



1 Even a very small percentage of fraud costs taxpayers  
2 dearly. That is why we have chosen this first hearing to  
3 look at the issue of fraud. It is talked about a lot, but  
4 frankly, I think if all of us are really honest, we probably  
5 don't get at a lot of it.

6 I think the witnesses today are all four individuals  
7 who understand that, who understand the challenges that we  
8 have in Government in terms of rooting out fraud, and they  
9 are numerous, and hopefully we will have a chance today to  
10 go over them in some detail. After this hearing, the  
11 important work then must begin, and that is continuing to  
12 put pressure on all parts of the system to make sure that  
13 fraud is found and that people are held accountable for that  
14 fraud. It does no good to find it if nothing happens,  
15 because if you find it and nothing happens, that sends a big  
16 green light to the next bad actor that they can take  
17 advantage of taxpayer money in a way that is criminal.

18 So we are happy to start with contracting fraud.  
19 Obviously, there are going to be many hearings of this  
20 Committee that will deal in many different aspects of the  
21 challenges we face in Government contracting, but today is  
22 about fraud.

23 Let me introduce our witnesses and ask for their  
24 testimony, and then I will have a number of questions. I  
25 want to welcome all four of you and I appreciate all of your

1 work.

2 Brian Miller is the Inspector General for the General  
3 Services Administration. He is also the Vice Chair of the  
4 National Procurement Fraud Task Force and the Co-Chair with  
5 Mr. Skinner of the National Procurement Fraud Task Force  
6 Legislation Committee.

7 Richard Skinner is the Inspector General for the  
8 Department of Homeland Security. He serves with Mr. Miller,  
9 as I said, as the Co-Chair of that National Procurement  
10 Fraud Task Force.

11 Charles Beardall is the Deputy Inspector General for  
12 Investigations at the Department of Defense. As the agency  
13 with the lion's share of Government contracting, you are  
14 going to get a lot of attention in this Committee, Mr.  
15 Beardall. The Department of Defense also has the lion's  
16 share of contracting fraud. I welcome your perspective on  
17 these issues.

18 Tony Ogden is the Inspector General of the Government  
19 Printing Office. He is the Chair of the Legislation  
20 Committee of the Council of Inspectors General on Integrity  
21 and Efficiency.

22 It is the custom of this Committee to swear in all  
23 witnesses that appear before us, so if you don't mind, I  
24 would like you all to stand. Raise your hands, please.

25 Do you swear that the testimony you will give before

1 this Subcommittee will be the truth, the whole truth, and  
2 nothing but the truth, so help you God?

3 Mr. Miller. I do.

4 Mr. Skinner. I do.

5 Mr. Beardall. I do.

6 Mr. Ogden. I do.

7 Senator McCaskill. Thank you all.

8 We will ask you all to try to hold your testimony to  
9 five minutes. Obviously, we will include any of your  
10 written testimony in the record, and Mr. Miller, let us  
11 begin with your testimony.

1                   TESTIMONY OF BRIAN MILLER, INSPECTOR GENERAL, U.S.  
2                   GENERAL SERVICES ADMINISTRATION

3           Mr. Miller. Good afternoon, Madam Chair. Thank you  
4 for inviting me here today and the opportunity to testify on  
5 these important matters. I and my distinguished colleagues  
6 here today would like to thank you for your strong support  
7 of Inspectors General. We are especially honored to be part  
8 of the first hearing of this Subcommittee.

9           The American Recovery and Reinvestment Act brings with  
10 it a sharp mandate to move quickly in addressing our  
11 Nation's economic problems. Doing so means that traditional  
12 oversight may need to be modified. This afternoon, I would  
13 like to highlight four new ideas that I believe will help  
14 expedite OIG reviews and control fraud and criminal  
15 activity.

16           I call the first proposal "Don't tip off the target."  
17 Basic investigative techniques include not tipping off a  
18 subject about an investigation. Premature disclosure can  
19 lead to destruction of evidence, intimidation of witnesses,  
20 or flight. It can also preclude undercover work and provide  
21 an opportunity for the subject to manipulate his finances to  
22 frustrate the Government's interests.

23           As an illustration, telling someone like Bernie Madoff  
24 that he is under investigation would only give him an  
25 opportunity to hide or transfer ill-gotten gains before the

1 Government had an opportunity to understand the full extent  
2 and scope of his crimes. Therefore, I ask that you treat  
3 Inspector General subpoenas the same as Grand Jury  
4 subpoenas, which are exempt from giving the subject notice  
5 when financial records are sought.

6 Second, I propose that you require a simple report from  
7 OMB regarding how many debarred companies and individuals  
8 are currently receiving Federal grants and contracts. This  
9 can be done by a cross-check of the Excluded Parties List  
10 System, EPLS, and USASpending.gov, which contains all of the  
11 Federal grants and contracts. Generally, one would not  
12 expect to find the same companies or individuals on both  
13 USASpending.gov and EPLS. These reports would highlight the  
14 critical need to fully check on the status of contractors  
15 and grantees before the Government does business with them.

16 My third proposal is in response to the decision by the  
17 U.S. Court of Appeals for the D.C. Circuit in the case of  
18 United States v. Safavian. The D.C. Circuit held that  
19 Federal employees have no legal duty to disclose all  
20 material facts when they provide information in response to  
21 a direct question from an OIG special agent. In the absence  
22 of such a legal duty, Safavian could not be convicted  
23 criminally of concealing information when he provided half-  
24 truths to a special agent, intending to mislead the special  
25 agent. To correct this, we propose legislation that would

1 clarify that Federal employees have a duty to tell the whole  
2 truth, not half-truths, to special agents.

3 My fourth proposal is to restore the contract clause  
4 that allowed GSA Office of Inspector General to do defective  
5 pricing reviews when they conduct post-award audits.  
6 Essentially, the regulations currently provide that we  
7 cannot look at pricing after the contract is signed under  
8 GSA contract terms. So if no pre-award review is done of  
9 pricing, the contractor gets a free pass audit-wise from any  
10 look at whether their pricing information was defective.  
11 Two qui tam lawsuits show that we need to have post-award  
12 audit rights. One case settled for \$98.5 million and the  
13 other case settled for \$128 million, both for defective  
14 pricing. The irony is that my office does not have audit  
15 authority under GSA contracts to audit for these very  
16 issues, these defective pricing issues, when we conduct a  
17 post-award audit, and we ask the Committee to consider  
18 correcting this.

19 Thank you for your attention. I ask that my statement  
20 and material records be made part of the record. I would be  
21 pleased to respond to any questions that you may have.

22 Thank you.

23 [The prepared statement of Mr. Miller follows:]

1           Senator McCaskill. Thank you very much.

2           Mr. Skinner?

1                   TESTIMONY OF RICHARD SKINNER, INSPECTOR GENERAL,  
2                   U.S. DEPARTMENT OF HOMELAND SECURITY

3           Mr. Skinner. Thank you, Madam Chair, and good  
4 afternoon. I appreciate the opportunity to be here today.

5           I want to begin by thanking you for your leadership,  
6 ensuring that American taxpayers are receiving the biggest  
7 bang for their dollar in Government contracts and for the  
8 support you have shown the Inspector General community. I  
9 also applaud the creation of this Subcommittee. The  
10 American taxpayer is demanding and deserves to know how its  
11 tax dollars are being spent and that they are being spent  
12 wisely. The work of this Subcommittee can go a long way to  
13 bringing accountability to the management of Federal  
14 contracts. We in the Inspector General community look  
15 forward to working with you in this endeavor.

16           Finally, I wish to commend the Department of Justice  
17 and the IG community for their hard work on the National  
18 Procurement Task Force. As my colleague, Brian Miller,  
19 already pointed out in his testimony, much was accomplished  
20 as a result of their hard work. But our work is not done.  
21 We are in the first mile of a marathon. There is still an  
22 array of legislative proposals that were considered by the  
23 Task Force but did not make it into legislation or  
24 regulation.

25           Two proposals in particular, I believe, could go a long

1 way in improving the ability of Inspector Generals to  
2 detect, prevent, and prosecute contract fraud. The first  
3 proposal deals with IG access to contractor and  
4 subcontractor records and employees. One can argue that  
5 access rights are implicit in the IG Act, yet in reality,  
6 this is not the case. We are continually being challenged  
7 by contractors, causing undue and prolonged delays in our  
8 ability to carry out our audits and inspections.

9       This problem was recognized by Congress, I believe,  
10 when it enacted the Recovery Act of 2009. The Act gave IGs  
11 explicit access rights to contractor employees and records  
12 and access rights to subcontractor records. Unfortunately,  
13 for some unexplained reason, the legislation did not give  
14 IGs access rights to subcontractor employees. In my  
15 opinion, this simply does not make sense, especially when  
16 you consider that many Government contractors rely heavily  
17 on subcontractors to meet their contractual obligations.

18       For example, after Hurricane Katrina, FEMA awarded four  
19 major contracts valued at over \$2 billion to help with  
20 response efforts. These four contractors then subcontracted  
21 63 percent of their work to subcontractors. Under the  
22 Recovery Act, we would not have legislative authority to  
23 interview subcontractor employees during the course of our  
24 audits or inspections. To do our jobs effectively, IGs  
25 should be authorized to interview subcontractor employees

1 regarding all transactions involving taxpayer money.

2       The second proposal deals with the IG's ability to  
3 match computer data being maintained by Federal, State, and  
4 local government agencies. The Computer Matching and  
5 Privacy Protection Act set forth procedural requirements  
6 that agencies must follow when matching electronic databases  
7 for the purpose of establishing Federal benefit eligibility,  
8 verifying compliance with benefit program requirements, or  
9 recovering improper payments under a benefit program. The  
10 procedural requirements include formal matching arrangements  
11 between the agencies, notice in the Federal Register of the  
12 agreements before any matching could occur, and review of  
13 the agreements by data integrity boards at both agencies.  
14 While the Computer Matching Act provides certain exemptions  
15 for statistical matches, matches for research purposes, and  
16 law enforcement if a specific target of an investigation has  
17 been identified, agency decision makers and data owners  
18 rarely consider OIG oversight--its work to fall under any of  
19 the exemptions.

20       Interagency sharing of information about individuals  
21 can be an important tool in improving the integrity and  
22 efficiency of Government programs. By sharing data,  
23 agencies can often reduce errors, improve program  
24 efficiency, identify and prevent fraud, evaluate program  
25 performance, and reduce the information collection burden of

1 the public by using information already within Government  
2 databases.

3 The work in the IG community in identifying management  
4 control weaknesses, which is our primary objective here,  
5 within agency program activities would be facilitated by  
6 permitting IGs as part of their regular audits and  
7 inspections to match computer databases being maintained by  
8 Federal, State, and local government agencies. Because IGs  
9 rarely control the databases to be matched, valuable time  
10 and resources are lost persuading system managers that  
11 matching is appropriate and necessary for us to do our job.

12 Finally, I would like to comment briefly on the issue  
13 of Federal Acquisition Workforce shortcomings. Madam  
14 Chairman, as you stated in your March 19 open letter to the  
15 acquisition community, the contracting workforce is no  
16 longer adequate to handle the volume and complexity of the  
17 workload.

18 In response to these concerns, acquisition shops  
19 throughout the Government have begun to implement two  
20 statutory hiring flexibilities to assist in recruiting  
21 acquisition-related positions: Direct hire authority and  
22 reemployed annuitant authority. These authorities expedite  
23 the hiring process and make it easier to hire qualified  
24 candidates. Overall, according to a recent GAO report,  
25 these initiatives are beginning to show some preliminary

1 results. Just as agency procurement officers across  
2 Government face a shortage of experienced staff, so do we in  
3 the IG community. To be effective, we need a mix of  
4 auditors, inspectors, investigators with acquisition  
5 experience. It would be extremely helpful as we continue to  
6 add experienced acquisition professionals to our staffs if  
7 those same statutory hiring authorities were expanded to the  
8 IG.

9 Madam Chair, that concludes my statement, and again,  
10 thank you for this opportunity to share my thoughts with you  
11 today.

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

1 Senator McCaskill. Thank you.

2 Mr. Beardall?

1 TESTIMONY OF CHARLES W. BEARDALL, DEPUTY INSPECTOR  
2 GENERAL FOR INVESTIGATIONS, U.S. DEPARTMENT OF  
3 DEFENSE

4 Mr. Beardall. Good afternoon, Chairwoman McCaskill.  
5 Thank you for inviting me to appear before you to discuss  
6 the important issue of procurement fraud. I am here  
7 representing Acting Inspector General Gordon Heddell and the  
8 women and men of the Office of the Inspector General  
9 Department of Defense, including the special agents of the  
10 Defense Criminal Investigative Service, the law enforcement  
11 arm of the DOD Inspector General.

12 DCIS was established in 1981 in response to the Defense  
13 contracting scandals of the 1970s and 1980s. From the start  
14 as an office of seven special agents, DCIS has grown to 366  
15 agents. Initially, DCIS special agents focused almost  
16 exclusively on combatting fraud and corruption. However, as  
17 the organization matured, its priorities expanded. DCIS's  
18 current top priorities include investigations of contract  
19 fraud, corruption, terrorism, illegal diversion and theft of  
20 sensitive technologies and weapons, and the protection of  
21 the global information grid.

22 Although its mission has expanded significantly, DCIS  
23 has remained true to its roots. Today, 61 percent of over  
24 1,800 DCIS active investigations involve DOD contracting.  
25 Cases in which DCIS has led or participated in have recouped

1 \$14.67 billion for the United States Government. Clearly  
2 relevant to today's discussion, \$9.9 billion of those  
3 recoveries have occurred within the last ten years.

4 DCIS has an ever-increasing workload. Implementation  
5 of critical initiatives related to the Global War on  
6 Terrorism and technology protection has reduced our ability  
7 to devote additional resources to fraud and corruption.  
8 Further, since September 11 and the beginning of Operations  
9 Enduring Freedom and Iraqi Freedom, DCIS's law enforcement  
10 partners in combatting procurement fraud have had to divert  
11 significant resources to competing priorities, such as  
12 terrorism, force protection, and counterintelligence.

13 During the past eight fiscal years, DOD contracting  
14 increased more than 250 percent, while the numbers of DCIS  
15 special agents has grown 13 percent. During the past five  
16 fiscal years, investigations involving financial crimes  
17 increased 35 percent, kickbacks increased 66 percent, and  
18 bribery an astounding 209 percent.

19 Recent increases in contract fraud and corruption  
20 investigations are largely the result of overseas  
21 contingency operations. To date, DCIS has initiated 173  
22 Global War on Terrorism contract-related investigations. Of  
23 these, 41 percent involve procurement fraud and 42 percent  
24 involve corruption.

25 DCIS is a key participant in various procurement fraud

1 task forces and working groups, which have proven to be  
2 effective alliances to combat contract fraud. The multi-  
3 disciplinary, multi-agency National Procurement Fraud Task  
4 Force has been extremely effective in fostering  
5 communication and better coordination to combat procurement  
6 fraud. Worthy of special mention, its offshoot, the  
7 International Contract Corruption Task Force, was formed to  
8 target contract fraud and corruption in Southwest Asia.  
9 Consisting of nine agencies, the Task Force is a model of  
10 law enforcement cooperation.

11 The recommendations in the legislation and regulatory  
12 reform proposal, the White Paper, will significantly enhance  
13 the Government's ability to combat procurement fraud. The  
14 DOD Inspector General strongly supports improving  
15 contractors' internal oversight and ethics program to  
16 enhance the Government's ability to prevent and detect  
17 fraud. Requiring contractors to implement internal  
18 compliance programs before a contract is awarded will help  
19 prevent fraud.

20 The DOD IG also supports recommendations to expand the  
21 authority of Inspectors General to include enhanced subpoena  
22 authority. We also support establishing a national database  
23 to determine contractor suspension or debarment history, and  
24 we favor extending criminal conflict of interest provisions  
25 to contractors.

1           In response to a recent amendment to the Federal  
2 Acquisition Regulation imposing mandatory self-reporting,  
3 the DOD IG has established the DOD Contractor Disclosure  
4 Program to process the disclosures. We believe this  
5 requirement will improve the Department's oversight  
6 capabilities.

7           While the White Paper identifies significant  
8 improvements, we hope to work with the Legislation Committee  
9 on more proposals. Two examples derived from the new FAR  
10 cases relate to the American Recovery and Reinvestment Act  
11 of 2009. One would expand whistleblower protections to  
12 subcontractors and the other would enhance contractor  
13 reporting requirements. As Congress considers the  
14 recommendation of the Legislative Committee, it is critical  
15 that IG resource requirements be considered. Adequate  
16 numbers of investigators and auditors are indispensable,  
17 particularly in an era of massive growth in contacting and  
18 diversification into other national priorities.

19           I hope my testimony today has been helpful and I look  
20 forward to your questions.

21           [The prepared statement of Mr. Beardall follows.]

1 Senator McCaskill. Thank you very much.

2 Mr. Ogden?

1 TESTIMONY OF J. ANTHONY OGDEN, INSPECTOR GENERAL,  
2 U.S. GOVERNMENT PRINTING OFFICE, AND CHAIR,  
3 LEGISLATION COMMITTEE, INSPECTORS GENERAL COUNCIL  
4 ON INTEGRITY AND EFFICIENCY

5 Mr. Ogden. Good afternoon, Madam Chair. Thank you for  
6 inviting me to testify on the role of the Inspectors General  
7 in detecting, preventing, and helping prosecute contracting  
8 fraud. While I am the Inspector General at the U.S.  
9 Government Printing Office, I am here today representing the  
10 Council of the Inspectors General on Integrity and  
11 Efficiency in my capacity as the Chairman of the Legislation  
12 Committee.

13 On behalf of the Council, I would like to echo our  
14 appreciation to you for your unwavering support of the IG  
15 community and congratulate you on being the first Senator to  
16 lead this new Subcommittee on Contracting Oversight. We  
17 look forward to working with you.

18 Senator McCaskill. Thank you.

19 Mr. Ogden. My testimony today will focus on the  
20 general views of the IG community regarding the major  
21 recommendation proposed by the Legislative Committee of the  
22 National Procurement Fraud Task Force in their White Paper.

23 We are happy to report that some significant  
24 recommendations proposed by the Task Force have already been  
25 enacted. For example, in November 2008, the Federal

1 Acquisition Regulation Council issued a final rule that  
2 imposes, among other things, a mandatory requirement on  
3 Federal contractors to disclose credible evidence of certain  
4 criminal violations and civil False Claims Act violations,  
5 and to establish an ethics and internal control program.

6 The IG Reform Act of 2008 also included several changes  
7 recommended by the Task Force. For example, the IG subpoena  
8 authority language was amended to clarify that its reach  
9 includes information and data in any medium. In addition,  
10 the Reform Act granted to IGs from designated Federal  
11 entities the authority to use the Program Fraud Civil  
12 Remedies Act. However, IGs from legislative branch entities  
13 are still excluded.

14 Although these changes are encouraging, many other Task  
15 Force recommendations have not been acted upon. To gauge  
16 the support of the IG community for some of the remaining  
17 recommendations, the Council through the Legislation  
18 Committee conducted an online survey of its members. Our  
19 survey covered three general Task Force recommendation  
20 areas: One, the Inspector General subpoenas for compelled  
21 interviews; two, reform of the Program Fraud Civil Remedies  
22 Act; and three, other general recommendations, including  
23 establishing a National Procurement Fraud database and  
24 allowing the use of Social Security numbers to identify  
25 individuals in the Excluded Parties List System, or EPLS.

1           The Task Force proposed that IG subpoena authority  
2 include the authority to compel witnesses to appear at  
3 interviews in connection with OIG investigations, audits,  
4 and other reviews. You have heard some of that testimony  
5 already. This proposal is similar to recent limited  
6 authority provided to some IGs under the American Recovery  
7 and Reinvestment Act. The proposed subpoena authority would  
8 not include the power to compel witness testimony.

9           The survey results show overwhelming support for this  
10 enhanced IG subpoena authority for all IGs. The issue is  
11 about access. Supporters cite the need to have access to  
12 contractor employees, former employees, third-party  
13 subcontractors, to discuss aspects of civil or criminal  
14 investigations still in development. In addition, this  
15 authority is necessary to be able to ask questions regarding  
16 voluminous records that companies serve in response to a  
17 subpoena.

18           In 1986, Congress enacted the Program Fraud Civil  
19 Remedies Act to enable agencies to recovery losses resulting  
20 from false claims and statements where the claims are  
21 \$150,000 or less. Our survey focused on the major Task  
22 Force recommendations regarding the use of PFCRA authority,  
23 the increase of jurisdictional and civil liability amounts,  
24 agency retention of recoveries, and the revamping of  
25 procedural requirements. There was overwhelming support for

1 these recommendations, and in the interest of time, I will  
2 defer discussion to questions.

3         The Task Force also recommended specific areas to  
4 generally prevent and detect procurement fraud. The Task  
5 Force recommended the creation of a National Procurement  
6 Fraud Background Check System, the Procurement Inquiry Check  
7 System, or PICS, which would be used by Federal, State, and  
8 local procurement officials prior to authorization of  
9 contract actions involving Federal funds. The PICS database  
10 would include information on debarred or suspended  
11 contractors from all participating Federal, State, and local  
12 government entities engaged in procurement and non-  
13 procurement activities where Federal funds are at use.

14         Again, more than 90 percent of the responding IGs  
15 supported the idea of a National Procurement Fraud database.  
16 However, many respondents suggested that it would be more  
17 efficient and cost effective for PICS to be an expanded  
18 version of the EPLS, given that the EPLS is a mandatory  
19 database and could be upgraded to include links to State and  
20 local government online databases on suspended and debarred  
21 contractors.

22         The Task Force also recommended the use of Social  
23 Security numbers to enable agencies to properly identify  
24 individuals who have been debarred or suspended in the EPLS.  
25 While there was support for this proposal, there was

1 substantial opposition generally focused on the privacy  
2 concerns with the use of Social Security numbers, which is  
3 also bolstered by the requirements of OMB Memo 716, which  
4 requires that agencies reduce the use of Social Security  
5 numbers and explore alternatives.

6 Finally, some survey respondents suggested other  
7 recommendations to combat procurement fraud. Let me  
8 identify briefly two of those. First, some recommended that  
9 a Federal contractor be required to certify that he or she  
10 has no knowledge of any convictions of civil or criminal  
11 fraud for owners, officers, or managers involved in the  
12 contract, with no time limit on the convictions or civil  
13 fraud judgments.

14 And second, survey respondents noted that the FAR does  
15 not apply to legislative branch agencies. Because  
16 legislative branch agencies operate under different  
17 acquisition regulations, consideration should be given to  
18 require legislative branch agencies to adopt in their  
19 acquisition regulations the FAR provisions related to the  
20 prevention and detection of procurement fraud.

21 This concludes my testimony and I have submitted  
22 written comments for the record. I would be pleased to  
23 address any questions you may have, and thank you again for  
24 the opportunity to testify before the Subcommittee.

25 [The prepared statement of Mr. Ogden follows:]

1 Senator McCaskill. Thank you, Mr. Ogden.

2 We have been joined by the Ranking Member of the  
3 Homeland Security and Government Affairs Committee. Would  
4 you like an opportunity to speak now? We just finished  
5 testimony.

6 OPENING STATEMENT OF SENATOR COLLINS

7 Senator Collins. Thank you, Madam Chairman. That  
8 sounds good to you, doesn't it?

9 Senator McCaskill. It does.

10 Senator Collins. I would welcome the opportunity to  
11 make just a few comments, and I will put my full statement  
12 into the record.

13 First, let me commend you for taking over the charge of  
14 this Subcommittee. There is no one in the Congress who has  
15 a better understanding of Federal contracting of auditing  
16 issues than you do. I am certain that we will be able to  
17 accomplish a great deal. In fact, we were talking--a group  
18 of our colleagues were talking just the other night that  
19 your auditing background is so useful to this Committee, so  
20 I thank you for your leadership.

21 The Inspectors General are vital partners in our effort  
22 to identify inefficient, ineffective, and improper  
23 Government programs. By leveraging the expertise and the  
24 independence of the IGs, Congress has been able to better  
25 identify and in some cases take action to stop wasteful

1 spending. It also helps us by giving us recommendations  
2 which shape legislation and oversight activities. As  
3 General Skinner knows, we have worked very closely together  
4 on some of the FEMA reforms and the anti-waste, fraud, and  
5 abuse legislation for the Department of Homeland Security.

6 In the last Congress, working with the Chairman as well  
7 as with Senators Lieberman and Levin, our Committee was able  
8 to pass important reforms to the Federal contracting process  
9 as well as to strengthen our Nation's IGs, and I mention  
10 those two separate bills together because the contracting  
11 reforms we successfully enacted were based in part on the  
12 recommendations of the IGs.

13 The most recent report of the President's Council on  
14 Integrity and Efficiency provides some insight into the  
15 effectiveness of the IG community, and I will put the list  
16 of statistics into the record. But suffice it to say that  
17 the IGs have identified \$11.4 billion in potential savings  
18 from their audit recommendations.

19 [The information of Senator Collins follows:]

20 / SUBCOMMITTEE INSERT

1           Senator Collins. We do need to make sure, however,  
2 that we are constantly updating the laws to ensure that the  
3 IGs have the tools that they need. It was more than 30  
4 years ago when the IG Act was first passed in 1978. I  
5 believe the legislation which we authored last year and  
6 which Chairman McCaskill was the chief proponent of improves  
7 the independence and the effectiveness of the IGs. But I  
8 recognize that the White Paper produced by the National  
9 Procurement Fraud Task Force provides additional proposals  
10 for us to consider.

11           Finally, I want to note that two of our witnesses have  
12 proposed an additional effort that I believe is desperately  
13 needed to improve our Government's acquisition programs, and  
14 that is a well-trained, properly resourced acquisition  
15 workforce. No matter how good the reforms, no matter how  
16 strong the law, if you don't have well-qualified and a  
17 sufficient number of acquisition personnel to administer the  
18 laws, we are not going to make a difference.

19           So again, I thank the Chairman for convening this  
20 hearing and I apologize for being late. I was giving a  
21 speech, unfortunately.

22           [The prepared statement of Senator Collins follows:]

23           / SUBCOMMITTEE INSERT

1           Senator McCaskill. Thank you, Senator Collins. And  
2 speaking of champions, no one has been a more aggressive  
3 champion on acquisition workforce issues than Senator  
4 Collins. I have had the pleasure of working with her on  
5 some of those issues, but she has been at it for many years  
6 before I got here. And clearly, not only IG personnel but  
7 acquisition workforce is a one-two punch that is going to be  
8 needed to do the kind of job that we all know we need to do  
9 in this area of fraud.

10           Let me start by asking each one of you to try to  
11 prioritize. What I would like to do with this Committee is  
12 to keep a running--as a former auditor understanding  
13 performance auditing, I would like to begin with a challenge  
14 to the Committee to try to keep track of our metrics, and  
15 that is at each hearing try to walk away with a list of  
16 things that we need to try to get done, either through the  
17 Homeland Security and Government Affairs Committee or other  
18 places as it relates to what we learn in these hearings. I  
19 am going to try to keep track of this list so we can be  
20 publicly accountable for it.

21           And the list I would like to come out with at this  
22 hearing is each of you to name the one thing that you think  
23 could make a meaningful difference in how many bad guys we  
24 could catch, the one tool that you don't have now. If you  
25 could only pick one, what would that one tool be that you

1 would add to your tool chest to do a better job in finding  
2 people who are ripping off our Government? Mr. Miller?

3 Mr. Miller. Thank you, Madam Chair. That is a  
4 difficult question because there are so many tools that  
5 could help us in our jobs. I think, of all the proposals,  
6 and there are many very good proposals here, I think the one  
7 tool that could help us immediately is what I call the  
8 "don't tip off the target" proposal, that is, getting  
9 financial records without tipping off the owner of the  
10 financial records. That puts IG subpoenas on parity with  
11 Grand Jury subpoenas in that respect. It will allow us to  
12 quickly investigate without having to go around--we can plan  
13 our investigations better. We don't have to plan to go  
14 around contacting the subject or going overt, so to speak.  
15 And we can better plan and move quickly and have a rapid  
16 response to investigating fraud. So that is the one  
17 proposal I would choose. Thank you.

18 Senator McCaskill. Let me--and I will come back and  
19 follow up on that.

20 Mr. Miller. Okay.

21 Senator McCaskill. So you want to make sure that you  
22 don't have to tell them ahead of time you are coming after  
23 them.

24 Mr. Miller. That is right.

25 Senator McCaskill. Okay.

1 Mr. Miller. Thank you.

2 Senator McCaskill. That makes perfect sense to me.

3 Mr. Skinner?

4 Mr. Skinner. As I stated in my testimony, I think the  
5 one thing that would really help us and other IGs is the  
6 ability to do computer, electronic computer matching.

7 Senator McCaskill. Computer matching for you?

8 Mr. Skinner. Yes.

9 Senator McCaskill. Okay. Mr. Beardall?

10 Mr. Beardall. Well, as is probably evident from my  
11 written and my oral testimony, more agents. I would also  
12 probably say more auditors and more agents, but certainly  
13 with the challenges we face in the Department of Defense,  
14 366 agents spreads very thin. I am heartened by certain  
15 recent pronouncements by the Secretary of Defense, including  
16 the fact that he is going to up DCAA by 600 auditors. Of  
17 course, the 600 auditors are probably going to bring us a  
18 whole lot more business, I would hope. So I think mainly  
19 the challenge for us is enough resourcing to do the job in  
20 today's massive spending.

21 Senator McCaskill. I heard Secretary Gates in his--I  
22 heard him say the magic words of DCAA auditors and I heard  
23 him say acquisition personnel. I don't remember him saying  
24 anything about DCIS.

25 Mr. Beardall. No. He didn't.

1 Senator McCaskill. Okay.

2 Mr. Beardall. And that is one of the points. And  
3 again, the point is accurate. Not only the auditors, but  
4 contracting officials, as well. We faced that problem a lot  
5 in Southwest Asia, seeing folks who were not prepared to  
6 undertake the duties of contracting officers.

7 Senator McCaskill. Okay. Mr. Ogden?

8 Mr. Ogden. I think that based on the survey results,  
9 and again, my responses here today are limited to the survey  
10 results, clearly, it was the expansion of the subpoena  
11 authority to be able to compel access to contractors and  
12 subcontractors. It is to compel--to summarize one of the  
13 comments, it is perhaps the single most important change  
14 that we seek. It is very important for those of us who do a  
15 significant amount of oversight work that involves third  
16 parties. But it really is about access.

17 There was some confusion in the National Procurement  
18 Fraud Task Force White Paper about the issue about  
19 compelling interviews or compelling testimony, but it is  
20 about compelling attendance at an interview, and I think  
21 that Mr. Skinner identified that issue very poignantly, as  
22 well.

23 Senator McCaskill. That brings me to one of the things  
24 that I think we are struggling with here, is what are you?  
25 I think that some people in Government see you as someone

1 who is causing trouble for the head of the agency, and I am  
2 not sure enough people in Government see you as someone who  
3 should have the same authority as any other law enforcement  
4 entity. You are tasked with finding crime as part of your  
5 job. Can anyone help me figure out, where is this--where  
6 are we getting this push-back? Why is it that they are  
7 asking you to tip off subjects of an investigation with that  
8 much notice as it relates to their financial documents?  
9 Where do we need to drill down to find people in Government  
10 that are pushing back in terms of giving you all the  
11 subpoena authority and the basic law enforcement protocols  
12 that are going to allow you to catch criminals?

13 Mr. Miller. Madam Chair, if I could try and respond, I  
14 think it is a historical quirk. I think that the Right to  
15 Financial Privacy Act was enacted over 30 years ago at the  
16 same time as the Inspector General Act, 1978, and I don't  
17 think there was a whole lot of thought that went into the  
18 requirement of requiring IGs to give notice but not--IGs  
19 when they issue IG subpoenas but not prosecutors on the  
20 issue of Grand Jury subpoenas.

21 I think at that time, what the Congress knew and was  
22 familiar with was the Grand Jury subpoena, so they naturally  
23 exempted Grand Jury subpoenas. I think it just didn't  
24 occur. I think it was an historical quirk that they didn't  
25 also exempt IG subpoenas. That is my speculation as to what

1 the problem is.

2 Senator McCaskill. Does anyone else want to speculate  
3 on why we have difficulty with this? How about compelling  
4 interviews? Mr. Ogden, do you want to take a shot at that?  
5 Why is it that people are so unnerved about the idea that an  
6 IG ought to be able to compel an interview?

7 Mr. Ogden. Well, and again, I might defer to Mr.  
8 Skinner to address this more specifically since he and Mr.  
9 Miller have had more experience in the area of where this  
10 issue has arisen. They can share some more specific  
11 examples with you. But I think that under the  
12 circumstances, it is how far do we want to let the IGs go?  
13 The ability, you know, some would perceive giving that much  
14 authority to IGs would be overstepping the bounds of the  
15 IGs, but I believe that the community would agree with you  
16 wholeheartedly, Senator McCaskill, that under the  
17 circumstances, we need to have the same tools. We need to  
18 have the ability to be able to go and reach out to those  
19 subcontractors.

20 One of the issues that I know that has occurred within  
21 my agency and other agencies, as well, is when you have  
22 contractors and subcontractors, if we don't have the same  
23 access as we would with our own employees within our agency,  
24 it does prevent us from being able to do our jobs  
25 effectively. The contracting workforce has expanded

1 significantly since many of these laws and rules were put in  
2 place. So in order to kind of catch up with the time, we  
3 have to look at the entire scope of the issue and realize  
4 that the reach now for IGs has to be to contractors and  
5 subcontractors.

6 Senator McCaskill. Thank you very much.

7 Senator Collins?

8 Senator Collins. Thank you, Madam Chairman.

9 Mr. Skinner, I want to follow up on your answer to the  
10 Chairman about the need to do more computer matching. As I  
11 understand it, under the Computer Matching and Privacy  
12 Protection Act of 1988, Federal agencies must follow a  
13 number of procedures prior to matching electronic databases,  
14 and those include entering into a formal matching agreement,  
15 noticing that agreement in the Federal Register, obtaining a  
16 review of the agreement by the Data Integrity Boards at both  
17 agencies.

18 Now, a lot of these steps are intended to be safeguards  
19 to prevent misuse of electronic records. But according to  
20 the Task Force Legislation Committee, those computer  
21 matching requirements limit the IGs' ability to detect  
22 contracting fraud in an expeditious manner because of all  
23 the steps that are required.

24 Is there also an issue where the IGs have to persuade  
25 multiple agency managers that the process should proceed?

1 Are there delays involved that impede your ability to detect  
2 fraud?

3 Mr. Skinner. Absolutely, and therein lies the problem.  
4 We agree with the safeguards that are in the Computer  
5 Matching and Privacy Protection Act. That is not the issue.  
6 There are exemptions to that Act, for example, to do  
7 research, to garner statistics, and for law enforcement if  
8 you have a target. With the IG, it would enhance our  
9 ability if we were included in one of those exemptions as  
10 part of our oversight role so that we could do computer  
11 matching, so then in turn demonstrate to the departments and  
12 the respective departments that you have weak internal  
13 controls. And we can demonstrate to you that you can  
14 improve your internal controls, be more efficient, and  
15 prevent fraud up front before it occurs.

16 At the same time, when we do this computer matching, of  
17 course, some of the collateral fallout is we will identify  
18 cases of fraud. For example, when we did--GAO did computer  
19 matching after Katrina with VA and small businesses, we  
20 identified people were self-certifying that they were  
21 disabled vets when, in fact, they were not. As a result,  
22 they got over \$10 million in contracts and excluded  
23 qualified small businesses in that process. There were  
24 other areas, as well, with the HUD, matching the benefits  
25 there. We demonstrated that you need to have these types of

1 computer matching agreements in place ahead of--at all times  
2 if you are operating a benefit program, and DHS operates  
3 many benefit programs, so that you can protect yourself.

4 When we asked for this authority, yes, there were  
5 delays. For example, to be able to match HUD housing data  
6 with FEMA housing data, it took us almost a year. By then,  
7 millions and millions of dollars were already out the door,  
8 and it is very difficult to get that money once it leaves.  
9 Had those controls been in place beforehand, we could have  
10 stopped that.

11 Senator Collins. I think that is an excellent point.

12 Mr. Ogden, do you have anything to add to that?

13 Mr. Ogden. Senator Collins, not with respect to the  
14 computer matching specifically. I think that Mr. Skinner  
15 has really summed up the issue directly.

16 I can add on behalf of the IG community, we have  
17 submitted comments and certainly support--I mean, I can  
18 represent on behalf of the IG community that we support the  
19 proposal.

20 Senator Collins. At a hearing that our full Committee  
21 had to look at the stimulus legislation and procedures to  
22 prevent waste, fraud, and abuse, there was discussion about  
23 the hiring needs of those entities that have gotten  
24 sufficient increases in their budgets, such as the IGs and  
25 the GAO and the Special Oversight Board, and the Acting

1 Comptroller General told us that GAO is currently permitted  
2 to compensate a returning annuitant without offsetting the  
3 annuity. In other words, you could hire a retired GAO  
4 auditor to come back and work for the next year on stimulus  
5 oversight without there being a financial penalty paid.

6 GAO has this authority. I believe DOD has this  
7 authority. But most departments and agencies in the Federal  
8 Government do not. I have introduced a bipartisan bill with  
9 Senator Herb Kohl and Senator Voinovich that would seek to  
10 provide that authority across Government, particularly to  
11 help out with a situation like this where we need trained  
12 people quickly, and you have got this retired workforce that  
13 would be willing to come back and help if there were not a  
14 financial penalty.

15 Starting with you, Mr. Miller, and going across, do you  
16 support legislation to give that authority?

17 Mr. Miller. I strongly support that legislation. That  
18 would help us respond rapidly and provide the oversight we  
19 need, so thank you for introducing it.

20 Senator Collins. Thank you.

21 Mr. Skinner?

22 Mr. Skinner. Yes, I would, and as I said in my opening  
23 remarks, this is one of the things that we were asking for.  
24 Some of the departments--right now in the field of  
25 acquisition management, there are authorities out there.

1 They just need to be invoked. And I believe that OPM did,  
2 in fact, say acquisition--those associated with acquisition  
3 management can use these authorities, and they defined what  
4 these people are. What they excluded were the auditors and  
5 investigators that need to support, because we are support,  
6 as well. And that is something I think that legislation  
7 would be very helpful, to give us that authority, as well,  
8 especially now in this time and age.

9 Senator Collins. Exactly. It doesn't make sense to  
10 carve out investigators and auditors.

11 Mr. Beardall, am I correct that DOD has this authority?

12 Mr. Beardall. Yes, we do, and we have used it very  
13 effectively, as you point out, when you have an agent with  
14 25 years of experience and who retires and you can bring  
15 back in a lot of cases just as a special agent rather than--  
16 and I have senior managers who go out and still have years  
17 left before they hit the mandatory retirement age of 57.  
18 They can come back and help us. We have actually recently  
19 had the head of our operations in Southwest Asia as a  
20 rehired annuitant who was one of our Assistant Special  
21 Agents in Charge and did a fabulous job.

22 Senator Collins. Thank you for that example.

23 Mr. Ogden?

24 Mr. Ogden. Senator Collins, your bill, S. 629, I  
25 believe is what it is, today we actually, lo and behold, had

1 a meeting of all the Inspectors General and I raised the  
2 issue of S. 629 and I can say here today I have been given  
3 authorization to say there was wholesale support for S. 629  
4 and there was absolutely no objection in the room. There is  
5 tremendous support from the community for--

6 Senator Collins. Excellent. I am really happy to hear  
7 that. I, believe it or not, did not know that in advance of  
8 asking the question today. If you would be willing to send  
9 a letter to the Committee to that effect to follow up, that  
10 would be wonderful.

11 Mr. Ogden. We would be happy to do so.

12 Senator Collins. Thank you.

13 Senator McCaskill. Thank you, Senator Collins.

14 Let us talk a little bit about the Department of  
15 Justice. It is my understanding that Justice has expressed  
16 concerns about expanding the IG authority as it relates to  
17 compelling interviews, and let me make clear that I  
18 understand that GAO now has that authority, correct? GAO  
19 now has the authority to interview both contractor and  
20 subcontractor employees in terms of interviews?

21 Mr. Skinner. GAO has the authority to, under the--to  
22 have access to records and employees at the contractor and  
23 subcontractor level. I am not clear--you may want to talk  
24 to GAO--I am not clear whether they have subpoena authority.

25 Senator McCaskill. Okay. But they have the ability

1 to, in fact, interview at the contractor and subcontractor  
2 level?

3 Mr. Skinner. That is correct.

4 Senator McCaskill. Okay. And it is my understanding  
5 that in the stimulus bill, we also gave limited power to  
6 compel interviews for audits and investigations concerning  
7 the stimulus funds, correct?

8 Mr. Skinner. Under the stimulus bill, the IGs have  
9 access rights to contractor records and employees and  
10 subcontractor records--

11 Senator McCaskill. But not subcontractor employees?

12 Mr. Skinner. For whatever reason, I don't know why,  
13 that was left out. And the FAR then emphasized that that  
14 authority does not go to sub-grantees, the recently-  
15 published FAR.

16 Mr. Ogden. Senator McCaskill, if I might just dovetail  
17 on that response, as well, under Section 1515(a) of the  
18 American Recovery and Reinvestment Act, it provides to  
19 interview any officer and employee of the contractor  
20 grantee, sub-grantee, or agency. It does not go, as Mr.  
21 Skinner has pointed out, to subcontractors.

22 The other issue, it only applies to the IGs that are  
23 affected by the stimulus package--

24 Senator McCaskill. Right.

25 Mr. Ogden. --so there are 28 IGs and there are 68 of

1 us in the community. So there is a significant exclusion of  
2 IGs that do not have that particular--

3 Senator McCaskill. And that is what I am trying to  
4 figure out. I mean, if it makes sense--it is almost like we  
5 are saying it is more important to catch crooks in the  
6 stimulus money than it is to catch crooks anywhere else?

7 Mr. Skinner. Exactly.

8 Senator McCaskill. I mean, to me, common sense is on a  
9 vacation. We had the chance to fix it in that stimulus  
10 bill. We should have made it Government-wide. Well, that  
11 doesn't--obviously, if there is not an objection to using  
12 these tools in the stimulus funds for some IGs, I don't  
13 understand why there should be objection by Justice or  
14 anyone else using it--

15 Mr. Skinner. I don't believe anyone is objecting to  
16 the rights of access. I think--I would like to believe it  
17 was just an oversight in the stimulus bill. Then GAO  
18 obtained access right authority through the defense  
19 authorization bill, which is somewhat different than the  
20 issue of compelled testimony or issuing subpoenas. IGs have  
21 the authority to issue subpoenas for documents, but we  
22 cannot issue subpoenas for testimony of employee--  
23 testimonial evidence. That is one of the things we were  
24 asking for, as well. If we can issue subpoenas for  
25 documents, we should have the authority to issue

1 administrative subpoenas--

2 Senator McCaskill. So you can't make anybody talk to  
3 you?

4 Mr. Skinner. With pressure. It takes time.

5 [Laughter.]

6 Senator McCaskill. Like if somebody just says, "I am  
7 not going to talk to you"--if you have got a contractor and  
8 you want to talk to them about a contract in FEMA and they  
9 just say, "I don't want to talk to you," you are done unless  
10 you go to Justice and get them to issue a subpoena?

11 Mr. Skinner. That is correct. It is very difficult.  
12 Our hands are tied.

13 Senator McCaskill. And how often do you get those  
14 refusals?

15 Mr. Skinner. It has happened to me, since I have been  
16 IG, in our audit of the Coast Guard Deepwater program, for  
17 example.

18 Senator McCaskill. All right.

19 Mr. Skinner. We asked for records. It took us months  
20 to get those records because our authority was challenged.  
21 The contractor challenged our authority to ask for those  
22 records. Then we asked to talk to employees to help explain  
23 what was in those records and the contractor would not give  
24 us access. We had to delay the audit for over a year while  
25 we negotiated access to the employees. Then when they did

1 give us access, they said the supervisor must be present,  
2 the attorneys must be present, and others, and obviously  
3 that sends a chilling effect on our relationship with that  
4 employee, so therefore we did not interview the employees.

5 Senator McCaskill. I--yes, go ahead.

6 Mr. Beardall. To take it a step further, we also would  
7 like to have subcontractors have whistleblower protection.

8 Senator McCaskill. Right.

9 Mr. Beardall. The Recovery Act provides for that, but  
10 otherwise, it is not available to subcontractors in  
11 investigations. And again, a recent example, we had a  
12 subcontractor who was willing to talk to us, so we didn't  
13 have to compel anything, but when she found out that as a  
14 subcontractor rather than a prime contractor she was not  
15 afforded whistleblower protections, she refused to talk to  
16 us. Fortunately, we were able to convince her to do her  
17 duty and got the information, but that is a no-brainer.

18 Senator McCaskill. It makes no sense.

19 Mr. Beardall. No, ma'am.

20 Senator McCaskill. Absolutely no sense whatsoever.

21 On the Deepwater contract that you struggled with, I am  
22 familiar that the National Reconnaissance Office, NRO, has  
23 included some contract language now, and I don't know how  
24 familiar all of you are with this, but the contract clause  
25 they are including in all of their contracts states the IG

1 shall have access to any individual charging directly or  
2 indirectly to this contract whose testimony is needed for  
3 the performance of the IG's duties. In addition, the IG  
4 shall have direct access to all records, reports, auditors,  
5 reviews, recommendations, documents, e-mails, papers, or  
6 other materials relating to this contract. Failure on the  
7 part of any contractor to cooperate with the IG shall be  
8 grounds for administrative action by the Director, Office of  
9 Contract, including contractual remedies. Would that have  
10 helped?

11 Mr. Skinner. I am familiar with that language. I took  
12 that language and I brought it to the Coast Guard, who  
13 referred me to the Chief Procurement Officer, who did not  
14 act on it. Yes, that language would help. I have asked  
15 that it be included in all contracts.

16 Senator McCaskill. And can I get any input from the  
17 rest of the panel as to whether or not you are seeing this  
18 language in any Government contracts right now, because we  
19 can do this by contract and not by legislation. If the  
20 individual agencies decide they want cooperation from people  
21 they do business with, they can demand it.

22 Mr. Miller. Madam Chair, that would help. That would  
23 give us access to the employees of contractors and  
24 subcontractors, and we need that access to do audits as well  
25 as investigations, because as you know, as an auditor, if

1 you just get documents--

2 Senator McCaskill. Right.

3 Mr. Miller. --you need to have people explain the  
4 system and that sort of thing.

5 Senator McCaskill. Or you need a lot more people.

6 Mr. Miller. You need a lot more people.

7 I would point out there is a distinction between that  
8 and a subpoena authority, for example--

9 Senator McCaskill. Right.

10 Mr. Miller. --in an investigation. The Recovery and  
11 Accountability Transparency Board, I understand, has  
12 subpoena authority to actually gain access in  
13 investigations. That may also be helpful, too, because if  
14 you have an investigation and you have an employee, for  
15 example, of GSA who may be conspiring with an employee of a  
16 contractor, we can talk to the GSA employee, but if we talk  
17 to the employee of a contractor, as you pointed out before,  
18 they could just say, "Go away," and we have no real  
19 authority to go back. We can try and get a prosecutor  
20 interested enough to issue a Grand Jury subpoena, but at  
21 that point, we have very little information to attract the  
22 attention of the prosecutor. So that may be a very  
23 difficult thing for us.

24 So I guess my point is there are two different things.  
25 There is the contract clause that would allow us to gain

1 access, and then there is the subpoena authority that would  
2 actually give us the power to have the attendance at the  
3 interview.

4 Senator McCaskill. But the contract language could  
5 maybe get you enough information that you could get the  
6 attention of a prosecutor that could get you the subpoena  
7 short of us getting Congress to do what I think we should  
8 do, which is give you all the same identical powers that  
9 others have in terms of rooting out this kind of fraud.

10 Mr. Miller. It certainly would help.

11 Senator McCaskill. Okay. Speaking of Justice,  
12 according to a Washington Post article, there are over 900  
13 cases of alleged fraud in Iraq, Afghanistan, and at home  
14 that are stalled at the Department of Justice. Some  
15 whistleblowers have evidently been waiting as long as seven-  
16 and-a-half years while they have waited for the Justice  
17 Department to decide whether to take on their case. Maybe  
18 Justice is worried about your subpoena power because they  
19 don't want any more business. Is that accurate, Mr.  
20 Beardall? Are there that many cases backed up at Justice?

21 Mr. Beardall. I am not aware of that number, and in  
22 fact, as I stated earlier, the ICCTF, the International  
23 Contract Corruption Task Force, has been a boom to us  
24 because we have right in country access not only to other  
25 Federal law enforcement agencies, but also the Department of

1 Justice. If there are delays in cases, I can't say that it  
2 is because of our support from attorneys. Not only that,  
3 cases that we get to a certain point in Southwest Asia, we  
4 then transport back to the States so we can have prosecution  
5 by AUSAs. I am not aware of that type of back-up. There  
6 takes time, of course.

7 The trouble with a lot of the cases from Southwest Asia  
8 are the fact that they end up being tendrils. It is a real  
9 spider web of one main actor and then the others, and of  
10 course, as you know, you wait to bring to prosecution until  
11 you have got everybody that you want and use those who have  
12 come first to help you with others. So that at times delays  
13 it. Otherwise, we have had great cooperation, and I am not  
14 aware of that kind of a backlog.

15 Senator McCaskill. Well, if you would, follow up for  
16 the Committee--

17 Mr. Beardall. Yes--

18 Senator McCaskill. --and find out, what is the backlog  
19 at Justice as it relates to these fraud cases. I am aware  
20 of the spider web you have been dealing with in Iraq on  
21 several different levels and have had the opportunity to be  
22 briefed on that. But clearly--I am not saying it is not  
23 possible that the Washington Post is not accurate, but  
24 clearly, if you don't think there is a serious issue of  
25 back-up and the article says there are 900 cases, we have

1 got to figure out what the problem is there, if there is  
2 one.

3 Mr. Beardall. Well, as I said, my current inventory is  
4 1,800 cases, so I don't have 900 of those backed up and we  
5 are the main actors. There are very few things going on in  
6 Southwest Asia right now that DCIS is not involved in.

7 Senator McCaskill. Okay.

8 Mr. Beardall. And I would certainly know that.

9 Senator McCaskill. Okay. The next area that I would  
10 like to ask questions about are whistleblower protections.  
11 The Project on Government Oversight recently released a  
12 report on whistleblower protections and they found that in  
13 some instances, the Offices of Inspectors General had not  
14 done as much as they should do in terms of whistleblower  
15 protection. Are you all familiar with the POGO report that  
16 I am referring to?

17 Mr. Skinner. Yes.

18 Mr. Miller. Yes.

19 Mr. Ogden. Yes.

20 Mr. Beardall. Yes.

21 Senator McCaskill. One of the places they cited  
22 particular problems, Mr. Skinner, was, in fact, with the DHS  
23 IG in terms of the hotline. They found really long waits,  
24 operators who didn't know anything about the agency, an  
25 inadequate system for dealing with anonymous calls. Could

1 you tell the Committee what your office has done to deal  
2 with what the POGO report laid out?

3 Mr. Skinner. Yes, and I would be happy to talk about  
4 that, and I think the POGO report was somewhat incomplete.  
5 Before I became IG, we didn't have a hotline. What you  
6 called, you called between--

7 Senator McCaskill. We call those cold lines.

8 Mr. Skinner. --between nine and five and you got a  
9 recording.

10 Senator McCaskill. Right.

11 Mr. Skinner. And that is all you got.

12 Senator McCaskill. Not really hot.

13 Mr. Skinner. So what I have done is we tried to create  
14 a 24/7 hotline where someone would answer the phone 24/7,  
15 and we analyzed the cost of that. It was cost prohibitive  
16 because of our budget at that point in time. That was back  
17 in early 2005, calendar year. The only thing--my only  
18 options were to take agents off the ground, off the line,  
19 and put them on the hotline, and our workload was so heavy  
20 and still is so heavy that I could not afford to take those  
21 agents off the line to operate a hotline.

22 So what I chose to do--I had funds but not staff. So  
23 what I chose to do is to hire a contractor that was doing  
24 this for other Federal agencies. I believe HUD was one of  
25 them who actually made the referral to me, and we looked at

1 two or three and hired this company as an interim measure  
2 until we could build up the resources to operate our own  
3 hotline.

4 I now have a proposal in to--as a matter of fact, I  
5 have submitted proposals to the full Committee as well as  
6 our appropriators as well as to the new Secretary, Secretary  
7 Napolitano, proposing that we integrate the two hotlines  
8 within the Department. The Department operates one and the  
9 OIG operates one. I propose that we merge those at a cost  
10 savings of about \$375,000 a year and that we use our people  
11 to manage that.

12 But as it stands right now, I just do not have the FTE  
13 that I could take off the line to answer those phones. So  
14 until I can get those FTE, I will have to use a contractor.

15 What is transparent to POGO when they made those phone  
16 calls is that that hotline is also a direct link to the Gulf  
17 Coast, and we have a disaster nationwide, disaster hotline.  
18 And depending on your queries, for example, if you say, I  
19 have allegations of public corruption along the border, that  
20 will go to a particular operator. If you say, I have a  
21 question of corruption dealing with the Katrina, Hurricane  
22 Katrina, there is fraud associated with that program, well,  
23 that is automatically routed, and it is transparent to the  
24 caller, down to Baton Rouge, where we have a hotline set up  
25 there that is run by--we set it up in conjunction with the

1 FBI and the Department of Justice and it is operated by LSU  
2 students on campus, on site at our site.

3 I agree, it can be improved. We want to improve it.  
4 It is a resource issue.

5 Senator McCaskill. Well, now we have a reason for you  
6 to come to another hearing, because one of our issues that  
7 we have got to deal with in contracting is what Government  
8 agencies have done. While we have been trying to boast--  
9 while some folks have been trying to boast that we haven't  
10 grown Government, what Government agencies have done when  
11 they don't have FTEs is they have hired contractors, and I  
12 will tell you it is not reassuring to me at a hearing on  
13 contracting oversight that I find out that maybe the reason  
14 that we weren't doing as well as we need to do with the  
15 hotline is because we were hiring contractors to do it. And  
16 so obviously there is an irony there that I am sure doesn't  
17 escape anybody in the room that we need to look at.

18 And a lot of it is prioritization in deciding whether  
19 or not the hotline and the information that comes from a  
20 hotline is--and I don't doubt, Mr. Skinner, I know that you  
21 work hard as an IG and you have got a great record--I don't  
22 doubt that you don't realize the value of whistleblowers.  
23 But I know how long you all have been doing this kind of  
24 work. I know you understand that the life blood of many,  
25 many investigations that you do is, in fact, the

1 whistleblower, and their ability to get information to you  
2 in a timely way with protection is just about as important  
3 as it gets.

4         So I hope that as we move forward in looking at these  
5 issues, usually, it is someone who is--especially in the  
6 area of contracting, because there are a lot of good  
7 Americans, and I know at DOD it happens all the time, people  
8 in theater that were calling and saying, this is  
9 unbelievable what is happening over here. And frankly, I  
10 don't think the Department of Defense believed it at first,  
11 because the calls were so almost--it sounded like some kind  
12 of bad movie plot.

13         Mr. Beardall. Yes, ma'am. Let me compliment our  
14 current IG. He has made this a top priority, both his  
15 hotline and reprisal investigations. Part of my hat as the  
16 Deputy Inspector General for Investigations is I handle  
17 reprisal investigations and he has plussed-up my staff  
18 significantly in the last couple of weeks, and he is also  
19 working hard to make the hotline as effective as it is. It  
20 is a focus of his and he is doing a great job.

21         Senator McCaskill. Generally speaking, do most IG  
22 shops have a formalized reprisal investigation protocol?  
23 Mr. Ogden, could you speak to that, or if not, can you get  
24 back to us and let us know?

25         Mr. Ogden. I can certainly get back to you on that. I

1 think the other panelists can probably directly address the  
2 question.

3 Senator McCaskill, I do want to come back on the  
4 hotline issue, though, too.

5 Senator McCaskill. Okay.

6 Mr. Miller. Madam Chair, I can speak for our office.  
7 We do conduct retaliation investigations from time to time  
8 in conjunction with the Office of Special Counsel and we  
9 will conduct those investigations. Ultimately, we can make  
10 findings, but ultimately, we cannot make the agency do  
11 anything. We can find that there is a whistleblower, that  
12 the whistleblower was subject to retaliation, but we don't  
13 have the authority to have the agency correct it. And then  
14 even with our findings, then the Office of Special Counsel  
15 would have to go through and either adopt our findings or  
16 adopt separate findings. So that is one of the weak points.  
17 But we do from time to time conduct these investigations.  
18 As you said, they are very important. We need to protect  
19 our whistleblowers and we do the investigations.

20 Senator McCaskill. Okay. Anything else? Mr. Ogden,  
21 on the hotline?

22 Mr. Ogden. Yes. Thank you, Senator McCaskill. Just  
23 as part of the charge of the Council of Inspectors General  
24 on integrity efficiency, the Executive Council has adopted  
25 some goals and objectives as part of the strategic plan and

1 one of the goals that has been identified, we do these  
2 cross-cutting issues and one of the first two goals that was  
3 identified is a hotline operations and whistleblower  
4 protection project, which was actually announced today.

5         The objective there is to develop best practices for  
6 OIGs in hotline operations and whistleblower protection for  
7 effective management and handling of whistleblower  
8 allegations, and so the purpose there is to really take a  
9 look at what the IG community is doing, help develop best  
10 practices, and then communicate that information broadly  
11 throughout the community so that we can fine-tune the  
12 operations in all agencies. So that will be one of the  
13 cross-cutting goals that we have identified and is launched  
14 currently.

15         Senator McCaskill. That is great, because I think that  
16 is one of the things that should be embraced, if we could  
17 get consistency and uniformity as much as possible on  
18 whistleblower protection and protocols for retaliation  
19 investigations, because that is what is scary to a  
20 whistleblower, and a lot of these contractors are working in  
21 many different agencies, as you all know. In fact, which is  
22 another hearing, the shopping around of contracts among  
23 agencies and buying off other people's contract and all of  
24 that that is going on. I think the more that we have  
25 uniformity and the more that it is embraced systemwide in

1 the IG community that whistleblowers are sacrosanct and need  
2 to be protected at all costs, I think it is really  
3 important.

4 I want to talk about the post-award audits, and I am  
5 trying to figure out, most people don't understand what that  
6 means, a post-award audit. It is a little bit like some of  
7 the other jargon. I have got to be careful in this  
8 Committee, because I speak it and you all speak it and many  
9 of the people who will testify in this Committee speak it,  
10 but it is like a lot of things in the auditing world. Most  
11 people out in America don't know the language, and so when  
12 we talk about a post-award audit, I want to clarify what we  
13 are talking about is checking to make sure that we got the  
14 deal that we thought we got when we signed the contract.

15 Mr. Miller. That is right, Madam Chair. Thank you for  
16 bringing this up, too.

17 Senator McCaskill. I am trying to figure out, what is  
18 the rationale for you not being allowed--because didn't you  
19 used to be able to check the price after we signed the  
20 contract to make sure we aren't getting ripped off?

21 Mr. Miller. We did, up until 1997. The Veterans  
22 Affairs Office of Inspector General also conducts these  
23 audits. But for some reason, in 1997, I guess OMB decided  
24 that we would focus more on pre-award audits and catch the  
25 pricing problems up front and we would eliminate the post-

1 award audit, so that after the contract is formed, we can  
2 look at a number of issues, but we can't look at price  
3 issues. Theoretically, we were supposed to look at those up  
4 front. But, of course, NAS contracting has grown  
5 exponentially and we only get to look at a few pre-award  
6 contracts, and over the last couple of years, even those  
7 were--there were attempts to cut those. So in 1997, it was  
8 GSA that actually cut the clause out of the contract that  
9 allowed us to look at prices, by the way. But in 1997, that  
10 was the rationale.

11       There was a hearing in 2005, just as I was appointed.  
12 I was confirmed, but I didn't have my commission, so I was  
13 having a Marbury moment, and there was a hearing on this  
14 very issue before this Committee, a Subcommittee of this  
15 Committee, and the issue came up again. I think Senator  
16 Coburn was the Chair at the time. They, again, looked at  
17 those issues and we testified and OMB testified again to the  
18 same rationale, that we will increase pre-award audits so  
19 there is no need to bring back the authority to look at  
20 prices post-award. So that is the only rationale that I  
21 have heard.

22       Senator McCaskill. And have the pre-award audits, in  
23 fact--

24       Mr. Miller. No.

25       Senator McCaskill. --flourished?

1 Mr. Miller. No, they have not--

2 Senator McCaskill. I had a feeling.

3 Mr. Miller. In fact, there is an attempt to reduce  
4 those, as well, over the last couple of years.

5 Senator McCaskill. But this is a unilateral decision  
6 just made by GSA?

7 Mr. Miller. GSA was the one making the decision. I am  
8 sure that OMB supported it. I think the other rationale  
9 that they would probably give would be somehow it was a  
10 burden on small companies, which I believe is a total red  
11 herring because we look at companies that have--we look at  
12 large companies that have a lot of Federal contracts.  
13 Typically, we don't even get to look at companies that have  
14 fewer than 50 million in contracts, in Government contracts.

15 Senator McCaskill. Well, first of all, that notion is  
16 insulting to risk assessment done by you as professionals.  
17 I mean, clearly, you are going to look where you think it is  
18 most likely that you are going to find problems. That  
19 doesn't mean you start with little-bitty contracts. You  
20 start with the big ones--

21 Mr. Miller. Indeed.

22 Senator McCaskill. --where you have the most likely  
23 chance of making a real difference, a real dent.

24 Well, I think this is something that--now is the  
25 moment--

1 Mr. Miller. Yes.

2 Senator McCaskill. --to work on this issue, because we  
3 have a new administration and I believe we have a head of  
4 GSA who has not yet been confirmed?

5 Mr. Miller. That is correct.

6 Senator McCaskill. Timing is everything.

7 Mr. Miller. Indeed.

8 Senator McCaskill. So I think this is a very good  
9 issue for us to look at as we talk to the new--now, let us  
10 talk a little bit about the Safavian fix. Am I saying that  
11 guy's name right?

12 Mr. Miller. Yes, you are, Madam Chair.

13 Senator McCaskill. What is the fix for this? Is this  
14 a law that we have to do?

15 Mr. Miller. Unfortunately, it is. I propose--

16 Senator McCaskill. We have to go in and say that when  
17 somebody from the Government comes and asks you questions, a  
18 material omission or twisting is somehow okay?

19 Mr. Miller. Well, no--

20 Senator McCaskill. That it is not okay?

21 Mr. Miller. That it is not okay.

22 Senator McCaskill. Courts have said that we have to  
23 statutorily inform people of this?

24 Mr. Miller. The D.C. Court--the D.C. Circuit held in  
25 the Safavian case that under the false statements statute,

1 18 U.S.C. 1001, that there was no duty on the part of the  
2 Federal employee, David Safavian, to tell the special agent  
3 the whole truth.

4 Senator McCaskill. So if you go to someone and ask  
5 them if they used a Government contract to, instead of do  
6 reconnaissance work somewhere, they were doing a charter  
7 service of the boat for deep sea fishing and they said no,  
8 they would not be in trouble even if they used it for a  
9 party cruise where there were no fishing poles?

10 Mr. Miller. Well, if they say an actual lie, then the  
11 D.C. Circuit would say that would count. The problem was  
12 that Mr. Safavian failed to state a very important fact.  
13 When he talked to our special agent, he failed to mention  
14 that he was actively giving assistance to Jack Abramoff in  
15 obtaining GSA business at the time, and so when he told our  
16 special agent that he--

17 Senator McCaskill. And your special agent was  
18 investigating Jack Abramoff?

19 Mr. Miller. My special agent was investigating claims  
20 about David Safavian. The issue that came in, the  
21 allegation was that Mr. Safavian went on a golfing trip to  
22 St. Andrews golf course in Scotland at the expense of Jack  
23 Abramoff along with a number of other individuals and that  
24 Mr. Safavian did not pay for the trip entirely and that Mr.  
25 Abramoff was doing business with GSA.

1           What Mr. Safavian told our special agent was that he  
2 had paid for the trip himself, and he produced a check. And  
3 he did not--specifically what he concealed and what the  
4 Department of Justice charged him with concealing was the  
5 fact that he was actively giving assistance to Jack Abramoff  
6 in GSA-related business.

7           Senator McCaskill. I see.

8           Mr. Miller. The other part that he didn't tell the  
9 full truth about was he only partially paid. He paid about  
10 \$3,100 for a week in Scotland and a weekend in London with  
11 Mr. Abramoff. So it was only a partial payment that he had  
12 paid. He didn't state that Mr. Abramoff did pay for the  
13 rest.

14           So what we propose are two potential fixes, one to the  
15 definitional section for 18 U.S.C. 1001, where we specify  
16 that for a Federal employee, they have a duty to tell all  
17 material facts when asked. The other potential fix is to a  
18 Sarbanes-Oxley statute, 18 U.S.C. 1519, and we would put a  
19 Subsection B that would clarify this particular point. So  
20 those would be the two legislative ideas to clarify that  
21 Federal employees have to tell the whole truth. They can't  
22 hide the truth with a deliberate intention of misleading the  
23 agent.

24           Senator McCaskill. I think that is why the phrase  
25 says, the truth, the whole truth, and nothing but the truth.

1 Mr. Miller. I think it does.

2 Senator McCaskill. Finally, an area that I would like  
3 to talk about is the Excluded Parties List System, the EPLS.  
4 This issue of Social Security numbers or taxpayer  
5 identification and also the idea that we could maybe expand  
6 it to include State and local, what is your--I know that you  
7 all surveyed on this, Mr. Ogden, and that there was--while  
8 you said there was significant opposition, I think 76  
9 percent of your Inspectors General still agreed that we  
10 needed to do some kind of identifying information on the  
11 Excluded Parties List System--

12 Mr. Ogden. Correct.

13 Senator McCaskill. So that is still--I mean, believe  
14 me, for somebody in my line of work, 76 percent is a huge  
15 majority.

16 [Laughter.]

17 Mr. Ogden. Let me clarify the opposition point.  
18 Exactly. Let me clarify the opposition point, Senator  
19 McCaskill. The opposition was the use of the Social  
20 Security numbers, not the EPLS, okay.

21 Senator McCaskill. Right.

22 Mr. Ogden. To the extent that there are problems with  
23 the EPLS and its administration, that was another issue.  
24 But the opposition that I referred to is specific to the use  
25 of the Social Security number because of identity theft

1 issues.

2 Senator McCaskill. But don't we have an issue of not  
3 being able to identify people as to all the companies that  
4 have the same or similar names? Isn't that a real problem?

5 Mr. Ogden. That is. That is a problem. I know we  
6 encounter it at my agency. I know that it is a universal  
7 problem throughout the Government. Again, the concern, I  
8 think, arises in the context of specifically the Social  
9 Security numbers. Whether or not there is another unique  
10 identifying number, whether or not there is an Employee  
11 Identification Number or another methodology or a means by  
12 which you can protect the data, specifically the SSN, if you  
13 have to use the SSN--

14 Senator McCaskill. Right.

15 Mr. Ogden. --is there a way to protect that data and  
16 ensure that it is not going to be publicly available.

17 Senator McCaskill. Right.

18 Mr. Ogden. And that is in keeping with--Senator  
19 Feinstein has introduced, I believe, two bills at this point  
20 that are dealing with breaches regarding SSNs and the OMB  
21 memorandum that I referred to earlier addresses this point.  
22 I know it is an issue within my agency right now, the whole  
23 protection of PII, sensitive personally identifiable  
24 information. So that is the only opposition that we really--  
25 --otherwise, there was support for the proposition.

1           Senator McCaskill. Well, one of you earlier mentioned  
2 the self-certification issue as they could certify that none  
3 of the officers of the company had been convicted of any  
4 fraud. Could we expand that to include debarment, that no  
5 one had ever been subject to an act of debarment?

6           Mr. Ogden. Yes. Yes. Clearly, that could be done,  
7 and I am not certain that it doesn't call for that right  
8 now. I know there is a time limitation of only three years  
9 currently for that certification, and the proposal, at  
10 least, I believe--and I will let Mr. Skinner address this  
11 and Mr. Miller address this more specifically since they  
12 worked on the Task Force on this issue, but it would be to  
13 expand the--to take away the time frame, to take away the  
14 time limit to ensure that the certification was without  
15 limitation.

16           Senator McCaskill. Mr. Skinner?

17           Mr. Skinner. What I was referring to earlier was not  
18 necessarily people that had a criminal record per se, but  
19 when we were doing computer matching, or GAO was actually  
20 doing the computer matching for us to validate small  
21 businesses and disabled vet owned businesses to qualify for  
22 small business contracts after Katrina. Without that  
23 information, without some type of an identifier, and in this  
24 case, we did have a VA identifier that we can match against  
25 their VA which they put on the form, but there are

1 oftentimes where there are no other identifiers.

2 Senator McCaskill. Right.

3 Mr. Skinner. And until we can come up with some type  
4 of consistent identifier across Government that we can use--  
5 and right now, the only thing we have available to us is the  
6 Social Security. A lot of the procurement fraud that we are  
7 encountering or benefit fraud that we are encountering can  
8 be detected by just doing simple computer matches against--  
9 with the Social Security Administration.

10 Senator McCaskill. Right.

11 Mr. Skinner. And if that is taken away from us, it is  
12 going to make our job even a lot harder.

13 Senator McCaskill. We did it all the time in the State  
14 Auditor's Office. I mean, matches were like the sun coming  
15 up in the morning. We couldn't have done our work without  
16 the computer matches.

17 Mr. Skinner. I think we have an obligation to ensure  
18 that that information is protected.

19 Senator McCaskill. Right.

20 Mr. Skinner. And as long as we can demonstrate that we  
21 are good stewards of that information and that we can  
22 protect and safeguard that information, I think that we  
23 should use it. These are resources, tools that are  
24 available to us that are just not being used right now.

25 Senator McCaskill. Well, let me say to all of you,

1 there are other questions I have that we will direct to you.  
2 And any information, further information you want to add to  
3 the record, please feel free to do so. I have got our four  
4 performance measures now that I know. We have got to work  
5 on, don't tip off the bad guy before we have to. We have  
6 got to do a better job on the computer matching. We have  
7 got to get more agents for DCIS. And we have got to deal  
8 with the subpoena authority.

9 Mr. Skinner. That is for everyone, Madam Chair.

10 Senator McCaskill. No, I know. I apply all four of  
11 these to all of you and to the entire IG community. But  
12 those are four things that could make a meaningful  
13 difference for taxpayers in terms of how easy it is for you  
14 to catch people who are ripping us off.

15 I thank you. Please tell all the people who work with  
16 you how much their work is appreciated. They are the kind  
17 of people that, frankly, never get much attention. There is  
18 no brass band for them. If their cases go to court, they  
19 generally plead. They are not even ever on the stand, like  
20 "Law and Order: Criminal Intent" or anything like that.  
21 There is no stardom in their work. But it is incredibly  
22 important. I know you all feel that, as leading the  
23 agencies you lead. But please convey to them on behalf of  
24 this Committee how much we appreciate their work.

25 And if there is anything else that this Committee can

1 do in helping you catch people who are stealing from our  
2 Government, let us know and we will get to work on our list  
3 of four that we have come out of this hearing with. Thank  
4 you very much.

5           The Subcommittee is adjourned.

6           [Whereupon, at 3:54 p.m., the Subcommittee was  
7 adjourned.]