy compliance and oversight. And

1 with the funding levels being what they are, we are doing
2 what we can with what we have, but it will--the effect is to
3 have fewer people to conduct investigations, do privacy
4 compliance reviews and investigations.

5 Senator Tester. Maybe we should have an IG report on
6 how much the fact that you guys do not have the personnel
7 you need is costing the government--the IGs.

8 I mean I do not have a clue if anybody has ever done
9 any work on that. You probably do not have time to, and
10 nobody has requested it.

11 But the truth is if you are talking about \$17 per
12 dollar invested--and, Peg, you said we are nowhere near the
13 point where we could top out--well, it is not good
14 government. Let's just put it that way.

15 I will turn it over to Senator Portman.

16 Senator Portman.

17 Senator Porter. Thank you, Mr. Chairman, and thank you
18 all for coming in.

19 I am probably going to start with Ms. Gustafson only in
20 that you are chairing the IG Legislation Committee.

21 On the budget issue, I think Chairman Tester asked a
22 good question, which is, are you at the table?

23 And I guess the other question is--and anybody should
24 feel free to answer this. Assuming that you are at the
25 table, I understand what you are saying about the

1 Appropriations Committees being a better way to get your
2 funding than through a CR because appropriators appreciate
3 your work for the most part. I know sometimes they may
4 disagree with you--and are likely to see the value of the
5 return on investment you talked about.

6 But do you feel in a CR environment, and particularly a
7 CR and sequester environment, that you guys are getting a
8 disproportionate cut, and do you have any data to back that
9 up?

10 Ms. Gustafson. I think that the one thing that is
11 troubling, too--and I cannot speak for every IG because
12 every agency, I think, kind of treated it differently. But
13 I think one of the things that was a source of some
14 frustration for IGs, as Mr. Horowitz had mentioned, is, you
15 know, when these across-the-board cuts come, they are not
16 supposed to be--and that is where we really do not have as
17 much of a seat at the table because it is just a directive
18 to do an across-the-board cut.

19 I think some of us found ourselves being subject to
20 just the 5 percent cut whereas it seemed that the agencies
21 were being told, you know, do kind of a cost-benefit
22 analysis; do not do just across-the-board, but figure out
23 where this 5 percent should be applied.

24 I think sometimes that is not happening. I cannot say
25 that that is not the same across every single agency, but I

1 think that sometimes it is not happening.

2 I have found, for example--again, just anecdotally as
3 far as the budget request--when the agency has been asked,
4 find 10 percent but, again, do that kind of analysis, they
5 take 10 percent from me.

6 Now I benefit again--and I think we all benefit--from
7 the fact that I do not then submit a 10 percent cut to the
8 President. I submit my number. And through the budget
9 process, I, again, have been pleased--again, this is the
10 appropriations process--with the President's request for
11 myself.

12 I do not know if anybody else wants to add.

13 Senator Portman. Yes, Mr. Horowitz.

14 Mr. Horowitz. I do feel like I have a seat at the
15 table and am heard by the attorney general, and I do not
16 think that has been the issue.

17 I think the--again, I only have 18 months of
18 experience, but the bigger challenge for me, frankly, has
19 been living on a CR, not knowing if sequestration is going
20 to go into effect or not, managing and figuring out whether
21 I can or cannot hire because I am either looking at
22 squeaking by next year or being able to hire and fill some
23 of the vacancies, but I am going to be halfway through the
24 fiscal year or close to that before I can do that.

25 And, frankly, with all the security clearances my folks

1 have to go through--

2 Senator Portman. Yes.

3 Mr. Horowitz. --it takes many, many months. There is
4 such a lag time between losing someone and hiring someone.
5 It is a tremendously difficult thing to manage.

6 Senator Porter. So it is the uncertainty.

7 But you do not feel as though there is a
8 disproportionate cut in your office as compared to other
9 offices at Justice under sequestration?

10 Mr. Horowitz. No, I do not think I can fairly say
11 that.

12 I think it is the bigger question of the across-the-
13 board and the importance, frankly, as Peg said, of stepping
14 back and saying, where is the value-add and where do we have
15 the ability to cut, and making that analysis. That would,
16 obviously, be helpful from my standpoint.

17 Senator Porter. On the vacancy issue, quickly, we
18 talked about that in my opening statement, and some of you
19 addressed it briefly. But, frankly, I think that issue is a
20 real concern.

21 The 2008 law, it seems to me, has been helpful. Do you
22 agree with that?

23 Two thousand nine was kind of the low watermark, right?
24 I mean, it was kind of the--

25 Ms. Gustafson. Yes. I do not recall the historical

1 level of vacancies. I do know the 2008 law addressed a
2 little bit the idea of CIGIE keeping a list of potential
3 candidates for IGs, which I know that that is done and that
4 list is always available to both the President or to the
5 agency, depending on how they are chosen and how they are
6 hired.

7 But, you know, I think it has gotten better in the
8 recent past, but it does seem to fluctuate.

9 Senator Porter. Do you support what we are doing here
10 in terms of confirmations on IGs? Do you have thoughts on
11 that?

12 Ms. Gustafson. Well, I think it was very heartening,
13 if I can speak for the IG community, you know, that two of
14 our very well respected IGs were just confirmed very
15 quickly, you know, for State and for Defense, and I think
16 that that was--that has to have been seen as a favorable
17 process.

18 Again, you know, it seemed to me that the nomination
19 process went very smoothly. From the day of intent to
20 nominate and to the day they were confirmed was a fairly
21 short amount of time--

22 Senator Porter. Yes.

23 Ms. Gustafson. --which is, obviously, a positive
24 thing.

25 Senator Porter. And this Subcommittee and this

1 Committee are sort of the champions of trying to get our IGs
2 through. So, when you have issues, I hope you, as the Chair
3 of the Legislation Committee, will come to us.

4 I think one thing, if you can get it in the record,
5 that probably would be helpful, is to say what is the impact
6 of not having a permanent IG.

7 In other words, if you have Acting IGs, how does that
8 affect the morale of the office? Is there a wait-and-see-
9 what-happens attitude among folks when you guys are dealing
10 with your counterparts in the agency?

11 In other words, gosh, this person is not going to be
12 here forever. Why don't I just see if we can wait him or
13 her out?

14 Ms. Gustafson. I think it is hard to make a universal
15 claim about what the effect of an Acting IG is because,
16 quite frankly, it seems to me, having been even on both
17 sides, having worked on the IG Reform Act and now having
18 been an IG for over four years, an Acting IG has all the
19 ability to be as independent as a permanent IG, which is to
20 say the great things that the IG Act does that gives the IG
21 that independence are available to an Acting IG as well as a
22 permanent IG. So, you know, that is not--there is not a
23 structural problem with that.

24 As to the other part of your question, whether some
25 people--you know, some things are waiting for the permanent

1 person to come, I think that would also depend on the Acting
2 IG. I know that when I came in to my office that my Deputy
3 Inspector General had been Acting for a while. I think, in
4 general, the place was running quite smoothly.

5 Quite frankly, there were some policy decisions that I
6 made when I came in, to take it in a different area. There
7 were some changes I made.

8 But whether things were being held off, I think,
9 depends on--it really gets down to the individual office and
10 how that Acting IG is doing.

11 Senator Portman. Okay. I would think continuity would
12 be affected, and just accountability.

13 Ms. Lerner, you mentioned you are protector of the
14 merit system laws.

15 And, as you know, Senator Tester and I have recently
16 been working with you.

17 And you sent a letter to the DHS Acting Secretary,
18 Beers. So the Department of Homeland Security does not have
19 a Secretary or a lot of positions filled, but the Acting
20 Secretary was asked to provide you information regarding
21 this recent report you guys did administratively
22 uncontrollable overtime.

23 And, as you know, this administratively uncontrollable
24 overtime is supposed to be very limited. In fact, the
25 statute says it should be used for irregular and occasional

1 circumstances only, such as if a failure to stay on duty
2 would constitute negligence, so a very narrow kind of
3 overtime.

4 And, looking at it, you determined that these improper
5 claims of overtime have reportedly cost the Federal
6 Government up to \$9 million annually at 6 DHS offices,
7 reported by whistleblowers to you. The amount of annual
8 abuse of this is unknown because we do not have the
9 information yet.

10 Senator Tester is holding a hearing on this in the next
11 month, and we look forward to that hearing, but just a
12 couple process questions for you on how organizations
13 respond to situations like this because we are concerned
14 about the lack of response.

15 The statute that governs these responses requires
16 agencies to describe any action take or planned as a result
17 of the Office of Special Counsel investigation. To me, the
18 response to you from DHS seemed totally lacking in detail,
19 specifically, anything about any disciplinary action against
20 employees. And I guess we can either assume that there were
21 not any actions taken or that they are not telling you what
22 actions were taken.

23 Can you comment on this briefly?

24 I want to get to my colleagues' questions. So we can
25 maybe do a second round on this. But, just briefly, does

1 this happen often, that agencies do not fully respond to
2 your requests, and do you think it is consistent with the
3 requirements outlined in the statute--the way they responded
4 from DHS?

5 Ms. Lerner. Well, I think there are several parts to
6 your question. Let me sort of address the process one
7 first.

8 You are absolutely correct that the agency has to
9 respond to us when we send over a disclosure, and the type
10 of response that we got from DHS was actually pretty much on
11 par, if not better, than some of the responses that we get
12 because DHS did confirm the allegations that the
13 whistleblowers made. They did not deny the allegations at
14 all.

15 So I took some measure of comfort from the fact that
16 they admitted that they had a problem and, at least, you
17 know, on paper, saying that they are taking responsibility
18 for fixing it.

19 Now the problem is they said the same thing five years
20 ago. A very significant portion, like maybe a quarter, of
21 the report that we got back recently was basically cut and
22 pasted from the report that we got back five years when the
23 same allegations were sent over there for investigation. So
24 not much has changed.

25 The other thing that has not changed, as you mentioned,

1 is the detail about what they are going to do to fix the
2 problem. The action plan, if you will, that they gave us
3 this time mirrors the same steps that they said they were
4 going to take five years ago, with the exception of a new
5 video that they plan to show to all employees.

6 So it is a little bit bare-bones in terms of what they
7 are going to do to fix this problem.

8 They have said that they are going to do a full audit
9 of this problem. So let's hope that that helps expose both
10 how deep the problem is--how widespread it is--and how they
11 might fix it.

12 Senator Portman. Let me cut you off there because I
13 want to get to Senator Johnson's questions, but if we can do
14 a second round, I will have some other questions for you
15 about how they responded.

16 Ms. Lerner. Sure.

17 Senator Porter. Thank you, Mr. Chairman.

18 Senator Tester. We will be doing a second round.

19 Senator Johnson.

20 Senator Johnson. Thank you, Mr. Johnson.

21 Ms. Gustafson and Mr. Horowitz, I guess I would first
22 like to start out asking, how do you prioritize your cases
23 for investigation?

24 Ms. Gustafson, we will go with you first.

25 Ms. Gustafson. I think that--you know, I have about 45

1 criminal investigators. The priorities--and they are spread
2 out throughout the country. So I think there are any
3 number--any number of factors go into how they are
4 prioritized, including the caseload of the investigators
5 that I have.

6 My criminal investigators work very closely with DoJ,
7 U.S. attorneys, assistant U.S. attorneys, and very often the
8 decisions on whether a case is a go or no-go often goes--
9 often is dependent or contingent upon talking to DoJ, seeing
10 the likelihood of that case, of course, being accepted for
11 prosecution because it is important that we do that.

12 So, in addition, of course, you know, certainly the
13 amount of loss is always a factor in any case. For my
14 investigators, again, the two biggest things that we are
15 looking at are loan fraud in the SBA lending programs and
16 then small business contracting fraud.

17 And so, one of the emphases I made was to reemphasize a
18 little bit the contracting fraud. Those cases sometimes
19 went a little bit by the wayside, and so we put more of an
20 emphasis on that.

21 And I think that that plays a part in that, which is--
22 which has resulted in some of our biggest cases, including a
23 \$100 million contract fraud case, with a billion-dollar
24 contract that was about to be awarded fraudulently that we
25 had a couple years ago.

1 So there are any number of factors.

2 Senator Johnson. So, I mean, likelihood of prosecution
3 or quality of the prosecution, then the dollar amount.

4 Mr. Horowitz?

5 Mr. Horowitz. If it is a criminal allegation involving
6 Justice Department employees or Justice Department funds, we
7 will investigate it. We will open an investigation and go
8 forward.

9 I have had occasion where I have had to call the U.S.
10 attorney because my personal view, having been a prosecutor
11 on corruption cases before, is the dollar value in a
12 corruption case should not matter, like it should in many
13 others. If a public official I taking money, that warrants--
14 --and you can prove it as a crime--that warrants prosecution.

15 In the noncriminal context, because we get thousands of
16 various pieces of information coming across, first off, as I
17 mentioned earlier, we do not have authority over attorney
18 misconduct in the course of attorney work. That is a
19 problem from our standpoint. So those cases go back to the
20 Department. They investigate themselves in that instance.

21 For non-attorneys, we will look at the seriousness of
22 the allegation. We take high-level official misconduct. So
23 GS-15 and above--generally, we will look at that.

24 And then, separately, we assess in the remaining cases,
25 what is the need for independent oversight? What value do

1 we bring as an independent oversight authority to look at
2 that?

3 Senator Johnson. Okay. I just kind of want to explore
4 your relationship with the agency and the Department and
5 your independence.

6 Let me first ask, what is--and I realize this is kind
7 of hard to summarize or typify. But, what would be a
8 ballpark in terms of how long you want to take on an
9 investigation?

10 I mean, how quickly do you want to get through
11 something? What would be an average length of time for an
12 investigation?

13 Mr. Horowitz. Well, let me speak from our standpoint.
14 We have such a wide range, frankly, of allegations. We have
15 some in the prison, and we have the prison system. We might
16 have a video that will take a very short time. Other more
17 sophisticated, grant-related frauds that could require us to
18 go administrative or grand jury could take months and years.
19 And we do not control some of those because those then to go
20 the prosecutor, and they have to bring them.

21 Senator Johnson. Okay. Well, let's talk about timing
22 of the release of a report. Who is in charge of that? Is
23 that strictly a call made by the Inspector General's Office?

24 Mr. Horowitz. In a noncriminal case, we would make the
25 call. In a criminal case, obviously, it is going to be the

1 indictment, and that is the prosecutor's control.

2 Senator Johnson. In terms of the reports you issue--
3 and I will ask both of the Inspectors General this--what is
4 the appropriate relationship between yourself and the agency
5 or the department you are investigating?

6 Mr. Horowitz. From our standpoint, when we do an
7 investigation, we do it--of the Department--if it is a
8 third-party, for example, we might have the FBI where we--

9 Senator Johnson. I am just talking about if you are
10 talking about your Department.

11 Mr. Horowitz. Right. Internally, we do it ourselves.
12 We talk about it ourselves. And, when the time comes, like
13 in Fast and Furious, to issue the report, we send the final--
14 --we send the proposed final report for comment, and that is
15 when the Department gets its first chance to comment.

16 Senator Johnson. So it would be totally inappropriate
17 for the Department to comment or see the report ahead of
18 time, before it is released?

19 Mr. Horowitz. We will give them a chance to review
20 our--for example, in audits, investigations--audits and
21 reviews--let me do audits and reviews.

22 We will give them a chance to review and provide us, in
23 some instances, with informal comment but always with formal
24 comment, which is what you see attached.

25 Senator Johnson. Okay, but that would be a comment.

1 It would be an addendum to the report.

2 They would not be--would they be changing wording in
3 your report?

4 Mr. Horowitz. They would not have authority to change
5 wording.

6 In audits, for example, we will often sit down with the
7 component and say, here is what we found. Here is a
8 problem.

9 For example, ATF undercover operations that we just
10 did, we found unreconciled \$100 million worth of cigarettes.
11 We went to the Department when we heard about that to alert
12 ATF and the Department that they needed to fix the problem.

13 Senator Johnson. Okay.

14 Mr. Horowitz. So, for example, in that instance, they
15 would know even earlier in the process.

16 Senator Johnson. But the department or agency would
17 not change the wording of your report.

18 Mr. Horowitz. We would not let them change the
19 wording.

20 Senator Johnson. They could read--

21 Mr. Horowitz. They could comment to us.

22 Senator Johnson. So it would be totally inappropriate
23 if an agency or a department changed wording with a report?

24 Mr. Horowitz. Let me just--I would not allow the
25 Department to edit my document.

1 They might give me comments. They might say I have got
2 it wrong. We would then sit down and talk about it
3 internally, and we make the decision.

4 Senator Johnson. Ms. Gustafson, do you agree with
5 that?

6 Ms. Gustafson. I do agree with that, again, and I have
7 to say for myself I am basically talking about the audit
8 context.

9 My criminal investigators, again, that would be--we are
10 talking about--

11 Senator Johnson. Okay. I am talking about a report on
12 your agency or your department.

13 Ms. Gustafson. Right. The reports that we issue are
14 done by us. Certainly, there is always a lot of
15 communication between the agency.

16 There is no question, though I am not an auditor, that
17 they are probably suggesting language. But, do they get to
18 dictate language and edit and then have final say? No,
19 absolutely not.

20 Senator Johnson. Would either of you ever--or would it
21 be appropriate for you--to utilize the agency or the
22 department's counsel in any capacity?

23 Mr. Horowitz. The Department actually does not have a
24 general counsel. It has the Office of Legal Counsel, and we
25 would not necessarily go to them for guidance or legal

1 advice.

2 Senator Johnson. Ms. Gustafson?

3 Ms. Gustafson. No. As the IG Reform Act notes, we
4 have our own counsel.

5 Certainly, OGC always has their own opinion of the
6 legal issues in our audit reports, and you know, we get to
7 hear those, but we do not rely on them.

8 Mr. Horowitz. Let me echo that. I go to my general
9 counsel regularly on issues. That is where I would go.

10 Senator Johnson. But, again, your general counsel in
11 the IG's Office, not the Department's.

12 Mr. Horowitz. The IG, correct.

13 Ms. Gustafson. Yes.

14 Senator Johnson. Okay. Thank you.

15 Senator Tester. Okay, I want to talk a little bit
16 about overclassification. It is something both, quite
17 frankly, of information and of positions. It has something
18 that has come to light in a number of different areas. It
19 is something that I actually feel very strongly about
20 because it compromises transparency and it impairs our
21 ability to perform quality oversight.

22 The question is, have you run into situations where you
23 are not able to get information due to overclassification?

24 Anybody who wants to answer that can.

25 Ms. Gustafson. First off, I am supposed to, under the

1 IG Act, have access to anything that I need from my agency,
2 and so what they are classified as should not dictate what I
3 get to see or not see. Section 6 of the IG Act is very
4 clear about that.

5 Senator Tester. So, if it is classified as being
6 secret information of any type, you still have access to it?

7 Ms. Gustafson. I have. There are people in my office
8 who have. For example, I have a top secret clearance.
9 There are people in my office--I mean, we have people who
10 have certain clearance levels just as the agencies do.

11 Senator Tester. Sure.

12 Ms. Gustafson. And, for example, if we have worked on
13 audits--we have done audits on DoD projects, for example.

14 Senator Tester. Sure.

15 Ms. Gustafson. I had a team of auditors who actually I
16 stole from DoD IG, who came with top secret clearances. If
17 we needed to see that information, they would have the
18 auditors who would see it because they would have the
19 appropriate clearance levels.

20 So we have not encountered that problem.

21 Mr. Horowitz. In terms of the Department saying we
22 cannot look at classified information, we have not had that
23 problem.

24 We have had discussions, though, as I referenced in my
25 testimony, to a question being raised whether we are, for

1 example, allowed to see raw FISA data, which--as you know,
2 we do many reviews related to FISA. That would be
3 problematic for us.

4 We have not had it withheld from us. We have worked
5 through the issues. But that is, for example, one of the
6 issues that we occasionally deal with.

7 The other context that brings up is when we want to
8 issue a report we fight very strongly to have the report go
9 public in as great a detail as it can, and we often get
10 faced with, in our view, the initial response being
11 overclassified, whether law enforcement-sensitive, which is
12 a separate category, or actual classification. We end up
13 pushing back very strongly and having in many instances, I
14 will call it, a robust discussion internally.

15 We ultimately do not control the final decision because
16 it is not our information, but we do push forward very
17 aggressively in ensuring that when we think there is an
18 overclassification in response to our report we fight
19 internally and often elevate it within the Department and
20 frequently prevail, frankly.

21 Senator Tester. Anybody else want to respond to that?

22 [Pause.]

23 Senator Tester. So let me ask it this way. From your
24 answers--do not let me words in your mouths--I am not
25 hearing that there is any impediment as far as getting

1 information regardless of the classification.

2 Ms. Gustafson. I have--I am not aware of impediments
3 regarding classifications.

4 Senator Tester. Okay.

5 Ms. Gustafson. I am aware there are sometimes IGs--and
6 I think Mr. Horowitz has some of his own specific examples--
7 who--some laws are thrown up, saying--thrown up to them,
8 saying you do not have access because of this specific law,
9 and then IGs need to work through that.

10 Again, the IG Reform Act--the IG Act is supposed to
11 give us access to that, but I have not heard of
12 classification being an issue.

13 Mr. Horowitz. Right. As Peg said, it is an issue that
14 has been thrown up. We have had to work through several and
15 various areas, not necessarily the classification issue, but
16 on the raw FISA issue--raw FISA information area--it has
17 come up. It takes many months.

18 To the point of how long does it take sometimes to do
19 our views, they are greatly impacted by those back-and-
20 forths. So it can take months.

21 Senator Tester. Okay. Ms. Neuman, your office handles
22 privacy policy within DHS. It has sought to create an
23 environment in DHS where neither privacy nor security is
24 compromised--an admiral task, tall task, especially in an
25 agency like DHS that has something like 22 agencies in it.

1 Many interact daily with literally millions of Americans.

2 How successful have you been?

3 Ms. Neuman. Well, in the short time I have been here,
4 I have to say that I think we have done a really good job.
5 We have been very successful. We work very closely with our
6 component privacy officers and privacy points of contact
7 during the development of programs and systems to build
8 privacy in on the front end, to build privacy protections in
9 on the front end.

10 All of this is documented in our compliance documents,
11 the PIAs I mentioned earlier, which serve a really
12 important--two very important functions. One is
13 transparency to the public so they know what information is
14 being collected and how it is used, but it is also used--
15 these PIAs are also used to help provide benchmarks for the
16 oversight process so that the privacy risks are identified.

17 Through the PIA process, we work to develop very strong
18 mitigation mechanisms to protect privacy, and then we use--
19 we refer to those benchmarks during PCR reviews and other
20 assessments of how effective the privacy protections have
21 been. And we update the PIAs as necessary. They are posted
22 on our web site.

23 So you are right; it is a very challenging job, but our
24 mission is to sustain privacy in the systems and programs
25 that the Department is implementing and developing.

1 Senator Tester. Can you give us an example of where
2 your office has interjected itself into the process to voice
3 its concerns over privacy?

4 Ms. Neuman. Well, there are a number of programs that
5 are developed to collect information, whether it is at the
6 border or from passengers traveling into the country,
7 students coming in on visa programs. And we are very
8 careful that the information is collected only for a
9 specific purpose. We pay very close attention to retention
10 periods so that information is not collected longer than is
11 necessary to accomplish a purpose and that access to that
12 information is really limited to people who have a need to
13 know that information or/and a need to use that information
14 to carry out their responsibilities.

15 Senator Tester. Okay. Michael, the same series of
16 questions as far as privacy goes--is there a time where you
17 have been able to be successful in balancing that, or is
18 that not an issue in your Department?

19 Mr. Horowitz. The privacy issue for us really does not
20 arise in my office.

21 We have--you know, our view is we are independent. We
22 make our own decisions on those issues.

23 We push very strongly to put forward publically, as
24 long as it is legally allowed, and obviously, the Privacy
25 Act plays into this. We want to be transparent. We want

1 our reports public. We want the information posted on our
2 web sites.

3 The issue comes back in pushing on what is law
4 enforcement-sensitive and some of the other issues that we
5 struggle with.

6 Senator Tester. All right, Senator Portman.

7 Senator Portman. Ms. Lerner, going back to the
8 previous questions we had about administratively
9 uncontrollable overtime, your response sort of surprised me
10 because you said you thought this was about par for the
11 course in terms of the response from DHS. You were pleased
12 that they did not deny the allegations; in fact, they
13 admitted them. You also noted that they had essentially
14 done that five years ago and that you were still concerned
15 about the kind of follow-through you would get.

16 Let me just ask you specifically about whether you
17 think the current statute gives you the authority you need
18 to get the information that you need.

19 The statute is 5 U.S.C. Section 1213(d)(5). It says,
20 agencies are required to describe any action taken or
21 planned as a result of the OSC investigation.

22 However, it uses the term, such as, and it says, such
23 as changes in agency rules.

24 The restoration of any aggrieved employee--the
25 restoration of any aggrieved employee is what we were

1 talking about earlier, that you do not know whether there
2 has been any disciplinary action taken.

3 Ms. Lerner. Right.

4 Senator Portman. Disciplinary action taken against any
5 employee, referral to the AG of any evidence of criminal
6 violation, changes in rules, and so on.

7 Do you think it would be helpful for you, in terms of
8 getting the responses you feel that you need, to have that a
9 requirement in the reporting in the statute, or do you think
10 you have the authority that you need to be able to get to
11 the bottom of these?

12 Ms. Lerner. Well, unlike prohibited personnel
13 practices, where we have, for example, a retaliation case
14 after someone comes to us with a disclosure--and we do have
15 some of those in the DHS matter too--the agency does have to
16 let us know what actions they have taken or will take as
17 part of an agreement with our agency. And I think that is
18 very helpful.

19 Of course, in that context, we have the ability to
20 actually prosecute cases to the MSPB and either require the
21 agency to take disciplinary action or make sure that the
22 whistleblower is made whole if they have been retaliated
23 against. So we can require the agency to take remedial
24 action.

25 We do not have that same ability in the disclosure

1 context under, as you said, 1213(d). We do not have
2 independent investigative authority.

3 In assessing whether the report from the agency is
4 reasonable or not, one of the things that we look at is what
5 remedial action they have taken.

6 So the reason that I found the report inadequate was
7 not because they did not come up with the right outcome in
8 terms of verifying the allegations; they did.

9 The reason I found it inadequate was because they had
10 not taken effective remedial action and because their steps
11 for, you know, solving the problem were not appropriately
12 outlined, and it left me with the concern that they did not
13 have the ability or the willingness to take corrective
14 action.

15 Senator Portman. Okay, given the history, but I guess
16 what I am questioning is whether you even have adequate
17 information to know whether they have taken remedial action
18 because they were not required to tell you.

19 Ms. Lerner. Well, they were not required to tell me if
20 they took disciplinary action. They were not required to
21 tell me if, you know, they were trying to figure out whether
22 the overtime that was being taken was actually fraudulent
23 overtime versus just inappropriate overtime.

24 They are required to tell me what steps they are going
25 to take to solve the problem.

1 Senator Portman. Like the video.

2 Ms. Lerner. Like the video, like--you know.

3 Senator Portman. Yes.

4 Ms. Lerner. They outlined a few steps.

5 Senator Portman. But not disciplinary steps and so on.

6 Ms. Lerner. That is right.

7 Senator Portman. We will get into this more in the
8 hearing, and I just wanted to prepare us maybe better for
9 the hearing by getting your input on that.

10 Ms. Lerner. Sure.

11 Senator Portman. Our job is, among other things, is to
12 look at legislation. So we are going to be looking at that
13 code section. If you have additional thoughts, I hope you
14 will let us know.

15 Ms. Lerner. Okay.

16 Senator Portman. On whistleblowers, we talked a little
17 bit about this. Mr. Horowitz, maybe you are the right
18 person to talk to since you have had some experience here.

19 In 2006, the IG at Justice testified before another
20 congressional committee. This is Glenn Fine, and he said
21 that--this is in the context of FBI reprisals against
22 whistleblowers by revoking an employee's security clearance.
23 You are probably familiar with this.

24 Mr. Horowitz. Mm-hmm.

25 Senator Portman. He testified, "The IG would have

1 authority to investigate an allegation that an employee's
2 security clearance has been revoked in reprisal for
3 protected disclosure under its general authority to
4 investigate allegations of misconduct, fraud, waste and
5 abuse in the Department."

6 He also stated that the FBI official said that they
7 were not familiar with any case in which an employee alleged
8 that revocation or denial of a security clearance was in
9 retaliation for protected disclosure.

10 A couple questions--one, do you agree with IG Fine's
11 point on the authority of your office to be able to do that,
12 and are you aware of any instances in which an employee has
13 alleged that revocation or denial of a security clearance
14 was in retaliation for a protected disclosure?

15 Mr. Horowitz. I do agree that we would have the
16 ability to go forward as he suggested.

17 I do not, as I sit here, recall any such instance in
18 the last 18 months, in my 18 months on the job, but I can
19 certainly go back and check on that.

20 Senator Portman. Have you ever investigated an
21 allegation of reprisal based on a security clearance being
22 suspended or revoked?

23 Mr. Horowitz. We do have several reprisal cases going
24 on, and I would have to, frankly, go back and see if that
25 was one of the components of the claim. It may have--there

1 may be one, but I would want to double-check.

2 Senator Portman. Okay. I think it would be helpful to
3 me if you would get back to me on that.

4 Mr. Horowitz. I will do that.

5 Senator Portman. Given some information that we had
6 received, we just want to try to confirm or determine
7 whether it is an issue or not.

8 On the privacy issue, Ms. Neuman, you responded to the
9 Chairman's questions about how your office operates within
10 DHS. You were pretty positive about that and the experience
11 you have had there.

12 Can you give us a specific example of where your office
13 has interjected itself into the process to voice a concern
14 over privacy?

15 Ms. Neuman. Let me answer the question this way. I am
16 not sure that I would see us as interjecting ourselves. We
17 foster a culture of privacy throughout the Department. And
18 included in the context of oversight, part of that culture
19 is encouraging--in fact, requiring--the reporting of privacy
20 incidents.

21 We do so in a way that encourages people to come
22 forward without fear of reprisal or humiliation, and we
23 would initiate an investigation if we found evidence or
24 allegations of really egregious conduct or willful
25 noncompliance with Department policy or directives.

1 We work with the components to address problems. We
2 often find that we do not have to get involved or initiate
3 resource-intensive full-scale investigations. We are really
4 able to address issues throughout privacy compliance review
5 process, which is a collaborative process that enables us to
6 make--to validate that the privacy requirements are being
7 adhered to.

8 So I see us as really working collaboratively with our-
9 -throughout the Department and not interjecting ourselves
10 absent the need to do so for really egregious conduct. And
11 we have initiated three investigations where we felt it was
12 necessary to investigate conduct that was brought to our
13 attention or that we otherwise discovered.

14 Senator Portman. Okay. If you are at liberty to
15 provide us that information, that would be helpful.

16 Ms. Neuman. One of them was public.

17 Senator Portman. No need to do it now. We want to get
18 on to Senator Johnson's questions.

19 Ms. Neuman. Certainly.

20 Senator Portman. But if you would not mind in writing
21 to provide that to the Subcommittee.

22 Ms. Neuman. Certainly.

23 Senator Portman. Thank you very much.

24 Senator Tester. Thank you, Senator Portman.

25 Senator Johnson.

1 Senator Johnson. Thank you, Mr. Chairman.

2 Ms. Gustafson, in your position as Chair of the
3 Legislation Committee of CIGIE, I just kind of want to walk
4 through a couple questions.

5 First of all, when there are allegations of wrongdoing
6 or reports of wrongdoing in the Inspector General's Office,
7 can you just quickly walk us through exactly how CIGIE
8 handles those?

9 Ms. Gustafson. So the IG Reform Act of 2008 codified
10 the Integrity Committee, which I will tell you existed
11 before the IG Reform Act. The Integrity Committee was in
12 existence.

13 And it is there specifically to investigate allegations
14 of wrongdoing by IGs or by those direct reports of IGs where
15 an investigation could not be done by the IG Office due to a
16 conflict, our head of investigations or our DIG, so that
17 when--when an allegation is received--the Integrity
18 Committee has a web site and a number.

19 Some people would report those allegations directly to
20 the Integrity Committee, which is chaired by the FBI. And
21 then the Integrity Committee is comprised of the FBI, four
22 Inspectors General chosen by the Chair of the Council and
23 also Office of Special Counsel and Office of Government
24 Ethics.

25 The FBI chairs that and takes those allegations, and it

1 goes through a process of seeking--of determining whether it
2 should be sent to Justice, determining whether an IG needs
3 to answer it.

4 If the allegations come through some other way--
5 sometimes I believe these allegations are sent to CIGIE
6 themselves. CIGIE has an office, seven employees, an
7 executive director.

8 I think sometimes the allegations are conveyed to the
9 Chair of the Council. Those are always sent right to the
10 Integrity Committee for the process. All allegations are
11 processed the same way and go through that process.

12 I do not know if you want me to walk through that
13 process a little bit.

14 Senator Johnson. No, let's try talking about it
15 specifically. Has CIGIE received allegations from the then-
16 Acting and now-Deputy Inspector General in the Department of
17 Homeland Security?

18 Ms. Gustafson. Well, unfortunately, I do not know the
19 answer to that question because I certainly have not. I am
20 not being facetious. I do not know.

21 I believe that--I know this is has been a topic of
22 discussion.

23 I believe that to the extent that any allegations have
24 been made and they have been sent to the Integrity
25 Committee, I was not--

1 Senator Johnson. You would have no knowledge of that
2 then?

3 Ms. Gustafson. I have no personal knowledge of that.

4 My understanding is any allegations received by any--
5 about any IG are sent by CIGIE which, again, would be the
6 Executive Director or the Chair, to the Integrity Committee.

7 But I do not have personal knowledge of that. I was in
8 a briefing it was--where they talked about that is the
9 process they would have taken, but I do not have personal
10 knowledge of what IG--

11 Senator Johnson. Well, let me ask anybody in the
12 panel. Is anybody on the panel aware of any allegations of
13 wrongdoing on the part of now-Deputy Inspector General of
14 the Department of Homeland Security? Anybody aware of that?

15 Ms. Lerner?

16 Ms. Lerner. Senator Johnson, I do sit on the Integrity
17 Committee. I am recused from any matters involving the DHS
18 IG because the same allegations are at my agency. So I
19 cannot speak to you specifically about anything, and I
20 probably could not in this public forum anyway.

21 But I can confirm that allegations were at least being
22 considered. I do not know the status now. As I said, I am
23 recused.

24 Senator Johnson. Anybody that is not recused that can
25 answer the question?

1 [Pause.]

2 Senator Johnson. Then I have no further questions.

3 Thank you.

4 Senator Tester. Wendy, you cannot get off. The
5 technology and how IGs throughout government are utilizing
6 it--how would you grade them on utilizing technology in
7 their jobs as Inspectors General, whether it is getting to
8 the problem of problems or getting information out to the
9 citizens?

10 Ms. Ginsberg. If you are asking about the Inspectors
11 General specifically, the best resource for that that I
12 could find was the Council of the Inspectors General on
13 Integrity and Efficiency had their own report on the use of
14 new media. And, as I said in my testimony, they did not
15 have a high level of respondents for that particular ask of
16 information on how many IGs were using new media, but only
17 26 of the 72 existing IGs responded that they were using any
18 form of new media whatsoever.

19 Senator Tester. So what you are really saying is that
20 they would have been utilizing it they would have probably
21 responded.

22 Ms. Ginsberg. My thinking on it was if they were doing
23 something incredibly innovative they probably would have
24 responded.

25 Senator Tester. Okay. Let me ask you about

1 information being put out there for public consumption when
2 there is so much of it that actually dilutes its
3 effectiveness.

4 Is there anything that we can do--quite frankly,
5 because transparency is a big thing in any part of
6 government--that could help make it so it is more accessible
7 to folks? It might be out there, but it still might not be
8 accessible.

9 Ms. Ginsberg. Well, I think the Smart Disclosure
10 Initiative is one way. The Administration is trying to
11 tackle exactly that problem, that you just cannot pour reams
12 of data out there and expect that every user who has an
13 interest in finding a particular data point can find that
14 data point. You get lost in the big haystack and cannot
15 find the needle.

16 But Smart Disclosure is an attempt this data in
17 machine-readable formats that allow interplay between sets
18 of databases. It is a way to try to get through and find at
19 least a few needles that might fit together and create
20 something that is more usable to individuals in the public,
21 so they can assist in Federal oversight, or create really
22 new, incredible apps that help people in their daily lives.

23 Senator Tester. Who would be--I mean, look, these guys
24 have got enough to do, plus, with short budgets and
25 sequestration.

1 Who would be responsible to give some guidance on that
2 so that--whether it is apps or whether it is--

3 Ms. Ginsberg. It has historically been communicated
4 through--the Office of Management and Budget has come out--
5 they have been in charge of creating a lot of the public-
6 facing web sites with the Electronic Government Fund that is
7 administered through the Government Services Administration

8 Senator Tester. Yes.

9 Ms. Ginsberg. So I think that they have done a lot of
10 writing of guidelines and memoranda to help agencies figure
11 out how to frame what data sets they should be releasing in
12 making information more accessible to the public.

13 Senator Tester. Okay. This next couple of questions
14 are for the Inspectors General. We rely upon your oversight
15 work to shed light on misconduct and waste in the agencies.
16 Who is ultimately responsible for policing the work that you
17 do?

18 Ms. Gustafson. Well, it depends on what you mean by
19 policing, but as I--because there are a couple different--

20 Senator Tester. Well, let me put it this way. If you
21 have got an IG that is really not doing their job--

22 Ms. Gustafson. Right.

23 Senator Tester. --who checks? Where is that box
24 checked at?

25 Ms. Gustafson. Well, just to reiterate, first off, as

1 far as allegations of wrongdoing or things that are serious
2 enough to suggest that an IG should not be an IG, that is
3 the Integrity Committee. Those referrals are made to the
4 Integrity Committee.

5 And, just so you know, in the context of that process,
6 DoJ Public Integrity Group also is referred to anything--is
7 referred anything where there may be allegations of criminal
8 wrongdoing.

9 Senator Tester. Yes.

10 Ms. Gustafson. As far as making sure that our work is
11 up to standards, all of our offices are subject to peer
12 review. Our audit shops receive a peer review every three
13 years from another audit shop. Those of us with law
14 enforcement authority undergo a peer review as well from
15 another IG for every three years.

16 But, as far as whether we are being as effective as you
17 want us to be, we are reportable to Congress, and of course,
18 I am reportable to the President.

19 And whether I am not--if I am not doing the best job,
20 in general, what that is, is that is up to you to make hay
21 about it if you do not think so and the President to remove
22 me if he does not think so, with 30 days notice, too, as to
23 why.

24 Senator Tester. Yes, but here is the problem from our
25 perspective, and I do not want to give you guys a way out

1 here, but unless somebody is doing the evaluation of you, I
2 guarantee you--well, maybe Senator Portman can, but I cannot
3 evaluate the work that you are doing. I do not have the
4 skill set to do that--

5 Ms. Gustafson. Right.

6 Senator Tester. --in a way that is fair and effective.

7 Ms. Gustafson. Right.

8 Senator Tester. So where do we go to get the
9 information?

10 Ms. Gustafson. Well, again, I think that if it is a
11 function of whether we are working under standards our peer
12 reviews are posted on the web sites, and you know whether we
13 pass peer review.

14 But, as far as whether we are up to snuff, I go to
15 hearings. The Small Business Committee will have hearings
16 very regularly where they will, I think, have a little bit
17 more insight into whether I am doing the job that they think
18 I should be doing just because of, you know, obviously the
19 subject matter.

20 I am sure Mr. Horowitz has the same type of thing.

21 But, as far as the effectiveness, you know, we issue
22 semiannual reports that talk about the accomplishments that
23 we have made.

24 One of the things that I think is often very useful
25 myself is we issue the top management challenges from the

1 agency. That is a report that we issue annually.
2 Personally, I think that that is a good arbiter of how
3 effective we are because the agency has to--I think it shows
4 whether the agency is listening to us, paying attention and
5 whether the big problems are being fixed. I think that is
6 often sometimes a good measure.

7 I think there are any number of things that way.

8 I do not know, Mr. Horowitz, if you have something to
9 add.

10 Mr. Horowitz. And, just briefly from my standpoint,
11 frankly, having been on the job for 18 months and seeing
12 what we can do and the impact we can have, if you are not
13 seeing strong, solid reports from IGs, they are probably not
14 doing all they can because there is a fair amount of follow-
15 up work, audits, investigations and reviews that can be done
16 that, if they are done aggressively, will find things.

17 And so I think one of the things that is very important
18 is getting those reports out publically and getting them out
19 to Congress.

20 And I think also, frankly, from the discussion we have
21 had today, we in the CIGIE community need to be as
22 transparent as we are with our own agencies. We, as a
23 community, should be putting out there what we are doing to
24 self-police and self-patrol so that taxpayers know what we
25 are doing and whether they are getting value for what we are

1 doing.

2 Senator Tester. Okay, Senator Portman.

3 Senator Portman. Thank you, Mr. Chairman.

4 And thank you all for being here today. We will
5 continue to be in touch with you and your colleagues.

6 To Ms. Ginsberg, I have to ask you some questions here
7 because you kind of left out earlier. The Chairman started
8 with his, so I will, too.

9 On this whole issue of technology, we are in the
10 middle, as you may know, of looking at security clearances--
11 this Subcommittee. This comes out of a longer interest but
12 particularly the horrific events at the Navy Yard and how
13 that guy got his clearances. We had been into it a little
14 bit on the privacy side, protecting some of our most
15 important government secrets.

16 And what we are trying to do is figure out how we can,
17 on the security clearance front, get better access to
18 databases, sometimes within the government, sometimes
19 outside the government, for more expedited clearances, more
20 thorough clearances and that sort of thing.

21 So just hearing your testimony and your response to the
22 Chairman's other question, can you tell us more about how
23 the Inspectors General should appropriately access data?

24 You talk about the fact that there are so much more
25 data out there and that that is good because the public now

1 knows more about how their government operates.

2 When I was at the Office of Management and Budget, we
3 put all grants and contracts online, and I was a strong
4 proponent of that. That actually came out of legislation in
5 this Committee as I recall.

6 But the reality is someone has got to analyze it and do
7 the sort of next-level analysis to determine whether this
8 information is the right information coming from agencies--
9 in other words, if it is accurate, if the agency is doing
10 what it says it is going to do.

11 And also, I think there is a responsibility among the
12 IG community to look beyond the data and sort of say, is
13 this the right data?

14 In other words, you might have a whole lot of data on
15 certain issues out there from, say, the Department of
16 Justice, but other stuff--I mentioned whistleblowers earlier
17 and some of the reprisal issues--that might not be out
18 there. So how to sort of balance that out?

19 Anyway, what are your thoughts on that, Ms. Ginsberg,
20 and can the IGs use data more effectively to do their
21 important jobs?

22 Ms. Ginsberg. I think it is certain that data can be
23 helpful to figuring out the best policy options and the
24 oversight process generally. But I will say that more data
25 does not necessarily equal better; more use of new

1 technologies and new media does not necessarily mean you are
2 going to better execute your mission.

3 You have finite resources. You have to spend them in a
4 way that is the best way to execute your mission. So just
5 going out here to find as many databases that you can get
6 access to is maybe going to encumber your mission more than
7 anything else. You are just going to get more background
8 noise than the information that you actually need to execute
9 what you want to execute.

10 So I think it is more of a strategic game about
11 figuring out what media might best suit your needs.

12 And I think earlier Ms. Gustafson talked about the
13 issues that exist with the Privacy Act that inhibit data
14 matching in some cases for IGs. They cannot get access to
15 one data set that might provide them and tell them whether
16 applicants for another entitlement, whether they are
17 providing accurate information to get that entitlement. And
18 you can cross data sets there. That might be a really great
19 use of a new database that an IG can acquire.

20 But to just start using Twitter, to start using Twitter
21 might not be the best use of resources of an IG.

22 Senator Portman. Yes. And I think it is an
23 opportunity but also a challenge, including, as the Chairman
24 said, just the inability to have adequate staffing to do
25 your current job, much less to be able to look through these

1 troves of data.

2 And there is a lot out there, but how much of it is
3 really useful is the question.

4 And then some of it is classified or at least not
5 public, and so that is a challenge for you guys to get a
6 hold of that.

7 Any other comments on that?

8 Mr. Horowitz, you seem like you have a comment.

9 Mr. Horowitz. Let me just add. We did a report
10 shortly after I got there on referencing checking, vetting
11 of applicants at the Department, and the Department was not
12 doing a very good job of that. Put aside, separately, just
13 the security clearance and background check. Good old-
14 fashioned reference checking is something the Department was
15 not doing.

16 And I am happy to send a copy of the report up to the
17 Committee because that is something that should be done.
18 There is really not much that it takes to get references and
19 follow up.

20 And on the data issue, it is a big issue for us. We
21 look, for example, at travel card purchases. We have our
22 fraud detection office and my office looking for anomalies
23 in that data, seeing if they can get out of there what would
24 otherwise be subsumed, maybe be a very small charge, but if
25 you can find a couple of small charges--

1 Senator Portman. It might show a pattern.

2 Mr. Horowitz. --that are fraudulent, it might show the
3 pattern.

4 And so we try and do that, but it is very hard.

5 Senator Portman. Well, thank you all very much for
6 being here.

7 Senator Tester. With every answer comes another
8 question.

9 I mean, the truth is you are exactly right; they do
10 need to do the follow-up on the background checks. If they
11 do not, we end up in a very difficult situation.

12 I would hope that you have the ability--the IGs--to get
13 people's attention if they are not doing their job so that,
14 ultimately--well, I have got a different perspective. I do
15 not think there is any tolerance for folks who do not do
16 their job in this particular area. They should be gone.

17 And I do not know if you have that ability to make
18 those recommendations or not.

19 Mr. Horowitz. We absolutely make the recommendations,
20 and one of the things that we try and do is follow up on our
21 recommendations. We have hundreds of open recommendations
22 in the Department in a variety of areas--

23 Senator Tester. Right.

24 Mr. Horowitz. --not just in this one.

25 But one of the things that is incumbent upon us is to

1 do a better job regularly following up on those
2 recommendations and reporting to the leadership of the
3 agency and to Congress on what the status of those open
4 recommendations is because changes--finding the problem is
5 not--is 10 percent of the issue. Remediating it is the key
6 part, frankly.

7 Senator Tester. Yes. And along those lines, if we
8 want to make your job less necessary in the future, we need
9 to do prevention up front. From my perspective, one of the
10 best ways to stop waste, fraud and abuse is drop the hammer
11 on the folks who are doing it.

12 Any other ideas in prevention that would work?

13 Ms. Gustafson. I think that there is definitely
14 dropping the hammer certainly in a lot of these contexts.
15 For example, again, we do a lot of Federal contracting work,
16 and that is a fairly small community. When we are able to
17 get good successes in contractors being debarred,
18 contractors being prosecuted, people know that, and that
19 message gets out.

20 I also think that you are right; there is also a need
21 to be proactive and work with the agency, make sure that--
22 you know, it is best to get the money before it goes out the
23 door--

24 Senator Tester. Right.

25 Ms. Gustafson. --you know, rather than to try to get

1 it back. And I do think that that is something that all IGs
2 are working on and working closely with agencies, to kind
3 of--to prevent the fraud and the waste before it occurs.

4 Senator Tester. Okay, I have a few other questions
5 that we are probably going to enter for you guys to respond
6 to at a later date because this hearing has gone quite a
7 while.

8 I want to thank you all once again for being here.

9 Senator Portman, do you have any closing remarks?

10 [Pause.]

11 Senator Tester. We have covered a fair amount of
12 ground here today, and I think it is important that we cast
13 a light on the challenges of our oversight workforce and the
14 opportunities we have to increase efficiency and
15 effectiveness of government. It is all something we all
16 want to see happen.

17 As I said at the outset, public trust in the Federal
18 Government is waning, and we certainly have a lot of work to
19 do to restore that faith. And we can start by moving
20 forward on some of the ideas that were put out for us today
21 and support the efforts to shed light on government and help
22 ensure taxpayer dollars are being spent responsibly and
23 productively.

24 I certainly look forward to working with the folks not
25 only on this Committee and Ranking Member Portman but all of

1 you and the other folks that work in the different IG
2 offices. I think it is the only way we will tackle the
3 problems.

4 The hearing record will remain open for 15 days for any
5 additional comments or questions.

6 Once again, I want to thank the panelists.

7 We are adjourned.

8 [Whereupon, at 4:09 p.m., the Subcommittee was
9 adjourned.]