POWER OF LEGISLATIVE INQUIRY—IMPROVING VA BY IMPROVING TRANSPARENCY

HEARING

BEFORE THE

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POWER OF LEGISLATIVE INQUIRY—IMPROVING VA BY IMPROVING TRANSPARENCY

Monday, March 16, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 7:30 p.m., in Room 334, Cannon House Office Building, Hon. Jeff Miller [chairman of the committee] presiding.

Present: Representatives Miller, Lamborn, Bilirakis, Roe, Benishek, Huelskamp, Coffman, Wenstrup, Walorski, Abraham, Zeldin, Costello, Radewagen, Bost, Brown, Takano, Brownley, Titus, Ruiz, Kuster, O'Rourke, Rice, McNerney, and Walz.

OPENING STATEMENT OF CHAIRMAN JEFF MILLER

The CHAIRMAN. This hearing will come to order. I want to thank everybody for coming to tonight's hearing entitled The Power of Legislative Inquiry—Improving the VA by Improving Transparency. This hearing tonight is going to examine some of the legal objections that have been raised by the Department of Veterans Affairs, including its Office of Inspector General in responding to this committee's requests for documents and information.

Members, I want to emphasize tonight that an essential goal of this committee is to use its constitutional oversight authority to discover and to address problems so that VA can serve veterans more effectively and efficiently. And while I am willing to work with Secretary McDonald to implement needed reforms, I am unwilling to allow the Secretary or anyone else at the Department to dictate how the committee conducts its oversight or performs its investigations, nor am I willing to permit the Department to place any limits on the information that we receive.

Simply put, the committee's constitutional obligation to conduct oversight requires that it receive complete and unfettered access to all documents requested. This committee requires transparency from the VA. Such transparency was absent last year when this committee helped to uncover the national wait-time scandal. Scheduling data manipulation was exposed despite repeated and false denials by VA officials that there was anything wrong. When VA tried to impede the committee's investigation, we were forced to issue subpoenas to get answers. Now, ultimately, leadership at the VA was forced out through accountability, for the national scandal itself remains complete. Unfortunately, it is uncertain whether VA truly understands the lessons in transparency it should have learned.

Currently, an excess of 100 requests for information remain outstanding, 63 of which are months and months past due. Based on its general counsel's advice, VA has insisted on chairman's letters for many requests and has taken to second guessing whether there exists a legitimate purpose for each of the requests. Equally problematic, VA and OIG assert that they can withhold sensitive information based on the unfounded fear that such information might be publicly released by this committee.

Members of the Supreme Court have consistently found Congress' oversight powers to be broad in scope due to its constitutionally enumerated powers. Regardless, VA, and more troubling, its Office of Inspector General, continue to assert a number of what I believe are meritless rationales to delay, to limit, and even deny information to this committee. For example, VA recently invoked the Trade Secrets Act to avoid disclosing a risk assessment evaluating the cost of options for completing the Denver Hospital construction project which is already hundreds of millions of dollars over budget. Given that Congress has to appropriate and authorize the funds for the hospital, the reluctance to share this needed information is perplexing at best.

In addition VA recently raised undefined privacy concerns to refuse producing all records of a veteran who tragically committed murder/suicide. That request was made months ago. Also due to an unnecessary and unjustified Privacy Act review by VA general counsel, VA has failed to produce several boxes of EEO documents from Philadelphia, an area that Mr. Costello has been very involved in. We requested months ago this information, and even though a member of my staff was told by a VA representative that the files would be available in a few days, they were never produced.

And at a briefing with committee staff last Monday, VA representatives suggested that VA and the committee work together to balance equities and minimize disruption to the Department. They suggested that the committee entertain briefings in lieu of document requests, and to the extent documents remained necessary, that the committee accept in-camera reviews. With full notice of this hearing, they even tried a late gambit to get ahead of the circumstances by offering to allow my staff to see long-sought veteran medical files and the Philadelphia EEO files, meaning VA would actually retain the physical custody of relevant documents, and the committee would only get a time-limited, VA-supervised viewing.

My flat answer to this arrangement is no. The committee is not a junior partner with VA in any respects, and certainly not when it comes to concerns that our obligation is required in its conduction of oversight.

We request documents for a number of reasons within our oversight role, and although we endeavor to share what we can with VA regarding the purpose of an inquiry, there are legitimate reasons for stopping short of full disclosure. Among other things, VA's efforts to co-opt committee investigations could place in jeopardy our ability to cultivate whistleblowers within the Department. Further, the independence of an investigation could be compromised or

frustrated by deliberate delay if the full purpose of an inquiry is revealed to the entity that is the subject of the investigation.

Let there be no mistake or misunderstanding. When this committee requests documents, I would expect production to be timely, complete, and accurate. I don't expect a litany of questions about the purpose of a request, a negotiation about how or when it will be answered, or a tutorial from VA officials about how the committee should conduct its business. Perhaps most disappointing is that even VA's inspector general has adopted a similar restrictive posture with this committee. The Office of Inspector General failed to include the committee in the distribution of an early report on wait times at Phoenix, and more recently, a report on serious medication management issues at Tomah, Wisconsin.

Notwithstanding the Inspector General Act mandate to keep Congress currently and fully informed, the IG has a stilted position that other than a semi-annual report specifically mentioned in the IG Act and others mandated by a separate statute, that reporting to Congress is fully within its discretion. This position was articulated most recently in refusing to provide the committee with all underlying documentation for an IG report finding serious improprieties of a former senior procurement official.

Among reasons for the denial were the FOIA, Freedom of Information Act, the Privacy Act, and the Trade Secrets Act. This case deserves special attention and is illustrative of the too-cozy relationship, I believe, between VA inspector general's office and the VA. Given the gravity of the findings in that the official had taken a position with the Treasury Department, we referred the report to the Treasury IG. The VA OIG refused to cooperate with the Treasury IG's office that was an investigation citing unfounded Privacy Act concerns. The Treasury IG conducted its own independent investigation, and issued a letter to the committee this past Wednesday that calls into question the integrity of VA OIG's actions in this particular matter.

At this time, I would like to ask unanimous consent to include the letter in the hearing record. Without objection, so ordered.

In addressing continuing scandals at VA, Deputy Secretary Sloan Gibson recently said, "I don't expect anybody to give that trust back. I expect we are going to have to earn it back. One of the ways we will work to earn that trust back is through transparency and openness." If VA truly wants to be transparent and open, one of the first things it needs to do is to stop impeding this committee's oversight investigations. And with that, I yield to the ranking member for an opening statement.

[THE PREPARED STATEMENT OF CHAIRMAN JEFF MILLER APPEARS IN THE APPENDIX]

OPENING STATEMENT OF CORRINE BROWN

Ms. BROWN. Thank you, Mr. Chairman, and I will be brief in my remarks given the time. I know that I speak for many of our members when I question the urgency and the need to hold this hearing in the evening and not in the course of regular order of this committee. I know we have a hearing scheduled on April the 30th on female veterans issues, but I wonder if a hearing on homeless vet-

erans or military sexual traumas, which many members asked for as far back as May 2013, would not be more of benefit this evening.

I believe that the topic of this hearing on the oversight powers of this committee and the limitation of that power including recognition that there are sometimes legal interests that the executive branch have that we should try to accommodate; it is an important one. This goes to the very heart of the Doctrine of Separation of Powers. I believe that this discussion rooted in Congress' broad but not unlimited oversight powers is a discussion that from the time many of our committee should engage in. Our job as a committee is an important one, and we need to have access to information that enables us to fulfill our valid legislative purpose. It is well settled that Congress does not have the general power of investigation.

I look forward to hearing from the VA how the new process that they have undertaken will lead to more complete and more timely response to legal committee requests. For too long, members on both sides have expressed frustration at not getting answers to the questions we have. I hope that this new process will fix this problem and not just be the same old process dressed up as something new. I have long believed that this committee works best when we work together, when we work together to uncover problems and work together to ensure that we find solutions to this problem. This working together includes informing all committee members of actions taken in the name of this committee, including oversight requests from the VA, the inspector general, and other agencies.

I am troubled that I have not been informed of many of these requests, and I hope that you will ensure me, Mr. Chairman, that my staff and I will be informed in the future. I look forward to the hearing and the oversight discussions. I believe their contribution will be helpful to all of us in order to enlighten us on this complex area of law that we look at ways to improve the manner and process by which we as a committee conduct our oversight responsibilities in the future. I thank you, and I yield back the balance of my time.

[THE PREPARED STATEMENT OF RANKING MEMBER CORRINE BROWN APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much to the ranking member. I would ask as this committee usually does if members would waive their opening statements. They can be entered into the record at the appropriate point. I was looking at the calendar. I would also note that next Monday night is clear, and if the ranking member would like to get with me, I would be happy to discuss another evening meeting reference MST or homelessness. I would be glad to try to work that into our schedule. I think those are very important issues.

Ms. BROWN. Would you yield, Mr. Chairman?

The CHAIRMAN. Yes.

Ms. BROWN. You and I have discussed working to make sure that we coordinate our schedules, and you just had another trip, and I indicated to you that I would like to make sure that when we schedule trips, or when we schedule hearings, that we work together to make sure it accommodates all of the members. I don't want you to meet without us. We are a team, and as the Army

said, it is one team, one fight, and it is best if we are all working together.

The CHAIRMAN. Thank you very much. And reclaiming my time, members, we were going to have this meeting next Monday night, but in deference to the ranking member's schedule, I did, in fact, move it to tonight.

So I would like to welcome the panelists to the table tonight. We are going to hear from the Honorable Leigh Bradley, general counsel for the Department of Veterans Affairs; Ms. Maureen Regan, Counselor for the Inspector General of the Department of Veterans Affairs; Professor Charles Tiefer, Professor of Law at the University of Baltimore School of Law; and Mr. Michael Bopp, Partner at Gibson Dunn & Crutcher, LLP.

Given the quick turnaround time for this hearing, the VA requested and was allowed not to provide a written statement. For the other witnesses who did provide a written statement, your complete written statement will be entered into the hearing record.

And, Ms. Bradley, if you do have an opening statement, you are recognized for 5 minutes.

STATEMENT OF HON. LEIGH A. BRADLEY

Ms. BRADLEY. Thank you, Mr. Chairman. Good evening. Thank you for the opportunity to speak to the committee directly following what I believe was a very productive briefing with members of your staff and the staff of the Senate Veterans' Affairs Committee just last week about how the Department of Veterans Affairs can better respond to congressional requests for information, including those made in the exercise of your legislative oversight authority.

At the outset, I would like to underscore my personal understanding of, and commitment to the important work that is before the Department. Secretary Bob McDonald has pledged to transform the Department to rebuild trust with veterans and other stakeholders. My commitment to be part of the Secretary's team during this seminal transformation is both personal and rooted in a deep belief that the mission of the Department, to care for those who have served and for their families and their survivors, goes to the core of our Nation's character. I am honored to be part of this mission, and enthusiastically committed to the work ahead.

An integral part of rebuilding trust is meeting our obligation to provide information to Congress. Secretary McDonald recently emphasized this important duty to the Department's leaders and has stressed to all employees the need to assist VA's Office of Congressional and Legislative Affairs in ensuring that oversight requests are responded to both accurately and in a timely manner.

I would like to reemphasize today what we said to your staffers during last week's briefing. The Department is wholeheartedly committed to working with Congress in collaboration and good faith to ensure that Congress' oversight goals are met.

Among the top priorities the Secretary laid out for me this past December, when I became general counsel, was to improve the Department's capacity to understand and respond to the committee's oversight needs. This effort is directly linked with the Secretary's commitment to improve our department's openness and transparency which will, we believe, help restore public trust. We have

made significant progress toward our goal. We have aligned resources to enhance the team charged with responding to congressional oversight requests, and a little bit over 2 weeks ago, we appointed an experienced leader to serve as legislative counsel to oversee the team. We are now developing procedures that will promote a more systematic and clear approach to responding to oversight requests. And as I said a few moments ago, we had a very productive discussion with your staff last week about how we are improving our response process.

The courts have recognized that the Constitution contemplates that the legislative and executive branches, as co-equal branches of the government, will work together to understand and accommodate one another's interests. One of my most important responsibilities as VA's general counsel is to ensure the Department's good faith engagement in the oversight accommodation process. Among VA's key interests in this process are the privacy rights and dignity of all veterans and VA employees.

For example, to carry out the Department's core mission, our sacred trust, of providing care to veterans and their beneficiaries, VA collects and maintains a variety of personal, and often intimate data, on individual veterans and their family members. Veterans' health records include more than medical diagnoses and lab test results, but also extremely sensitive information like sexual history, family finances, and personal information about the veteran's children, spouse or other loved ones that veterans may share with VA clinicians.

Similarly VA employee records may include sensitive information such as bank account and routing numbers, the Social Security numbers of dependent children who may be covered by the employee's health insurance plan, and the designated recipient of death benefits.

Some of this data goes to the core of an individual's privacy and dignity and may also go to the heart of the patient-provider relationship. We simply cannot rebuild veterans' trust in VA if we are not sensitive to that fact. We understand and respect that the committee may need access to VA records to properly oversee the Department, and that may include this type of data. We are committed to accommodating your requests for records as fully and as quickly as we can. When we do provide veterans' or employees' records to the committee, however, we must do so sensitively and carefully consistent with our core values, legal obligations and our commitment to veterans.

The Office of General Counsel is guided by Secretary McDonald's mandate for increased transparency and openness with Congress and by the Department's core values. I cannot overstate how deeply we are committed to providing you with responsive and timely information. We believe we can fulfill that obligation through open dialogue to facilitate the most responsive information possible to meet your oversight needs.

Getting this right is deeply personal to me. I am a veteran myself, as well as a career civil servant. Both my husband and my father are veterans, as well as both my grandfathers. My daughter is currently serving on active duty and will one day become a veteran. I believe that all of us who chose to serve this Nation, in uni-

form or otherwise, expect the Department to work with Congress to ensure that your oversight goals are met. At the same time, I believe they also expect both VA and Congress to work together to ensure that their privacy and dignity are preserved through the protection of their personal information. From this place of shared interests, we look forward to working with you to accommodate both of these critical goals.

For myself and the Office of General Counsel, I give you my commitment to perform our duties faithfully and respectfully, to fulfill the Department's sacred trust to veterans, and to engage in an efficient and transparent accommodation process with the committee. That is what Secretary McDonald has directed, and I fully support him in that important commitment. Thank you.

[THE PREPARED STATEMENT OF MS. BRADLEY APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much. Ms. Regan. You are recognized for 5 minutes.

STATEMENT OF MAUREEN T. REGAN

Ms. REGAN. Thank you. Chairman Miller, Ranking Member Brown, and members of the committee, I would like to take this opportunity to address the issues that have been raised with respect to the report we issued on December 8, 2014, regarding the contracts awarded by VA's Technical Acquisition Center to Tridec Technologies for the Virtual Office of Acquisition. On Thursday evening, March 12, we received a media inquiry regarding a letter sent by Inspector General Eric Thorson at the Department of the Treasury to the chairman and ranking member questioning the integrity of our report. It is very disconcerting to us that this letter was released to the media without any discussion with us. In fact, as I sit here tonight, neither the committee nor Mr. Thorson has provided us with a copy of the letter.

Mr. Thorson's conduct raises serious question about the legality of his actions as a Presidentially-appointed inspector general who, at the request of the chairman of this committee, conducted an investigation of the VA Office of Inspector General and reported his findings directly to the Chairman of the Committee.

In accordance with the provisions of Section 11 of the Inspector General Act, we have referred the matter to the Integrity Committee of the Council of Inspectors General for Integrity and Efficiency, otherwise known as CIGIE. We requested that the Integrity Committee conduct a full investigation, including the conduct of all individuals involved. The Integrity Committee is chaired by the Assistant Director of the Criminal Division Of The Federal Bureau Of Investigation.

It is also disconcerting to read the Chairman's recent attacks in the media on the integrity of VA OIG leadership and cast doubt on the reliability of our work. If the committee has concerns about this or any of our reports, the committee can discuss these concerns with us, and we encourage that, or report their concerns to CIGIE's Integrity Committee.

As the author of the VA IG report on the contracts awarded to Tridec, I can assure you that the findings and conclusions are fully supported by the evidence. I personally reviewed the investigative

records and contract documents and cited them in detail in the report. In response to a January 7, 2015 request from Chairman Miller, we provided the supporting documents to the Committee. We understand those documents were given to the Treasury IG. Because the March 11 letter was released to the media, I would like to address some of the most egregious factual errors in the March 11 letter.

The Treasury's IG's conclusions appear to be based in part on unchallenged statements made by two subjects of the report and four unidentified persons without any verification of their statements. The Treasury IG states in his letter that his staff did not have access to the evidence needed to verify the statements. Nonetheless, he reached unsupported conclusions. One specific example is that the Treasury IG relied on Ms. Cooper's statement that she was unaware she was the subject of an investigation when she spoke to the VA OIG Special Agents, even claiming that she was told she was not the subject.

Her statements are not true. OIG investigators are required to advise employees of the Government who are the subjects of an investigation of certain rights afforded them under Garrity v. New Jersey. It is often commonly referred to as the Garrity warning. Ms. Cooper was not only advised of her rights under Garrity when she was interviewed by the VA OIG special agents, she signed a document certifying that she was so advised. We were not asked for that document. Treasury IG states that when his staff reviewed the VA OIG report, they found the conclusions unsupported and sought supporting documentation. The letter further states that their efforts and those of the Department of Treasury to obtain evidence from us were denied. The records at issue are maintained in a Privacy Act system of records. As such, we did not have authority to release the records without either Ms. Cooper's authorization, which we asked them to get, or a valid request under Exemption (b)7 of the Privacy Act which is for a specific civil or law enforcement activity. We received neither from anyone in the Department of the Treasury or the Treasury OIG. As such, we would be violating the Privacy Act to give those records to the Department of Treasury, and we are not going to violate the Privacy Act.

The March 11 letter also alleges that the Tridec investigation was conducted at the request of a Mr. Jan Frye, the VA Deputy Assistant Secretary for Acquisition and Logistics, and asserts that he holds some level of control over me and the VA OIG because he funds certain positions. This statement is also not true. As noted in our report, the review was conducted in response to multiple anonymous allegations relating to the contract that was awarded. These allegations were received through the VA OIG hotline.

Also of importance is that the criminal investigation was conducted because one of our auditors who was conducting an audit of the TAC, the Technical Acquisition Center, identified this contract, had concerns about how it was awarded, and actually referred it to the OIG's Office of Investigations.

The reimbursible agreement has been in place since fiscal year 1993, and it is between the VA OIG and VA's Office of Acquisition. The memorandum of understanding has never been signed by Mr. Frye. The most recent one, it was just recently amended, was

signed by Mr. Glenn Haggstrom. This agreement has never been a secret, and has been included in our budget submissions and congressional appropriation bills. The work conducted by the employees who provide the services under this agreement has been requested by various VA entities within VA, and at times, we have the authority to conduct a review on our own initiative. Mr. Frye has absolutely no influence over our workload.

According to the most recent semiannual report to Congress, the Treasury OIG has 17 positions funded on a reimbursible basis by the Department of Treasury, so this is not unusual. Any concerns the Committee has with allegations that Mr. Frye had undue influence with this investigation is inconsistent with the fact that one day after the nonpublic Tridec report was provided to the Committee, Mr. Eric Hannel, the Staff Director for the Subcommittee for Oversight and Investigations, cut and pasted the summary of a confidential report into an email and sent it to Mr. Frye. He even noted in there that this report had not been made public. Mr. Frye had no reason to see that section of the report.

There are numerous other inaccuracies in the Treasury letter, including evidentiary, contracting, and other standards. However, due to time constraints, I cannot address them all in this statement. We have requested expedited action by CIGIE's Integrity Committee so the truth can be seen by all, and the baseless attacks on our reputation and integrity can be laid to rest. Thank you. I will answer any questions.

[THE PREPARED STATEMENT OF MS. REGAN APPEARS IN THE APPENDIX]

The CHAIRMAN. I have several questions to ask, but we will go ahead and allow the other two members of the panel. Sir, Professor, you are recognized for 5 minutes.

STATEMENT OF CHARLES TIEFER

Mr. TIEFER. Thank you, Chairman Miller and Ranking Minority Member Brown, and all members. I appreciate the committee's invitation for this important and controversial subject. I was in the House General Counsel's Office. I was general counsel of the House of Representatives. I was in that office for 15 years. I came to many hearings just like this in which there was a struggle going on between executive departments and Congress, and I have written about it since becoming a professor and coming back here to testify at two congressional hearings dealing with executive privilege claims, one by President Bush, and one by President Obama. That is how important this subject is. It is almost historic any time a committee gets together to listen to it.

The VA IG and the general counsel have raised various objections to the committee obtaining documents for oversight. They seem open and generous, at least to some extent, and willing to work out compromises and solutions, but to the ear of a House general counsel, to accept the privileges that are being evoked, the arguments that are being invoked would mean at least delay, if not barring the door.

Let me take the first of two or three issues. The inspector general in the written statement has said that their obligation to the committee is satisfied by public reports. I quote from the testimony:

"The only specific means identified or mandated in Section 5"—that is Section 5 of the Charter of the Inspector General Act in the Inspector General Act of 1978—"the only specific means for meeting this requirement are the semiannual reports to Congress and the 7-day letter described in Section 5(d)." After that it is all, I guess, discretionary. But the Inspector General Act says that the Congress is to be kept, "fully and currently informed by means of the reports required by Section 5, the reports, and otherwise."

Now, the statute says reports and otherwise. Wouldn't need that if it just said reports. I have quoted the legislative history of the statute which bears this out, that Congress knew what it was doing in 1978 when it passed this provision and so forth. A second argument is the Privacy Act. We have the argument that the Privacy Act is a basis for withholding from Congress.

Now the OIG testimony said, and I quote, "OMB guidelines specifically state that this exception"—I will come back to what the exception is—"does not authorize the disclosure of information protected under the Privacy Act to an individual Member of Congress acting on his or her behalf or on behalf of a constituent." Now, this provision says what Congress provides in Section 552(a)(b)(9) of the Privacy Act, that it was not authority to withhold from "either House of Congress or to the extent of a matter within its jurisdiction, any committee or subcommittee thereof."

What am I contrasting here? There is an OMB guideline which says you don't disclose Privacy Act stuff for constituent casework by individual Members of Congress, and they don't. But the statute itself says that is not authority to withhold from a committee or a subcommittee. Well, that is you. Is there anybody in this whole building who doesn't know the difference between a committee or a subcommittee on the one hand, and an individual caseworker on the other hand? Because if there is no difference, I think you should leave this great-looking room here. There are certain little cupboards where caseworkers are, and you should all cram yourselves in there because that is your status apparently.

All right. My third and final point is the question of medical records. And, of course, they are nonpublic, and of course they are private. You don't want people to walk in off the street and start riffling through the medical files, but an investigative body, including the House committee can get them. The relevant regulations under the closely related HIPAA statute says a covered entity may discover protected health information. "A covered entity may disclose protected health information to a health oversight agency for oversight," and the VA has posted publicly in its notice of privacy practices—I have put the Web site link in my testimony—"VHA may disclose your health information"—they are telling this to the veterans, to the beneficiaries—"to law enforcement, health care, oversight, e.g., giving information to the Office of Inspector General or congressional committees." Thank you. My time is expired.

[THE PREPARED STATEMENT OF MR. TIEFER APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you, Professor. Mr. Bopp.

STATEMENT OF MICHAEL D. BOPP

Mr. BOPP. Chairman Miller, Ranking Member Brown, and other members of the House Committee on Veterans' Affairs, thank you for inviting me to testify before you this evening. My name is Michael Bopp. I am a partner at the law firm Gibson, Dunn & Crutcher. I also head our firm's congressional investigation group. I also hope to distinguish myself this evening as being the only witness to actually finish my testimony in under 5 minutes.

I spent more than a decade conducting investigations on Capitol Hill in House and Senate committees and on four special committees convened to investigate a particular issue or problem, and I have helped to orchestrate more than 100 hearings. I have taken countless depositions and interviews, and I have managed massive document discovery efforts both pursuant to letter and subpoena. I have been at Gibson Dunn for more than 6 years, and have represented individuals, companies, and other organizations in dozens of congressional investigations. I have been on both sides of the dais, both seeking documents and being asked to provide them. The power of Congress to investigate, though not explicit in the Constitution, is woven into its fabric. As George Mason noted, Members of Congress are not only legislators, but they possess inquisitorial powers. The U.S. Supreme Court has also concluded that Congress has the authority and obligation to investigate.

In one seminal case, McGrain v. Daugherty, the Supreme Court held: We are of opinion that the power of inquiry, with process to enforce it, is an essential and appropriate auxiliary to the legislative function. Now why is this the case? What is the reason for this investigative authority? Because Congress needs up-to-date, granular information to legislate effectively. After the terrorist attacks of September 11, 2001, Congress did not rush immediately to pass legislation reforming the intelligence community based on available information. Instead, Congress created the 9/11 Commission, waited for its report, and embarked on its own investigation of our intelligence community. The legislation that ensued affected a seismic change in how intelligence is collected, analyzed, and shared by government agencies. It was the result of cooperation and information-sharing by the intelligence community with Congress.

In 2005, when Hurricane Katrina hit the Gulf Coast, both the House and Senate initiated investigations into what went wrong with Federal, State, and local preparations for and responses to the hurricane. As part of the Senate investigation, we interviewed more than 325 mostly government witnesses, held 22 public hearings, and reviewed more than 800,000 pages of documents. There was a lot to look at. What followed was legislation that overhauled the way FEMA addresses natural and other disasters. The legislative action would not have occurred absent a thorough investigation by both the House and Senate.

Now it is important to note that Congress need not investigate with the sole purpose of drafting or amending legislation. During the Katrina inquiry, were we investigating specific ways to amend Federal response protocols? No. We were investigating what happened, what went wrong. So, too, the Supreme Court in McGrain held that it is entirely appropriate for Congress to investigate matters on which legislation could be had. The executive branch, no

matter which party is in control, might not always like Congress' investigative authority or the way it chooses to exercise that authority, but it should respect it because congressional investigations help Congress perform its constitutional functions more effectively.

Congressional oversight of executive agencies helps ensure that the government is functioning the way it should in the best interests of the American people. The executive branch should respect Congress' powers to investigate and legislate just as Congress must respect the executive branch's responsibility to ensure that the laws are implemented and enforced, even when they are enforced against Members of Congress.

Vigorous oversight and investigative activities will always cause some degree of friction between Congress and the executive branch. In fact, that is how the system was designed, but they should not cause agencies to look for questionable ways to withhold information from congressional committees. In the private sector context, the types of obfuscation alleged here would not be tolerated. In the case of investigations of the executive branch, such activities are not unique to a particular agency or Office of Inspector General, and they are also not unique to a particular political party, but they are all too common.

I applaud the committee for standing up for the prerogatives of Congress through this hearing, and I welcome any questions you may have.

[THE PREPARED STATEMENT OF MR. BOPP APPEARS IN THE APPENDIX]

The CHAIRMAN. Thank you very much. Ms. Regan, I too have sent a letter to CIGIE to try to get to the bottom of the conflict that exists between the two offices of inspector general. In your very eloquent opening statement, you talked about many things, but one thing you did not discuss, or if you did, I apologize, I didn't hear it, how many times did the inspector general's office from the Department of Treasury contact VA OIG to discuss or gather information regarding Tridec and the Iris Cooper report that you signed off on?

Ms. REGAN. Signed off on what?

The CHAIRMAN. The report, whether you signed off on it or not.

Ms. REGAN. They didn't contact us at all before the report was issued. The report was issued——

The CHAIRMAN. Okay. I am talking about after the report was issued.

Ms. REGAN. After the report was issued, we learned around the 17th or 18th of December, Mr. Richard Delmar left a voice mail demanding the file. We didn't know why. In a conversation with Mr. Delmar, he told me he had been asked by the Committee to conduct an investigation, and he needed the entire file. I told him, there is several email exchanges, one in which Mr. Thorson actually, when I explained the Privacy Act——

The CHAIRMAN. Actually all I am asking for is a number, numerous.

Ms. REGAN. Actually, I don't know the number. I think it is laid out in the 5-page response that we gave to the Department of Treasury that I provided to Mr. Towers and Mr. Tucker.

The CHAIRMAN. I believe it is at least eight.

Ms. REGAN. I don't remember the number of pages, but we laid all of that out in there, and every single time——

The CHAIRMAN. Thank you very much. I appreciate that and CIGIE will get to the bottom of it, I am sure.

Ms. Bradley, December of 2014, we were told that the VA would be providing a copy of a risk assessment regarding the Denver Construction Project. Later in January the VA responded that it would not provide the committee with the promised copy of their assessment, but instead, would allow committee staff to review the document in the presence of VA staff. VA has made the same decision regarding MSPB and Equal Employment Opportunity files from the Philadelphia RO. However, in both cases there was no justification for the unilateral decision that was made by VA.

I would like you to explain to me and the committee what grounds do you think VA has for demanding an in-camera review of the assessment.

Ms. BRADLEY. I really appreciate the question, Mr. Chairman. I think both of those examples you point to underscore the need for greater communication between VA and the committee, a greater development of trust so that when you ask for documents or information that we retain, that we can be responsive to your needs, but we can also be mindful of executive branch prerogatives, meaning executive branch interests which we must protect. With respect to the risk assessment——

The CHAIRMAN. If I can reclaim my time, who appropriates and who authorizes the expenditure of funds for things like the Denver Hospital?

Ms. BRADLEY. Congress.

The CHAIRMAN. Correct. How can we do the oversight necessary if you do not provide us the entire document that exists out there and the assessment that you are doing, VA is doing, in order to try to bring this behemoth disaster under control. I mean, we are talking about a project that has gone from $600 million that will probably more than double before it is over.

Ms. BRADLEY. The way that you phrase this is misleading to the American people. You suggest that we haven't provided this information to the committee. We did in December——

The CHAIRMAN. Excuse me.

Ms. BRADLEY. Could I finish? Could I answer?

The CHAIRMAN. No. No, you can't because I have 1 minute left on the clock, and I am not going to let you filibuster for me to get the answers that I need. Why did VA not provide the risk assessment, not in-camera, the risk assessment.

Ms. BRADLEY. The risk assessment contains sensitive pricing information. As you note, we had to compete for the follow-on contract. We wanted you to have that information immediately and offered it to you immediately. The reason we that didn't want to provide you a document is the risk of redisclosure, whether it is inadvertent or intentional. It was too important to making sure that we could have fair playing field——

The CHAIRMAN. Excuse me. Mr. Bopp, is that an adequate explanation? Is Congress bound by the same privacy requirements that the general public is?

Mr. BOPP. No, it is not, Mr. Chairman.

The CHAIRMAN. And so what Ms. Bradley is trying to explain, and I can understand the need to try to protect sensitive information, but if Congress asks for that information, is there any explanation as to why it should not be given?

Mr. BOPP. In my view, it is Congress' prerogative to ask for and receive the information in the form it needs. That is, if in-camera inspection is not adequate to the committee's needs, the committee should have access to the information.

The CHAIRMAN. Thank you. Ms. Brown.

Ms. BROWN. Thank you, Mr. Chairman. Mr. Chairman, I first would like to say I have not seen a copy of the letter that you sent CIGIE. Can you provide us a copy of it?

The CHAIRMAN. I will be happy to.

Ms. BROWN. Mrs. Bradley, I would like for you to finish. Because I understand when we request sensitive information or information that the committee needs, what I want to know is when we get that information, let's say a lot of this is legal—in other words, we may be suing somebody or someone might be suing us—what happens if the committee releases that. I think that is what you were discussing?

Ms. BRADLEY. Well, precisely. I also want to make the point that we didn't say that the committee couldn't have the risk assessment. In fact, if the committee finds that an in-camera inspection of the risk assessment is insufficient to meet your needs, if we have a more open dialogue, you would simply tell us that, and we would reassess and provide it to you. We are trying to minimize the redisclosure of highly sensitive information.

In this case, it is procurement sensitive information that could give an offerer on a follow-on contract an advantage over other contractors, and so for the reason of trying to protect the taxpayers so that we get the best value on the follow-on contract, we thought that the best approach was to provide it in-camera. But again, accommodation is about talking about your interests. Over the months, and I have only been the general counsel for just shy of 3 months, and Secretary McDonald talked to me about this, we have been engaging in conversations through letters. We really haven't been talking. You haven't been sharing with us your needs. So if we come up with a proposal for providing you information, a healthy dialogue——

Ms. BROWN. Ms. Bradley, I don't have much time either. Don't we have a new process in place?

Ms. BRADLEY. We do.

Ms. BROWN. Tell us quickly, what is that?

Ms. BRADLEY. We have a streamlined process. We have an exceptional person who is leading that process. So now we have someone who is going to be a focal point with you and to our agency to very quickly assess what information you need and the format that you need that information. So instead of asking for boxes and boxes of personnel records that you may or may not need, we will talk to you to make sure that we are providing what you do, in fact, need to perform your oversight function.

Ms. BROWN. Thank you. Ms. Regan, did you want to respond to the request that was asked you earlier more complete?

Ms. REGAN. Yes, I would. Thank you. I received a phone call around December 17 from the Treasury IG demanding a copy of all the investigative files. When I questioned their need for it, they told me they were asked to investigate by the Chairman of this Committee, and actually they told us that, I think on a letter from Mr. Thorson at one time said on December 12, that Mr. Rees had sent over a copy of that report. At that time, it was not a public report. We had many, many discussions with them about what they needed, why they needed, that it was a Privacy Act document, and that we had to meet certain requirements of the Privacy Act so as not to violate it.

Ms. BROWN. My question is, is this the usual process that one inspector general's office investigates another?

Ms. REGAN. It is unheard of. And I would like to say that as we went through this discussion on January 5, I had a call again with Mr. Delmar, and when I told him I didn't have authority to give him the records in the manner he was asking, he said to me, and I quote, "Well, I am going to have to report you to House Veterans Affairs Committee for not being cooperative with us." Two days later we get a letter from the Chairman asking for the records, and we did provide the records requested for the stated oversight purpose for that. We had them come over. We talked about what they needed. We told them they could get an authorization from Ms. Cooper. We told them about a (b)7 letter. Turns out they didn't even know what one was. They didn't have a civil or criminal law enforcement purpose. We can't violate the Privacy Act.

We went for about a month and a half trying to work with them to find a valid legitimate reason under the Privacy Act to give them the records, and there wasn't one.

Ms. BROWN. Thank you very much. Is there in-camera review, Mr. Bopp, in-camera review, is there appropriate accommodations at times?

Mr. BOPP. At times, sure, I think if that meets the needs of the committee, absolutely. But I think the point is the committee has the authority to decide whether it needs more than just in-camera review.

Ms. BROWN. Thank you.

The CHAIRMAN. Ms. Bradley, real quick, did I hear you correctly say that VA would determine what the committee may or may not need?

Ms. BRADLEY. Absolutely not. If I said that, I did not mean to say that.

The CHAIRMAN. Would you like to retract that?

Ms. BRADLEY. It is clearly——

The CHAIRMAN. Could you turn the microphone on, please?

Ms. BRADLEY. I didn't say that, or if I said it, I certainly didn't mean to say that. We must talk to you so that you can tell us what you need. What I said before is that we have been sharing information through letters where the needs are not as clear to us as we would like them to be in order for us to be responsive and expeditious.

The CHAIRMAN. If I would tell that you we were offered the risk assessment document the day after our telephone conference call with VA in December, it took several weeks of dialogue for VA to

finally acquiesce to allow an in-camera review. Let me just make it very clear. In-camera review of any document is not acceptable. So you don't even have to go through that. Okay? We want the documents. Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman, for your leadership in having this meeting. Ms. Bradley, you inferred that you need to protect the privacy of veterans and their dependents, for instance, not giving out their Social Security numbers. Has this committee ever asked for Social Security numbers?

Ms. BRADLEY. No, and I am not suggesting that you do. But when you ask, especially if you have broad requests for information, a lot of times the information that you request has all of that sensitive information in it. So what we may want to do is have a conversation with you to tell you that we would like to redact the Social Security numbers, but we want to be open and transparent about it so——

Mr. LAMBORN. If this congressional committee has to give you a specific reason behind any particular request for information, doesn't that allow you to judge whether or not you agree with that intention? If so, that makes you a more than equal partner in what should be a co-equal relationship.

Ms. BRADLEY. No. We are not in a position to judge. We don't have authority to judge. We just need to know what you need. In other words, if we are trying to divine from the heavens above what you need out of 200 personnel files, and then later after you look at the personnel files and you say to us, you know what, what we were looking for——

Mr. LAMBORN. Let me go on. I have a limited time here. Ms. Regan, in your testimony you site in 1989 DoJ Office of Legal Counsel opinion stating that, "The process of accommodation requires that each branch explain to the other why it believes its needs are legitimate." What you do not say in this testimony is that this opinion relates to the accommodation process involved when a constitutional privilege has been asserted. Tell me, please, what constitutionally-based executive privilege the OIG has asserted to the committee?

Ms. REGAN. We have not had a request where we have asserted that privilege at all. I am just talking in general about providing documents. And up until recently we have never been asked for anything that was deliberative process.

Mr. LAMBORN. Okay. So you are not asserting, and no one is asserting any kind of constitutionally-protected executive branch privilege.

Ms. REGAN. I don't have a request at this time in which we would assert that privilege. The only request that seems to be an issue is the request for the entire investigative file on Tridec.

Mr. LAMBORN. Okay. So on the record, there are no privileges being asserted?

Ms. REGAN. We already provided those documents that were requested, and the documents that related or supported the report as the letter said, and we did not assert that privilege.

Mr. LAMBORN. And, Ms. Bradley, back to you, it should be sufficient for you to realize that if we are serious enough about a request to put it into writing, and to formally present it to you, we

want a truthful and transparent response, and this should control, no matter what you think our intentions are or are not. Would you agree with that statement?

Ms. BRADLEY. I certainly do. And, again, I don't want to convey an impression that we at VA are trying to judge your intentions. We are simply trying to respond, to be responsive to your oversight needs.

Mr. LAMBORN. Okay. Well, that is not how it is coming across, and I don't think we would be here otherwise, so I really think that we need more transparency on the part of the VA. Thank you, Mr. Chairman. I will yield the balance of my time to you if you want to use it.

The CHAIRMAN. Thank you very much. Ms. Bradley, I would ask you, the MSPB and EEO files, why it has taken 3 months for the VA to tell the committee that you will not comply with the request when the EEO program manager actually told us that we could get the information. In fact, I think I was told that I would have to have a chairman's letter. I provided that chairman's letter. We are not writing letters because we like to. Most of the chairman's letters are written because that is what has been demanded of this committee from the agency, so my question is, why is it taking so long to get the information that should have been available, was told to us it could have been available, in 1 to 2 business days?

Ms. BRADLEY. Mr. Chairman, I am really glad that you asked about this one as well. I have only been on the job for whatever, 2 months and 3 weeks.

The CHAIRMAN. Can we stipulate that you have just started?

Ms. BRADLEY. That would be great. I have looked into this matter, and we haven't said no; and, in fact, we are working on that particular request, and we said to your committee on this past Thursday, that we wanted to come up and have a conversation because we got boxes and boxes. We wanted to make sure that this is what you want and need before we convey all this information to you.

The CHAIRMAN. Thank you. And I very much——

Ms. BRADLEY. You refused that request.

The CHAIRMAN. I apologize. I am not trying to shut you down, and I appreciate that commitment, and I look forward to working with you in that. But could you share with us when the Philadelphia RO provided the EEO files to the Office of General Counsel.

Ms. BRADLEY. I don't know but I certainly can and I will.

The CHAIRMAN. Will you find out for me?

Ms. BRADLEY. I can and I will.

The CHAIRMAN. Thank you very much. Mr. Takano, you are recognized.

Mr. TAKANO. Thank you, Mr. Chairman. There is just an awful lot of documents in question that we haven't been made privy to on the minority side. And so I am just trying to figure out what the dispute is about, and from I what I can tell, there have been questions that have been put to you, the VA, by the inspector general of the Treasury, and there have been questions put to you by the majority of this committee. Is that correct? I mean, is that what the dispute is about here?

Ms. REGAN. Are you talking about the dispute with the Tridec report?

Mr. TAKANO. Yes.

Ms. REGAN. I am not sure what the dispute is. We did provide the Committee with documents. The question I got asked is why we didn't provide the documents to the Treasury IG, and as I said, those records are protected under the Privacy Act, and we did not have authority to give them to the Treasury IG, so we did not.

Mr. TAKANO. Mr. Bopp or Mr. Tiefer, you have commented on what the VA is required to do with respect to congressional committees.

But do you have any comment as to the VA OIG responsibilities to respond to another IG office?

Mr. TIEFER. No.

Mr. TAKANO. You have no comment?

Mr. TIEFER. I have no idea.

Mr. TAKANO. So do you have nothing to say about whether or not they are required to respond to queries of another IG office and they can determine whether or not they should disclose certain information or not?

Mr. BOPP. I would make one observation, and it is this. My reading of the Privacy Act is that—for the exceptions within the Privacy Act, which include exceptions for providing information to Congress or congressional committees and also includes an exception to providing information to another agency or an instrumentality. I don't read the Privacy Act as requiring an affirmative request for the IG to be able to share that information.

Mr. TAKANO. Well, let me ask you this: Does the fact that an inspector general, in this case, of the Treasury, who has been asked, presumably, by the chairman of the committee—does that give any more authority to the IG's office under the inspector general—of the Treasury—of a different department?

Mr. BOPP. It is a very good question. I think I would answer it this way. I think the chairman of the committee, having asked for the information—well, the information obviously can be. And I understand what is shared with the committee. As far as whether the chairman can somehow vest more authority into the IG—into——

Mr. TAKANO. It isn't more straightforward just for the chairman to go through regular order and get authorization from the committee because we do have a process here by which subpoenas are issued for information? Or in the absence of cooperation, wouldn't that be a much more straightforward process than going through the IG of another department whose ability to be able to ask that question is somewhat in question?

Mr. BOPP. My understanding is that the information was provided to the committee, but I defer to Ms. Regan and the committee staff.

Mr. Takano. Ms. Regan.

Ms. REGAN. The information requested that is—the documents that supported the findings and conclusions in the report were provided to the Committee.

And my understanding is that they were then given to the Department of Treasury, who has absolutely no authority to conduct an investigation into another IG's office.

Mr. TAKANO. Do you have any—I mean, you say it is unheard of that one IG's office would investigate another IG's office.

I mean, do you have—I mean, I am trying to understand why this happened.

Ms. REGAN. First of all, this committee has no oversight authority over the Treasury IG. So even for the Treasury IG to conduct an investigation of the individuals, it would be a Privacy Act record. And the only time you can provide those documents to the Committee is for your oversight committees or subcommittees.

So that Treasury IG has no authority to come in and investigate our work. There is no authority whatsoever. The IG Act says that your scope of your authority is over the programs and operations of the agency for which you are the IG.

So ours is the VA. Treasury is Treasury. There is no authority under the IG Act. Their appropriated funds are to conduct the oversight of the Treasury Department.

Mr. TAKANO. Since you have not asserted any form of executive privilege—I mean, that is what I have heard you say, no executive privilege—there is no reason for extraordinary measures trying to be had here by going to a different IG.

Ms. REGAN. There is a significant difference in dealing with information to go to another agency. There is actual case law holding that you can't even use a routine use to give Privacy Act information to another agency.

The only exception under the Privacy Act is with the authorization of the individual, a waiver. So, for example, if there is an OPM background investigation, there is a waiver that says agencies can give them the information.

The other exception is (b)(7), which is for law enforcement purposes, and that requires a specific articulated law enforcement activity and a specific portion of the record that is being sought.

We could not get either from the Treasury IG. They had no civil or criminal law enforcement activity. The Privacy Act prevents us from giving those records without violating the Privacy Act.

Mr. TAKANO. Thank you very much.

The CHAIRMAN. Mr. Takano, if I can express to you just a little bit and the other Committee members so you understand.

This didn't just bubble out of nowhere. When the VA OIG did the report, it was a damning report on a former VA employee who had left VA and gone to work doing almost the exact same job at the Department of Treasury.

So this whole conversation started because it appeared that this person had left VA and, because there is no communication between the agencies, that Treasury had no idea that Iris Cooper and the Tridec report had occurred.

Ms. Regan, I mean, is that kind of in a nutshell?

And then——

Ms. REGAN. There was nothing public at the time she moved over to the Department——

The CHAIRMAN. Correct.

Ms. REGAN [continuing]. Of Treasury.

The CHAIRMAN. Correct.

So when we found where she had gone to, we called to make sure that they were aware of what was going on. They thought that they

had hired an employee that could have an issue from being hired. That is how the two IGs—normally, we would never communicate with another IG.

Again, when—and you know from being on this committee time and time again employees are allowed to resign, they are allowed to transfer, to leave, and it never goes in their file. And so they are shuffled on to another agency. And so that is how this all started.

And so Treasury IG then began their own questioning, trying to find out what was going on. They were being blocked from getting any information at that point. And so that is where—I mean, yes, this is about the two Offices of Inspector General. And, by the way, the report is public. The exact report that was given to the Treasury OIG is the same report that is online now.

Ms. REGAN. It was not public at the time it was given to them.

The CHAIRMAN. It is now.

Ms. REGAN. We had FOIA request, and we published it within 7 days.

The CHAIRMAN. Correct.

So it is a public report. There was nothing changed in that report. There was no privacy information that was given that shouldn't have been given.

But that is how this whole document situation began. Otherwise, we would be dealing specifically with Ms. Regan and not—not the other OIG.

Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. Appreciate it.

All right. Questions for Ms. Bradley.

Previous Supreme Court findings and Federal court cases that were mentioned in the testimony of Professor Tiefer and Mr. Bopp provide case studies that support the powers vested to Congress on inquiries without justification needed nor a product or legislation produced.

My question is: Why should congressional committees with an oversight role related to agencies have to disclose the purpose of their inquiry?

Ms. BRADLEY. Let me quote from a seminal case on this issue. This gives you the legal framework for our thinking.

"The framers expected that, where conflicts and scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in a manner most likely to result in efficient and effective functioning of our governmental system.

"The coordinate branches do not exist in an exclusively adversarial relationship to one another when a conflict arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the others."

So while we will see your needs for information for oversight purposes, we want to talk more frequently and openly with you all so that you understand our needs to protect certain information.

Mr. BILIRAKIS. Mr. Tiefer or Mr. Bopp, would you like to respond to that?

Mr. TIEFER. That kind of language is used when there is a much stronger executive branch claim than the ones here, the kind of

claims that were made by President Bush or President Obama when they gave executive privilege claims from the presidency itself.

Just because one can say, "Oh, I think the Privacy Act should be put in the way of the committee," even though it says in the statute it can't be, that is not enough to start this dynamic approach of the planets and the Congresses and the separation of powers and all that sort of stuff. You save that for a place where you have got a real argument to defend the material from oversight.

Mr. BILIRAKIS. Mr. Bopp, do you have anything to add?

Mr. BOPP. I would say that what Ms. Bradley quoted from is aspirational when it—as it refers to this committee and—but the reality is that the Constitution vests authority such that it is up to this committee to decide what it needs and when it needs it and it is not up to the agency to be able to determine—or to determine that, "Well, there is not enough dialogue going on with the committee; therefore, we are not going to produce these documents."

Mr. BILIRAKIS. Thank you.

The next question is for Ms. Regan.

One of the main functions of the Inspector General's Office authorizing the IG Act of 1978 was to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies related to the administration.

In your testimony, ma'am, you suggested that the IG's interpretation of this law only requires the IG to submit semi-annual reports to Congress. Can you confirm that this is the position of the IG specifically in relation to the IG Act and what is required by law to Congress? Yes or no. Can you confirm that?

Ms. REGAN. The IG Act only requires—the only specific requirement is a semi-annual report.

Mr. BILIRAKIS. Thank you.

Ms. REGAN. But that is not what do.

Mr. BILIRAKIS. Thank you.

Ms. REGAN. As noted in my testimony.

Mr. BILIRAKIS. Thank you.

Mr. Bopp, in regards to the interpretation of the IG Act, do you agree that the intent of this act and requirement of the OIG is limited to semi-annual reports when keeping Congress fully and currently informed?

Mr. BOPP. I do not. I don't believe that semi-annual reports alone in most circumstances constitute keeping Congress currently and fully informed.

Mr. Bilirakis. Mr. Tiefer?

Mr. TIEFER. Same.

Mr. BILIRAKIS. Thank you.

The IG Act has been enacted for the last 37 years. The question is for Ms. Regan and Ms. Bradley.

The IG Act has been enacted for the last 37 years. Why is it now that the VA and the OIG are contesting the investigative powers and authority of Congress in this act?

During a time when the VA must continue to rebuild the trust of the veterans they serve and, of course, Congress and the Amer-

ican public, how would providing less information to Congress and the public help in this endeavor?

So we will start first with Ms. Regan, please.

Ms. REGAN. All of our reports—as I said in my written testimony, all of our reports are reviewed prior to being issued, and those reports, if they can be a public report without redactions under the Privacy Act, are actually put up in unredacted form on our Web site within 3 days after being issued.

Those reports that have to be redacted, we have to wait for a FOIA request, a Freedom of Information Act request, but they are all ready to go. So once we get a FOIS request they are put up on the Web site.

So we do keep the public informed because all of those reports are put up on our Web site without delay. That is one thing we have conscientiously done.

So we know what reports are going to go up. We even try to write our reports in such a way to take out names, identifiers, medical records, and everything else so that we can put it up on the Web site unredacted.

We do that a lot with the healthcare inspections. Otherwise, they would almost all be confidential and we wouldn't be able to release them. So we make a concerted effort, and that is one of the ways we keep Congress informed.

In fact, before a report goes up on the Web site that we expect will have some public interest or Congress is interested in, even an individual Member, we make the effort to come up and brief them. I think we have had 400 briefings up here, and those are just the formal ones.

There are the informal ones where a staff member or somebody—a Member of the Congress calls us and just wants us to answer some questions about something, and we do that, too. We have never withheld information on the——

Mr. BILIRAKIS. Thank you.

Ms. REGAN [continuing]. Reports that we have done.

Mr. BILIRAKIS. Thank you.

I would like to give Ms. Bradley an opportunity to respond about these things.

Ms. BRADLEY. Thank you.

Transparency is so important to establishing or reaffirming a trust with the American people and with our veterans. And, to that end, Secretary McDonald has made a lot more information available to the public, including information that is posted on the Web site about access.

I understand that we have to do a better job responding to the oversight requests that you send us. I will note that the committee started a list, I believe, in January of 2013 that you monitor so that there is more transparency about how we are responding to your requests.

Of the list of items that you have requested from VA, my understanding is that currently we have provided you with 94 percent of all of your requests. That doesn't mean there isn't a lot of work to do, but that is why I am here tonight, to talk about the new team and the new process.

We can do better, and that is our goal, openness and transparency with this committee and with the American people.

Mr. BILIRAKIS. All right. Thank you.

My time is expired. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much.

And the chair disputes the 94 percent of all requests.

Ms. Brownley.

Ms. BROWNLEY. Excuse me. Thank you, Mr. Chairman.

I wanted to ask Mr. Bopp or Mr. Tiefer—either one of you could respond.

I think at least, Mr. Bopp, you have made it, I think, pretty clear to the committee that the Constitution indeed invests the authority in committees to ask for information that they need to legislate. So I wanted to just drill down a little bit further.

So what does it mean when the committee asks for information? Is that a collective committee decision? Is that the chairman of the committee making a decision? What constitutes a request from the committee?

Mr. TIEFER. It depends on the rules of the House and the committee rules. Under some legal situations, the entire committee is supposed to authorize, but that is——

Ms. BROWNLEY. So that can be determined by the rules of the committee.

Mr. TIEFER. Under other circumstances, the chairman by himself.

Ms. BROWNLEY. Okay. So the committee requests information. Under optimal circumstances, we receive the information.

Once we receive that information, does that information become public information? Is there a responsibility of committee members once they have in their possession this information?

Mr. BOPP. It does not become public information when it is received by the committee. There are House rules about what happens to that information. And the information that is shared with the committee then becomes the information of the committee. And so, as Professor Tiefer noted, it is then up to committee rules to determine what can be done with that information.

Ms. BROWNLEY. Thank you.

And just, again, to continue to sort of drill down and explore with regards to any possible limitations to Congress in terms of its broader oversight authority, can either one of you provide any examples of what you would consider to be a request made by a committee within its jurisdiction that could be properly ignored by an agency?

Mr. TIEFER. Well, there certainly are several statutes which I named in my written testimony. One of them concerns taxpayer information where the statute itself says, in general, committees can't get it.

And if one of the few committees that can get it, which is the Ways and Means Committee, wants it, they have to walk through the following path of explicit authorizations and so forth.

And there is—the intelligence committee is similarly surrounded by procedures and restrictions and limitations. That is not true, in general, where the information is sought. It is true of some.

Ms. BROWNLEY. Yes, sir.

Mr. BOPP. You phrased your question very adeptly. You said within the committee's jurisdiction. And if the request is within the committee's jurisdiction, then I believe that that request is valid——

Mrs. BROWNLEY. Right.

Mr. BOPP [continuing]. And should be complied with.

Ms. BROWNLEY. Are there any—I am not a lawyer. It is probably pretty obvious. But are there any time restrictions also with regards to request of information and the timeliness of receiving that information?

Mr. BOPP. Not built into the rules. I mean, that is the key. Right? In my view, in today's—today's discovery involves—often involves, you know, requests for electronic discovery, electronic emails, sometimes text messages. Those documents can take time to produce. And there is no timeframe listed in the committee's rules.

But what ought to happen in a situation like that is there ought to be a dialogue between the committee and the agency being asked for the information. The agency being asked for the information should explain how long it will take, what the process is for getting those documents, so there is no—there is an understanding.

Sometimes it does take weeks to collect documents and to produce them. But if the documents are actually collected and they are being held and not produced to the committee because—for whatever reason that is not valid within the law, then there is a problem.

Ms. BROWNLEY. Thank you very much.

And I yield back.

The CHAIRMAN. Thank you.

Dr. Roe.

Dr. ROE. Thank you.

The CHAIRMAN. Dr. Roe, also, I apologize. Welcome back. We have missed you. And our thoughts and prayers have been with you the last several weeks. I just want you to know that your seat was vacant, but we all knew why you weren't here.

Dr. ROE. Thank you. I want to thank the committee for their support and all the Members that have reached out in a personal way during my family tragedy that was very heart-rending for me.

I just want to say a couple of things. I have been here 6 years and change. And the way we—and we are a pain, I realize, sometimes. We can be a real pain, and you know where. And that is our job, though.

We can't do our job without adequate information. And when it is not—when the VA is not transparent—and that is why I think we are having this hearing tonight, is that we don't feel like—and I certainly don't—feel like that information has been generously handed to us.

And I will give you an example, Ms. Bradley. When you said that, basically—and the impression that the chairman gave was exactly, "We will decide what you think is important"—"We will decide what is pertinent information." That is what I heard you say.

And I think, if the VA had been forthcoming, we wouldn't be $500 or almost $600 million over budget at a VA hospital in Aurora, Colorado. And when I think about that, I think about, as a

physician, how much health care we could provide veterans for $5 or $600 million. It is a lot, let me tell you. That is a lot of money. And it isn't done yet.

So I think us knowing what those contracts are, we could help you do your job better. And in the time that I have served on this committee, I haven't seen any private information released yet. And you are making an assertion that what happened here that I have never seen happen.

And as Mr. Lamborn said, we have never asked for somebody's Social Security. Redact that. If it is personal information, we can have records release signed. Every doctor up here on both sides of the aisle know that, to release personal information, you have got to have a records release. We can get that if we need it.

We need you to be forthcoming because what we think—we have built a wall between the VA and this committee, and it is a steep wall. And every time we find out you are not giving us information, we then think, "Well, what are they holding back from us that we can do our job?"

So I think you begin to see why it is so important for you not to decide. But if we pore over more records than need be, let us pore over them. That is our problem, not your problem. And I haven't seen that fear you have of information being given out, personal information.

I would like to have you list one case that that has happened. I don't know of one. Do you?

Ms. BRADLEY. I am aware of several cases. Yes.

Dr. ROE. What are they?

Ms. BRADLEY. Secretary McDonald shared a case with me.

Dr. ROE. What are they?

Ms. BRADLEY. But let me say something first.

Dr. ROE. No. I asked you a question.

What I——

Ms. BRADLEY. I think——

Dr. ROE. I have never heard——

Ms. BRADLEY. I don't want to share it in this hearing. But suffice it to say——

Dr. ROE. Well, give me a broad—use a Jane Doe.

Ms. BRADLEY. It was shared with the Secretary in the chairman's presence.

Dr. ROE. Don't give anybody's name or anything.

Ms. BRADLEY. That is exactly right.

Dr. ROE. Use somebody else's name.

Ms. BRADLEY. But that is the point. There is such a lack of trust between——

Dr. ROE. I want you to tell me——

Ms. BRADLEY [continuing]. This committee——

Dr. ROE. I want to know what those cases are where private information from this committee were divulged. That is what you have just said.

Ms. BRADLEY. I will be happy to share that with you, but I don't intend to share it in this public forum.

Dr. ROE. Okay. That will be fine.

Ms. BRADLEY. I am not going to redisclose the information. But I am aware of two cases.

But that isn't the point. The point is we must trust each other and we must work closer together. That is precisely why you are developing——

Dr. ROE. Let me interrupt you.

Ms. BRADLEY [continuing]. The process——

Dr. ROE. That is the point. Because what you just said was, "We can't supply that information because we are afraid you will say something you shouldn't."

Ms. BRADLEY. I never said that.

Dr. ROE. Well, that is what you just said.

Ms. BRADLEY. I didn't say it, and I don't mean to imply it.

Dr. ROE. Okay. Good. I appreciate that you don't.

And the IG—we have to have an independent IG to be able to do our job. There is no question about it. Without your input, Ms. Regan, we can't do what we need to do because we can't get the information that we need to make these decisions.

And so we have to have a straight shot from you, and we have to be able to believe what you are saying. And I have. Look, I think you all have done a good job through the time I have been on here. And so I think we have to have that transparency. I think it is gone, and I think that is why we are holding this hearing tonight.

Ms. REGAN. But I will echo the words of Ms. Bradley's that there is—it is a two-way street and there has to be trust. And, to be honest, the trust isn't there right now.

And I can give examples where information we gave to this Committee that we thought was for Committee purposes—there was never a discussion with us about the information, but the next day it ends up in the press.

Dr. ROE. Let me interrupt you.

I don't think you—I don't think you need to decide if it is—what we do with that information. That is our job to do. Not your job to decide what we are going to do with the information——

Ms. Regan.

Dr. ROE. I think——

Ms. REGAN. When the information is never used for a Committee purpose, just to give to the press, based on our conversations with the Department of Justice, we do have the right to ask questions and to engage in this justification process.

And conspicuously missing from here is the Department of Justice, who provides the legal advice and guidance to the executive branch.

Dr. ROE. I think right now you have just defined the problem that I have seen develop over the last 6 years here, is that how—it is not how we can help you do your job. It is sort of how we don't trust the Congress to do its job. We are elected to do that. We have a constitutional requirement to do what we are doing here tonight.

With that, I yield back.

The CHAIRMAN. Thank you very much.

I would, Ms. Regan, want you to explain to me why a member of my staff would receive this email from somebody who was asking for information regarding the Tridec/Cooper information.

And it said, "Here is the reason for the redactions: (b)(5), predecisional; (b)(6), privacy concerns outweigh the public's right to

know; (b)(7)(C), privacy concerns outweigh the public's right to know with respect to law enforcement records."

Is that a proper reason for withholding information from Congress?

Ms. REGAN. First of all, we had a letter. Under (b)(9) of the Privacy Act, it states that there must be a letter in writing, and it says may give the records to the Congress. It doesn't say must give the records to the Congress.

And, frankly, there wasn't trust because 2 days before that letter——

The CHAIRMAN. This has nothing to do with——

Ms. REGAN [continuing]. That we gave—what we gave——

The CHAIRMAN. Ma'am. Ma'am. I apologize.

But this has nothing to do—I don't care if you trust me or not. It is not important. What is important is the Constitution, the separation of powers, the executive branch and the legislative branch.

And for the witnesses to sit there today representing one agency and to imply that you get to make the decision as to what information we get to see reminds me an awful lot about something we have been watching in the press recently.

It is not your choice. If we ask for it, we shouldn't have this long, flowery conversation about should we get it or not. We should get it and not under a camera review. And I apologize.

But your response is that, then, this was an appropriate response to a request.

Ms. REGAN. Yes, it was.

The CHAIRMAN. Then, why did they change it and go to a deliberative process and trade secret argument?

Ms. REGAN. I didn't make those arguments with respect to those records.

The CHAIRMAN. That is what happened with this dialogue. The person——

Ms. REGAN. We came up to a have meeting. I think it was on January 29. And we went through a list of issues and concerns that we had about information. We did not talk specifically about that request.

The CHAIRMAN. This came from your Office of Legislative Affairs. In case you didn't know, You know, that is who we get our information from.

Ms. REGAN. IG information comes directly from the Inspector General's Office. We do not go through the Department because we are independent.

The CHAIRMAN. No. You—I apologize. This individual, I think, is in your Office of Legislative Affairs, but maybe not.

Do you have an Office of Legislative Affairs?

Ms. REGAN. We have a legislative liaison. Yes.

The CHAIRMAN. Yeah. Okay. Well, this came from that person.

Ms. REGAN. Right.

The CHAIRMAN. Okay. And you assert that that is correct?

Ms. REGAN. Yes, we do.

The CHAIRMAN. Okay. Mr. Bopp.

Mr. BOPP. Not knowing what was actually redacted—look, the problem is this. When an agency takes it upon itself to redact information and to assert privileges that do not apply to Congress, then

you have a problem because you are not getting the information you need.

Now, if there was a relationship between the committee and the agency of the IG's office where the IG's office was being prompt in delivering information—I don't know if it was or wasn't in this case—promptly delivering information and raising concerns and asking you, "Look, we would like to redact this information because it is particularly sensitive. Are you okay with doing that?", you could discuss accommodations.

If it just appears in front of you after weeks or months of asking for it—and I don't know whether that happened in this case—and it is redacted, I can completely understand the frustration because that is—these are not privileges that apply to Congress.

The CHAIRMAN. And that is what has happened time and time again with the agency, whether or not it was this particular instance or not, and that is—that is why we are here.

Ms. Titus, you are recognized.

Ms. TITUS. Thank you, Mr. Chairman.

I feel like I have fallen down a rabbit hole. There are two things that seem to be going on here. One was the stated purpose of this hearing, which was to look at how to have better communications, more transparency, better cooperation between this committee and the VA and IG's office so we can better serve our veterans and keep them informed of what is going on. That is the primary goal.

Now, after the scandal in Phoenix, a lot of people thought they weren't informed. Fortunately, I was able to talk to our local hospital folks and tell our veterans what was going on there, but maybe other people didn't have that opportunity.

I think that is a very worthwhile cause. That is something this committee should do, and we have been doing it for the past 2 years, how can we work together better. Okay. Fine.

I think we all might be well served to read this book that is on our desk about congressional hearings, when Congress comes calling, a primer on the principles, practices, and pragmatics of legislative inquiry, and answers a lot of the questions about when things are justified, what is First Amendment, what is executive privilege, what is right of privacy. That is right here.

Now, the second thing that I am hearing is this attack on the IG for something about the Tridec case. Now, we have had no hearing on the Tridec case. There was a report issued in December. I doubt if many people here know what brought about the Tridec case. We have nobody from Treasury to answer any questions, nobody from the judicial—judiciary to answer any questions, or the Justice Department.

Ms. Cooper has been much maligned here. Where is she? What is her position in all of this? What is the point of all of this? Did you all go after her because you didn't like her? Should Treasury have not hired her because she had a bad reputation? You know, that is all a whole personnel matter that is secondary to what we should be addressing.

And then we have got the law professor—I am not sure what you were talking about—and the legal expert who has got opinions. That is all it is, opinions. So, you know, somebody help me out here. Let's start with the VA.

Ms. BRADLEY. We need your oversight. We thank you for your oversight. We are dealing in very challenging times. We want to be more open and transparent and responsive.

If I have said anything this evening to suggest that I in any way intend to or my team intends to second-guess your needs, your requests, I apologize. That is the antithesis of my message tonight.

Secretary McDonald recruited me to take this job. He said one of our top priorities must be to restore public trust. And so what we are doing, we have built a team that is committed to working closely with you, getting you what you need as soon as possible, better understanding what you need.

We are not here to second-guess your motivations or to question what you do with the information once you get it. We are committed to this. It is essential to our ability to restore trust with our veterans.

I am here to do that and to convey that message. And so, if I have misspoken at all in any previous statements, I really want to make sure that is the one takeaway point tonight from the VA general counsel.

Ms. TITUS. And then can I ask you from the IG's office, what if next time one of your former employees gets hired by the Department of Agriculture? Are we going to have their IG come over and investigate what you all are doing?

Ms. REGAN. I certainly hope not. I am not sure they have the authority.

Ms. TITUS. I don't think they do.

Ms. REGAN. I don't think they have the authority to investigate us. This is first time this has ever happened, and people in the IG community, as far as I have heard, were astounded that the Treasury IG issued that report criticizing our report.

Ms. TITUS. All right. Thank you.

Ms. BROWN. Mr. Chairman.

The CHAIRMAN. Did you yield back?

Ms. TITUS. I will yield my time to the ranking member.

Ms. BROWN. Thank you. And I am going to be real brief.

But I think it is very important that we have communication with the committee. When something happens to Members' families, we need to know, or when we send letters to different agencies, so we won't have this confusion.

And I think where we need to have the confidence that we get the information, they also need to know if we are trying to get it for purposes that we want to have a—better working together with the agencies in oversight or whether or not we are just going to release it to the media to sensationalize.

And I want to tell you I was very encouraged, Mr. Chairman, when you have said from the beginning that we are moving forward—we are moving forward working for the veterans and that we are not—you know, I know you made some statement that you didn't really mean about somebody in the press that is ignoring some kind of information. I missed that. I know we are not putting——

The CHAIRMAN. Thank you very much.

Ms. BROWN [continuing]. Politics in this committee.

The CHAIRMAN. Time has expired.

I do want to ask Ms. Regan one thing.

You said that you publish all your reports in your—or at least the title of the reports in your semi-annual report to Congress?

Ms. REGAN. All reports that are issued are put up on our Web site, as required under the IG Act.

The CHAIRMAN. Okay. So help the committee. And I apologize because I know it is Dr. Benishek's time.

But in looking at the semi-annual reports, I don't see the March 2014 Tomah report listed and I don't see the 2008 Phoenix report described in the semi-annual report.

So can you explain why they weren't in there.

Ms. REGAN. I was not involved in either one of those. But my understanding is they are not issued reports.

The CHAIRMAN. Oh.

Ms. REGAN. They were administrative closures.

The CHAIRMAN. What is an administrative closure investigation?

Ms. REGAN. Administrative closure—you would have to ask the people responsible. Each our Directorates has the authority to do an administrative closure——

The CHAIRMAN. So this——

Ms. REGAN. Let me finish my answer.

The CHAIRMAN. No.

Ms. REGAN [continuing]. And each directorate——

The CHAIRMAN. No.

Ms. REGAN [continuing]. Decides what——

The CHAIRMAN. Ma'am, I am sorry.

But I want to know what the Phoenix report that was—and that was about the wait times—and the Tomah report that we will be going and having a field hearing on the 30th of March—how would anybody know those reports existed or that there was such a problem at Tomah or at Phoenix if those reports were never made available to Congress? How would we know to even ask for those reports?

Ms. REGAN. I am not sure I agree about all the problems. Especially in the Tomah report, we had no findings and there was only one complaint——

The CHAIRMAN. You don't think there is any problems at Tomah?

Ms. REGAN. There was one complaint about Tomah in 2011. And at the time they did the administrative closure, which was, what, 3 years later, there were no other complaints about Tomah.

The CHAIRMAN. So it is your——

Ms. Regan.

The CHAIRMAN. It is your——

Ms. REGAN. But I did not administratively close that review.

The CHAIRMAN. It is your testimony, then, that there are no problems at Tomah because the report clears them?

Ms. REGAN. I said we did not have any findings at Tomah.

The CHAIRMAN. Okay. Thank you very much.

Dr. Benishek.

Mr. BENISHEK. Thank you, Mr. Chairman.

Ms. Bradley, on February 10, 2015, we held a hearing in this committee on the issues at the Greater Los Angeles VA Medical Center.

During that hearing, I asked Dr. Skye McDougall, the acting director of the Pacific Healthcare Network, what the average wait time was for new patients at the LA facility, and she told me it was about 4 days.

Two days ago CNN released a report saying that that claim was simply not true. This is according to internal VA documents stating that the actual wait time was 48 days.

I also asked about wait times for mental health patients at the facility and was told that it was also roughly 4 days. And according to the same CNN report, that number is more like 36 days. I think this illustrates the problem that we are having and why this hearing is important.

Was Dr. McDougall misinformed or was she deliberately trying to misrepresent the new patient wait time at the facility?

Ms. BRADLEY. I have been thinking about that issue. I saw the CNN clip myself. And I wonder, if you all want accurate information that is granular——

Mr. BENISHEK. We would like accurate information. I will tell you that right now.

Ms. BRADLEY. Then, you would get that in a briefing. If you ask a witness a question——

Mr. BENISHEK. But you understand, if you don't know the answer, you can always say "I don't know."

Ms. BRADLEY. No. What I am saying is that——

Mr. BENISHEK. No.

Ms. BRADLEY [continuing]. She provided granular information.

Mr. BENISHEK. The answer that she gave was 4 days, and that was inaccurate.

So was she misinformed or was——

Ms. BRADLEY. See what I mean?

Mr. BENISHEK [continuing]. She just making up an answer? Is that allowed? Is that what you think? If you don't know the answer, you should just make one up?

Ms. BRADLEY. See, this——

Mr. BENISHEK. You just said that.

Ms. BRADLEY. This is exactly why——

Mr. BENISHEK. When you are in a hearing and you don't know the answer, you give an answer. Is that—that is your testimony.

Ms. BRADLEY. My testimony is that——

Mr. BENISHEK. No. You just told me.

Ms. BRADLEY [continuing]. It is not appropriate for you to badger me into answering a yes or no question. I am saying that what you need from her and from all of us at the VA——

Mr. BENISHEK. No. That is enough of that.

Ms. BRADLEY [continuing]. Is accurate granular information.

Mr. BENISHEK. No. I am talking now.

Ms. BRADLEY. She is probably accurate on one——

Mr. BENISHEK. Can you clarify in writing for the record what the actual new patient wait times are——

Ms. BRADLEY. Yes.

Mr. BENISHEK [continuing]. At the LA facility?

Ms. BRADLEY. Yes, I could. And I——

Mr. BENISHEK. In that clarification——

Ms. BRADLEY [continuing]. Think that would be helpful——

Mr. BENISHEK [continuing]. Could you please provide evidence of what precisely explains how wait times for new patients at the time of Dr. McDougall's testimony were about 4 days. Could you please explain how that answer about 4 days came to be.

Ms. BRADLEY. Absolutely.

Mr. BENISHEK. Thank you.

Ms. BRADLEY. I think that would be helpful to the committee.

Mr. BENISHEK. Ms. Regan, on February 23, I, along with Ms. Brownley, sent a letter to Inspector General Griffin in addition to Secretary McDonald.

We wrote with specific questions on the alleged overprescription of opiate pain medications at the VA Medical Center in Tomah. We haven't received a response from our letter. So I would like to ask you some questions about that tonight.

So, as you know, the IG investigation on Tomah was administratively closed. Do you know when the report was completed?

Ms. REGAN. If I am not mistaken, I was not—I was not knowledgeable about that at the time.

Mr. BENISHEK. So you don't know when it was completed.

Ms. REGAN. I think it was February 2014.

Mr. BENISHEK. Who has it been released to and when? Do you know that?

Ms. REGAN. It was released—I believe it was in July of 2014, based on a FOIA request from Senator Baldwin.

Mr. BENISHEK. Has the entire unedited report been released?

Ms. REGAN. The report has minimal redactions, but it has been up on our Web site for some time now.

Mr. BENISHEK. How many reports are administratively closed every year?

Ms. REGAN. I have no idea.

Mr. BENISHEK. Who makes the decision whether or not to administratively close a report?

Ms. REGAN. Until very recently, it was the Assistant Inspector General for the directorate that was doing the review.

Mr. BENISHEK. How many administratively closed reports within the past 3 years have contained specific recommendations for VA action?

Ms. REGAN. I don't know.

Mr. BENISHEK. As I understand it, your testimony to the Chairman suggests that there was no suggestion for VA action within the Tomah report.

Ms. REGAN. I don't recall if there were or not. I didn't ask specific——

Mr. BENISHEK. Apparently, there are suggested actions to the VA within the Tomah report and, yet, it was still administratively closed. Is that standard procedure?

Ms. REGAN. I don't know what the standard procedure is for——

Mr. BENISHEK. Thank you.

Ms. REGAN [continuing]. Each office.

Mr. BENISHEK. I think I will yield back the remainder of my time.

The CHAIRMAN. Thank you very much.

Dr. Ruiz.

Mr. RUIZ. Thank you, Mr. Chairman and ranking member, for the opportunity to speak today.

I am going to just focus on the transparency and making sure we get the information that we need because that is of vital importance for us. I am an emergency medicine doctor, and oftentimes we practice medicine with imperfect information.

And we understand—I understand the importance of being able to have the most accurate information in a timely manner in order to make the proper diagnosis in order to provide that treatment.

That same example applies to policymakers in this committee, is to have the most accurate information in a timely manner so that we can provide the best solutions to the problems that exist and then have it implemented by the administration.

Now, my question—we have talked about how we have had a new team and new process. So in the spirit of problem-solving, in the spirit of cooperation, in the spirit of making sure that we focus on these solutions, Honorable Bradley, can you tell me a little more about the process and how you will, one, prioritize the requests.

Because I understand, too, sometimes when you are flooded with requests, it doesn't help the system produce the responses. But how will you prioritize with the direction of the chairman and the committee?

And, two, have you come up with any metrics of success in the responsiveness that you want to demonstrate so that we can see how things are changing?

Ms. BRADLEY. Well, thank you for the question.

And I would like to tell you that I think what is really important is we said before we have responded to the vast majority of requests from the committee, but the ones that are left are pretty complicated.

Many times there are broad requests that require us to go into, let's say, independent databases or ask for data across all of our medical centers or all of our regional offices. So what we haven't been doing a good job of and what my commitment is to the committee tonight is that we ask you to help us prioritize the work.

It is not up to me. I don't want to make that call. I want you all to tell me what you need first and what you want my team to focus on first. That is number one.

Number two, we have a senior—a senior, highly skilled, mature person who is going to be in charge of this effort, who is going to be kind of the bellybutton so that you can call her and she can call you and we can adjust as needs change.

She is also going to be the focal point in VA. So people will get to know her. And when she says "I need particular information and I need it right away" and "Oh, by the way, I gave you a deadline and I am going to hold you to it," it is a way for us to inject some accountability, is what I am trying to say. Because before it was a kind of, "Um, I don't know." It was a decentralized process and nobody was really in charge and nobody was really being held accountable.

I think we can improve dramatically with our new team and, also, a more systematic approach and lots more communication with this committee.

Mr. RUIZ. So I understand what you are saying is that you have restructured your office in order to provide a mechanism for more dialogue with the committee in setting those priorities under our discretion——

Ms. BRADLEY. Right.

Mr. RUIZ [continuing]. So that you can start to tackle one at a time.

Now, how about the metrics? Like what are you going to be able to hold up in agreement with the committee to show that things are improving or not improving and then we—if they are not improving, then we have the responsibility to hold all of you accountable? So what are those metrics that you are going to be employing?

Ms. BRADLEY. Well, I think the committee's satisfaction is important to us, and I think that will be measured by our timeliness and whether the information that we provide you is responsive to your needs.

Mr. RUIZ. As you have repeatedly seen in our committee, committee satisfaction is very subjective. So I would highly recommend that you have something a little more objective that we can count so that we—it can be clear as to whether you are doing your job or not doing your job in being responsive to this committee.

Ms. BRADLEY. I agree.

Mr. RUIZ. I yield back my time, Mr. Chairman.

The CHAIRMAN. Thank you very much.

And as we ask questions—and I know some of them sound argumentative, but, you know, Members have extremely small amounts of times with which to ask those questions.

And, you know, the impression that is being left to the committee and anybody that is here watching is that 90 percent of the requests have been complied with. That is just not the case.

90 percent of the requests may have been responded to, but that doesn't mean that they have been complied with. We still have over 63 that are more than 60 days that are out there.

And I would suggest to the VA that one way to move the process forward is to go ahead and give the committee the Bradley Stone file and the EEO records that we have asked for. There is no need for delay. We have been very clear in exactly what we have asked for.

And you were correct. I mean, Ms. Bradley is new, and she is trying to set up—but we are—we have got to plow old ground, too, because there is a lot of stuff that is out there that this committee has been looking at for a long period of time.

So, with that, I just want to also extend our deepest sympathies and condolences to our colleague, Mr. Huelskamp, upon the loss of his father last week. We are glad that you are back here with us, even if you are a little under the weather.

But, Dr. Huelskamp, you are recognized.

Dr. HUELSKAMP. Thank you, Mr. Chairman. I appreciate those comments. I certainly appreciate the opportunity to ask a few questions this evening as well.

I would like to follow up on Dr. Benishek's line of questioning. He outlined a statement that was made in this committee by the VA, that a CNN report says it is simply not true. Let me outline

a few other statements that are not just to the committee, but to the American public, rolling back in the last year.

On April 30, 2014, former VA Under Secretary for health Robert Petzel said there was "no evidence of a secret list in Phoenix." That, of course, turned out to be very false.

In a May 23, 2014, report, former Phoenix VA Director Sharon Helman and current Phoenix VA Chief of Staff denied there was a secret list in Phoenix. Those statements turned out to be false.

In a December 15, 2014, report, the inspector general documented how VA officials have misled Congress and the press regarding deaths related to delays in VA medical care.

And then most recently, on February 15, 2015, on a national appearance on Meet the Press, VA Secretary Bob McDonald said the VA had fired 60 people due to wait-time issues. That statement was also false.

Ms. Bradley, how do you explain how so many VA officials have been caught misleading Congress, the press, and the American people?

Ms. BRADLEY. Certainly does draw our attention to our need to be much more clear and accurate in what we provide to the public and to you and to our veterans.

So I don't have any other comment other than there is no way for us to restore trust unless we are more careful about specific facts, numbers, and information that we provide.

Dr. HUELSKAMP. 60 people fired. That is a very specific fact. The Secretary himself stated that. You were obviously working for him then.

Did you approve that statement? Did he just make that up? Did he get confused between 4 and 60? Explain that a little bit more, if you would, please.

Ms. BRADLEY. I really can't say what he was thinking about. He may have been using numbers of people who had been removed for other reasons and merged the two. I don't know that.

Dr. HUELSKAMP. Was there a statement following that by the VA that said "No. We made a mistake" or "We misled"? I have not seen the follow-up statement from the Secretary.

Ms. BRADLEY. Yes.

Dr. HUELSKAMP. Because that statement is put—is that statement true?

Ms. BRADLEY. I believe there was a statement that was made from the VA for a followup.

Dr. HUELSKAMP. The statement that he fired 60 people, is that true, that he made on Meet the Press?

Ms. BRADLEY. As far as I know, it is not true.

Dr. HUELSKAMP. So why would he make such a statement?

Ms. BRADLEY. I don't know. I don't think it is fair to say——

Dr. HUELSKAMP. You said he issued a statement about his statement?

Ms. BRADLEY [continuing]. He made the statement up. I really think you should ask him about it.

Dr. HUELSKAMP. He is not here. You are the general counsel for the VA. You are asking us to trust you. To me, this is the most misleading statement I have heard made, probably, in my 4 years

on this committee. Meet the Press. 60 people fired. That is not true at all. You agree it is not true.

Can you tell me what the Secretary's statement was.

Ms. BRADLEY. I didn't say that 60 people weren't fired. I said that he misspoke when he said that 60 people were fired because of access issues.

So it may be, in fact, that there were 60 people fired. They just weren't fired for access issues. I don't know that for——

Dr. HUELSKAMP. So there were 60 people fired? You don't know that?

Ms. BRADLEY. I don't know that——

Mr. HUESKAMP. And you are asking me to trust.

You were working for the VA at this time, on February 15?

Ms. BRADLEY. I was.

Dr. HUELSKAMP. And you want us to trust you, but you can't answer or explain away this statement about 60 people that was patently false.

Ms. BRADLEY. Again, you should ask Secretary McDonald about that statement.

Dr. HUELSKAMP. He is not here. Ma'am, if you want trust to be restored——

Ms. BRADLEY. I can't speak for him, though.

Dr. HUELSKAMP. I have been——

Ms. BRADLEY. That is the point.

Dr. HUELSKAMP. Where were you before you came to the VA?

Ms. BRADLEY. I was at the Department of Defense.

Dr. HUELSKAMP. Department of Defense.

Ms. BRADLEY. Yes.

Dr. HUELSKAMP. Did it astound you? Did you get worried and upset when you heard about waiting lists in Phoenix and veterans possibly dying because of waiting lists? Did that upset you?

Ms. BRADLEY. I was obviously so committed to come back to the VA. I served as the general counsel in 1998. I served for 3 years.

Dr. HUELSKAMP. Did that upset you?

Ms. BRADLEY. It did.

Dr. HUELSKAMP. I will tell you what the committee's perspective was. We had VA officials sitting right in those chairs. They said there was no waiting list. And people were dying because of that. And I believe they lied to the committee.

And this will be my request, Mr. Chairman, from the committee, an official request, for each of these five statements, including the one from my colleague.

I would like a written statement, an explanation of whether or not this was a false statement or not and how your Department, if it was a false statement, repaired that breach of trust.

Would you be willing to provide that to the committee?

Ms. BRADLEY. I will ask the Department to provide it. Sure. Absolutely.

Dr. HUELSKAMP. You will ask—you are the Department representative here, ma'am.

Ms. BRADLEY. I won't——

Dr. HUELSKAMP. Yes or no. You will provide it or not?

Ms. BRADLEY. I can't answer on behalf of the Secretary. But, yes, I will make sure that you get that answer.

Dr. HUELSKAMP. So the answer is, yes, you will provide that?

Ms. BRADLEY. Yes.

Dr. HUELSKAMP. Okay. I appreciate that.

Mr. Chairman, as we have discussed here, the key word is "trust." And until these misleading statements and, I think, are patently false—and we have heard so many of these for 4 years, and these have to be cleared up.

And, again, I appreciate you calling the hearing tonight, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you, Mr. Huelskamp.

I will say that I did speak directly with the Secretary regarding those comments. He did tell me that he had misspoken, that the statement was not accurate in the way he had phrased it. But I will leave it to Ms. Bradley to see if she can get any more on that.

Also, for the record, this committee has been clear. It was 40 veterans died while waiting on the list, not because they were on the list.

Ms. Kuster.

Ms. KUSTER. Thank you very much, Mr. Chairman. And thank you for the opportunity to address our witnesses today.

I just want to join the comments of my colleague, Representative Titus, that I do feel that we have sort of dropped into a black hole with regard to the notice of this hearing and some of the topics that are being covered because we haven't had a hearing notice on the specifics of this other matter that has come up today.

So I want to direct my remarks to what was noticed in this hearing, and this is generally on the issue of transparency. And I want to start with our—I presume expert witnesses were called by the chair because there has been a lot of discussion about accommodation.

And I want to ask Attorney Bopp, in the circumstance of committee staff releasing documents directly to the media without those documents coming to members of the committee—these are documents that I have not had the opportunity to see. I don't believe my colleagues in the minority—letters that have been sent where the minority has not been even copied, the ranking member even copied on the request for documents that were asked for—we didn't hear about it till many, many weeks later. Frankly, I have just heard about it today. And I am hearing reports at this hearing that staff members are releasing these documents directly to the media.

In that circumstance, under your legal advice to a Member of Congress, how would you recommend this accommodation?

Our chair has said—and I want to quote this accurately because this is a blanket statement—there will be no in-camera review. So he has taken that off the table as any type of accommodation of people that are trying to reach—trying to develop the trust.

Here we have a new effort, a new Secretary seeking and recruiting a new legal counsel so that we can have a new process to reestablish trust, and, yet, we have taken this in-camera review off the table because they want, quote-unquote, to hold the documents.

Well, it seems to me they want to hold the documents because the staff is going to give them to the press. What would you recommend to me as——

The CHAIRMAN. Would the gentlelady yield?

Ms. KUSTER. No. I am sorry, Mr. Chairman. I won't yield. I would like to hear the advice that I would get from counsel as to how I would possibly handle this.

And, by the way, I come from The Granite State, where privacy is of primary concern. I represent veterans who care about not just their Social Security number. They care about their personal private information.

The topic that we talk about more often than not in this committee, PTSD—they can't even come forward to get the medical care that they need, and now we are going to start spreading this information around publicly? So just what advice would you give me?

Mr. BOPP. I would say, first of all—look, it is a good question. I don't know the facts as you lay them out. But let's assume the facts, as you lay them out——

Ms. KUSTER. You know as much as I know. We both have been in this room.

Mr. BOPP. Sure.

Ms. KUSTER. This is as much as we know.

Mr. BOPP. Okay. The House rules and committee rules don't contemplate committee staff—don't contemplate committee staff providing information—committee information directly to the press.

Ms. KUSTER. And that is the problem. I mean, that is the situation we have. So if an accommodation would be an in-camera review because you want to limit the release of private personal information to the press, but that has been taken off the table because the chair refuses in-camera review, then where are we?

Mr. BOPP. I would say this. There really ought to be more of a discussion at the front end of a request for information from the committee with an agency and that that front-end discussion ought to include what information is available, how long it will take to provide that information, and then how sensitive that information is. And, at that point, that is the time to discuss accommodations.

And I don't know—again, I don't know what is happening here exactly, but it is not the time to start discussing accommodations 3 months in or 60 days after a request is already received.

But you are right. I mean, there ought to be a discussion of the sensitivity of the information, how long it will take to provide the information, and what is available on—at the front end.

Ms. KUSTER. And just—if I can ask one quick question——

The CHAIRMAN. The gentlelady's time has expired. Thank you very much.

I would also——

Ms. KUSTER. I will ask you the question another time.

The CHAIRMAN. I will also tell you that the information that——

Ms. KUSTER. I am sorry. This is——

The CHAIRMAN. Well, let me finish.

Ms. KUSTER. You are now taking my time.

The CHAIRMAN. No. Your time is expired.

What was released to the press was a letter that was written to me as the chairman. I have the authority to release letters that are written to me. You are making—no, ma'am.

Ms. KUSTER. I am simply saying is there a reason——

The CHAIRMAN. No, ma'am.

Ms. KUSTER [continuing]. that we wouldn't accommodate this issue? And, obviously, that is what has created the lack of trust.

The CHAIRMAN. No. Unfortunately, the lack of trust has been long developing in this process. I can assure——

Ms. KUSTER. Well——

The CHAIRMAN. Ma'am——

Ms. KUSTER [continuing]. Then, it doesn't seem to——

The CHAIRMAN [continuing]. I can assure you that the problem that exists here today is a lack of trust. We are attempting to correct that. The Secretary is doing everything that he can in hiring a new general counsel, making changes.

But we also—you know, what is interesting is everybody wants to focus on improving the VA by improving transparency, but we are leaving off the first part of this, and it is called the power of legislative inquiry. And that is what we are doing here today.

Mr. Coffman, you are recognized.

Mr. COFFMAN. Thank you, Mr. Chairman.

If I can, let me refer something to our two legal experts here today, Mr. Tiefer and Mr. Bopp.

The construction of a VA hospital is in my district. It is hundreds of millions of dollars over budget, years behind schedule, and this committee has done some inquiries to find out how things got so messed up, I guess, to put it mildly.

And so we requested a report—a risk assessment that the VA did, and they did not provide it because they were concerned about a more—quote-unquote, more public review. I think they were willing to do it in camera.

Could you both comment on that in terms of our oversight responsibilities and the VA's response.

Mr. TIEFER. As I said in my written testimony, not only is the Trade Secrets Act, which is the only legal provision that is being invoked here, not some basis to withhold from Congress, because it says you can withhold, you can keep materials unless you are being asked by someone, quote, "authorized by law," and you are authorized by law. So it is not a statute that was meant to keep things from Congress, and it doesn't.

More broadly, and more common sense, procurement is like one of the main things that all the committees of the House get into because everybody's got some department, and their department does procurement, and their procurement is screwed up, and so the idea that there is a barrier to doing oversight over procurement, it is a novel discovery in a situation where there have been hundreds of previous times it wasn't there.

I am going to say this, which is, if there is this terrible concern that a certain piece of paper's numbers—certain numbers on this, should be very closely held, you provide a document that is redacted other than those very numbers, you bring the numbers up, and you present the case, do you want these numbers in writing, or can we just show you the piece of paper and where the numbers fit? And at that point—but not—you discuss them at great length of time and distance in-camera as a general theory. You bring the paper up to the committee.

Mr. COFFMAN. Mr. Bopp.

Mr. BOPP. I agree with Professor Tiefer.

Mr. COFFMAN. Ms. Hadley—Ms. Bradley, I am sorry, the Congress of the United States, is going to have to vote on lifting the cap on this hospital soon. By sometime next month, we will be beyond the authorized cap, and we are going to have to do some sort of supplemental appropriation for a hospital that is hundreds of millions of dollars over budget and years behind schedule. If you are not willing—if the VA is not willing to provide the information to Congress on how we got to where we are, how is Congress supposed to make that decision?

Ms. BRADLEY. We didn't know when we offered in-camera inspection that that didn't meet your needs.

Mr. COFFMAN. But that wasn't the request. The request was for the document, and it is the power of Congress, the ability to ask for that document. And so your position is, well, we will decide what information we want to give Congress, and what information we don't. And you are here trying to create a new environment of trust. How can we trust you?

Ms. BRADLEY. Well, just by telling me that you would like to see the risk assessment and that an in-camera inspection——

Mr. COFFMAN. It was in writing. The request was in writing.

Ms. BRADLEY [continuing]. And then we will do it. And we will talk about it, and if you tell me that is your need, we will do it.

Mr. COFFMAN. The request was in writing.

Ms. BRADLEY. I am just answering your question. Tonight is the first night——

Mr. COFFMAN. You are saying that a request in writing isn't good enough?

Ms. BRADLEY. We offered it. We came back through the accommodation process and said we understand what your request is. Because of the sensitive pricing information, that could really go to making a deal in which the taxpayers suffer, we said would you be willing to accept an in-camera inspection? And as far as I know, we never heard that you weren't willing to accept that. Now we have heard that. This is what accommodation is about. You tell us no, an in-camera inspection of the risk assessment is insufficient. We would like the document. And then we go from there.

Mr. COFFMAN. When can I get the document?

Ms. BRADLEY. Got it.

Mr. COFFMAN. Okay. Thank you. Mr. Chairman, I yield back.

The Chairman. Mr. O'Rourke.

Mr. O'ROURKE. Thank you, Mr. Chairman. To Ms. Regan, I just want to make sure I have the dates on some of these correct. The VA OIG publishes the Tridec report on what day?

Ms. REGAN. I believe it was December 8, of 2014.

Mr. O'ROURKE. December 8?

Ms. REGAN. Yes.

Mr. O'ROURKE. Of 2014. And then the VA committee requests the Tridec report on what date? Or what day did you receive that request?

Ms. REGAN. The letter was dated January 7.

Mr. O'ROURKE. Okay. And then what day did the VA Committee receive the Tridec report?

Ms. REGAN. The Tridec report—the report itself was given to the committee the day it was issued.

Mr. O'ROURKE. Okay.

Ms. REGAN. We sent copies up here the same day to the four corners.

Mr. O'ROURKE. Okay. On the chairman's concern about the fact that Ms. Cooper was alleged to have committed serious misconduct, was less than candid, who had potentially steered multi-million-dollar contracts to people that she knew that were not noncompetitive. What is the proper way for her next employer in the Federal Government, the Treasury Department, to learn of these accusations?

Ms. REGAN. I would hope that the agency hiring the individual would have vetted her through her former employer, or current employer. We don't know what happened with regard to that. Sometimes reports just kind of overlap, and it is a surprise somebody's leaving. So if they, and I remember with the report involving FedBid and Ms. Taylor, I think the agency gave the report to the future employer, and then the hiring was cancelled. But we didn't know Ms. Cooper was leaving, and the report hadn't been finished yet at that time.

Mr. O'ROURKE. Okay. So the onus would be on the future employer to look over her work history, call her former employer.

Let me switch to Ms. Bradley. On this question of the outstanding requests from your office, and the chairman disputes your 94 percent completed, and I think that should certainly be worked out. I would love to understand the resolution of that. You said that we should assist in prioritizing those requests. Why not just prioritize them based on when they came in and the longest outstanding? The chairman says the committee has 63 requests at 60 days or over. Those seem like the ones to attack and resolve.

Ms. BRADLEY. It does seem logical, but for example, we might get a request for all of the arrests that VA made in 2014, and then all of the subsequent disciplinary actions that were taken as a result of those arrests. So that might take us a long time to get. And there might be two or three other requests that the committee needs immediately for its oversight and legislative purposes. I don't know about these priorities. I need you to tell me what those priorities are so that we can be more responsive to you.

I can just tell you that some requests are extremely onerous. They take a long time and a lot of different people, and looking at a lot of different databases in our very decentralized organization. So, you know, it may not be to the committee's advantage for us to tackle that one if that one is at the top of the list. Just in terms of, you know, first in, first out.

Mr. O'ROURKE. Let me ask this question. Have you and the Secretary met with the chairman and the ranking member on this issue of access to information that I think is owed to the committee?

Ms. BRADLEY. Secretary McDonald has met with the chairman twice, and he was accompanied with someone who is part of the oversight team, that I have stood up. I have not met with the chairman yet. Tonight was my first night to meet him, but I know

that there were two prior meetings I think relatively recently to discuss these issues, yes.

Mr. O'ROURKE. I would, you know, just respectfully recommend that a meeting of those four, with the ranking member representing the minority committee members on the committee, meet to see if we can't resolve this because I think this is a legitimate, genuine issue. I think you are hearing the urgency from my colleagues about care delayed or denied, hospital projects that have gone twice over budget, taking money presumably from other districts who have pressing needs as well, a history of frustration on our part in getting information that we need.

Now I will say that, but I will also say that under the leadership of this Secretary, I have seen a turnaround in responsiveness, in transparency, and the development or the beginning of a development of a culture of accountability. And I see that directly from the Secretary who is personally responsive and accountable to requests that I make, so I do think that the leadership is there and that the will and the intent is there. And Republican or Democrat, we are both interested in getting to the same end of serving those who have served this country.

So, this committee is known for its bipartisanship. I just hope that we don't lose that. I hope that those four can meet, work through these issues. I certainly would support that. And so, I appreciate your willingness to join that meeting, and I yield back.

The CHAIRMAN. Thank you very much, Mr. O'Rourke. And the ranking member and I have just been talking, and if the Secretary is available, Ms. Bradley, we are more than happy to meet at any time this week that we can mutually agree upon because there are scheduling conflicts, I understand. And if not this week, you know, maybe we can get together quickly. And I think it would be a good thing for us.

And we did. We sat right here at this table, the Secretary and I did, and several of the things we did get accomplished, but three weeks ago we were talking about the EEO files, and we still don't have the EEO files. So Dr. Wenstrup. Ms. Walorski, you are recognized.

Mrs. WALORSKI. Thank you, Mr. Chairman. Ms. Regan, in your testimony you state that the IG is only required to provide the committee semiannual reports, and everything else is subject to the IG's discretion. So, is it your position that the committee should resort to legislation or a subpoena to get documents that we request?

Ms. REGAN. Absolutely not. We have responded with just about everything that this Committee has asked for. We are very open. We do briefings. We give information to the Committee. We keep them updated. We give them copies of the reports before they are made public. There are some reports that are even going to be listed on the Web site as restricted. There is a briefing ahead of time. That is information that is the other, in the IG act. But we do keep this committee currently informed.

We have not taken the position that we don't have to saying anything or we don't have to give anything else, but when you go to the specific language in the IG Act, as you go through what is required versus discretionary, that is all it says; and we do keep this committee fully informed.

Mrs. WALORSKI. Yeah, I have only been on the committee 3 years. I am one of the younger members of the committee. And it has amazed me when we put requests in for information as individual members or through the committee and then sometimes, you know, just continually asking and asking and asking, I asked a question 7 months ago that I was just actually made aware of, we finally got the answer tonight before this hearing, 7 months.

And, I guess I would direct this to you, Ms. Bradley. You know, I had a horrible situation develop in my district last week. It was in Indianapolis VA Hospital. And there was the medical center director, who basically is in charge of administering the mental health programs, the lifelines to veterans who desperately need help and are often suicidal. She sent an email out mocking the veterans that she was charged to serve, and the photos that she sent in this email depicted a toy Christmas elf as a veteran pleading for anti-anxiety medication, and then hanging himself with a strand of Christmas lights. The employee in question has been placed on paid on administrative leave and will eventually be coming back to work. The medical center director is telling me that they have responded, but he can't comment on any disciplinary actions, and I am operating on his word. Because I only have his word, I need documentation they are responding appropriately; and for sure this committee needs documentation that they are responding.

So, based on what I am hearing tonight, you are telling me, or are you telling me, that if this committee wanted to see documentation in regards to the disciplinary handling of this employee in question, what we would need to do is go to your headquarters, review documents on-camera in the presence of a VA staff. Is that what you are saying if we wanted additional information on how this was handled?

Ms. BRADLEY. No. Absolutely not. That is not what I have said for the entire——

Ms. WALORSKI. So what would be my step if—and I guess—and let me just say this. Here is the caveat to this whole thing is—I have only been here 3 years, and it has been a disaster after disaster after disaster. And the reason I think folks like me are so passionate and can get emotional about this, is because we are fighting in many cases, and I have had to do this myself with the new Secretary, and he absolutely responded as Representative O'Rourke mentioned. But we are fighting for the lives of people. I mean, I have been in life and death situations with veterans in my district, and all this is surrounded by the fact that you and I both work by the taxpayers' money that they are investing and asking us to be good stewards of. We are elected to be able to be involved in an oversight question and answer to be good stewards of the money given us by the taxpayers of this country, who at many times in my district are hard, hard workers, double income, and we have 54,000 veterans plus their families in my district.

So, you know, I get very passionate about this because if we are not sitting here in the 3 years I have been here fighting, having to sit and listen sometimes to ridiculous answers, and then waiting 7 months to get an answer and then something happens in my State, State of Indiana, and it is horrific. I think this employee should be fired. I am questioning whether the executive director

should still be the executive director, having that email in his hand for 3 months. These are the kind of things.

This is reality in my world as one member of this committee. This is reality, when people ask me what I do, I tell them I fight for veterans every day. And I will say Secretary McDonald has gone out of his way and he saved the life of one of my veterans. But, that is why it is so frustrating, and to say to you how do I get information on this case? How do I know this woman was put on administrative leave? How do I know she was disciplined? How do I—what do I do? How do I get the information? Where is my first step if it is not that camera request.

Ms. BRADLEY. Forget the in-camera request. Have you asked for a briefing? It seems to me we should provide you a briefing, like tomorrow, if that is what you want.

Mrs. WALORSKI. Okay. Now here is what makes me leery of that. I asked a question, and I just got an answer 7 months later, 7 months. The history of what the VA has been able to deliver to this committee is months if not ad infinitum. That is why it is so hard for me to sit here and say to you, yeah, I want a briefing tomorrow. I will take it. Can you deliver me a briefing tomorrow in the Indianapolis case?

Ms. BRADLEY. I think I can.

Mrs. WALORSKI. All right. I—Okay.

Ms. BRADLEY. I am passionate and am thrilled that you are passionate and you have a right to get a briefing about this like in realtime.

Mrs. WALORSKI. What time tomorrow, and how soon can you tell me what time? This is real news. This is real in our district, and in our State. Not my district, but certainly my State. My veterans go to that hospital. Can we get a briefing tomorrow?

Ms. BRADLEY. You can get a briefing tomorrow, yes. I think we can arrange that.

Mrs. WALORSKI. And so I am giving you the request right now right? I appreciate it. Thank you. I yield back my time, Mr. Chairman.

The CHAIRMAN. One of the things that bothers me, Ms. Regan, is you are leaving the impression that the IG has responded to all of our requests, given the impression to the Members that when we ask for something, we get everything we ask for. Again, and I know, Ms. Kuster and others have said they don't know about the Tridec-Cooper report. What I got, was 27 pages with at least a paragraph or more redacted, 15 where the entire page, if not most of it, was redacted and whole pages missing. So, again, that is where the transparency problem exists is we are leaving the impression that we are getting what we are asking for, and we are getting half of what we are asking for. And I am willing to accept what has been said tonight, and I think the committee wants to accept it so we can move forward.

And as I said earlier, you know, the impression again that, you know, with the Tridec-Cooper issue, we did not release anything to the media, except my letter that I got from the OIG, which of course any of us are within our own rights to be able to release that, but I am just letting you know, just because they send us a

package like this, doesn't mean we are getting what we are asking for. Ms. Rice.

Miss RICE. Thank you, Mr. Chairman. So, I know Ms. Walorski said she has only been here for about 3 years. I have been here for about 5 seconds compared to you. So, and given my background as a prosecutor, I guess my question could probably be an obvious one, but I am going to direct it to Ms. Bradley and Ms. Regan. The responsiveness to the chairman's request or alleged lack thereof, is that an attempt at a coverup on either one of your parts regarding potentially negligent, criminal behavior, et cetera, on anyone's part at the VA. Ms. Bradley, yes or no?

Ms. BRADLEY. Absolutely not.

Miss RICE. and Ms. Regan.

Ms. REGAN. Absolutely not.

Miss RICE. Okay, so then from that point I guess what we can do is I take you at your word, and I am sure everyone on this committee does. I think that was a direct question that has to be asked, and I appreciate your answer. And I think then that what we have to deal with is obviously the bureaucratic steps that need to be taken in order to answer the chairman's request for information or any member of this committee's request for information, and there is one simple reason, because that is what the men and women who are brave enough to put on a uniform and go fight for all the freedoms that we enjoy every day, that is what they deserve.

I appreciate both of your presence here today, and I am sure that you are going to, my hope is that you are going to continue to ensure that whatever is going wrong at the VA is made public so that we can go forward and serve the men and women that so dearly deserve the help that they need.

Thank you, Mr. Chairman. I yield back my time.

The CHAIRMAN. Thank you. Dr. Abraham.

Mr. ABRAHAM. Thank you, Mr. Chairman. Ms. Bradley, thank you and you your family for your service.

I want to echo, some of what Dr. Ruiz and Dr. Roe said. It is not you all's job to tell us what we need when we ask for it. We are fairly intelligent enough to know that if it is private information, then it is to stay private. I am assuming that you or someone on your counsel, your team, decides what is private information and what isn't.

You inferred that mental health, and certainly we understand that, but day end, you are making that decision. Well, I think we are quite capable of making that decision ourselves. So, I want to echo what Dr. Roe was saying that, that what we ask for when we ask for records, we expect to get the records, and we can make that decision.

I am looking forward to the two cases that you have cited where information was possibly leaked from members of this committee, and I would like to see the circumstances regarding that, but then that also goes back to a trust issue for us. You have to trust us to a point, and this is a new committee this year. And I don't think there has been any information leaked from this committee on the 114th Congress.

In reference to Mr. Ruiz' comments, I totally agree that, you know, you also said that we need timely, systemic, objective data. But, again, who decides what timely is? Who decides the system? So, we do need a template of sorts to check the box as to what time is, what we can get from you guys, when we can get it, because again, we are talking subjective. We need to get objective because, like Ms. Walorski said, we are talking about lives here, and sometimes time does matter.

So, I guess the question, and with the nod of your head, I think you have probably answered it, that your team so to speak, heretofore has made the decision what to redact on these reports that we asked?

Ms. BRADLEY. That is correct.

Mr. ABRAHAM. Okay. And there are no physicians per se on your team, that wouldn't understand the health issues that some of it could be private information and some that may not be?

Ms. BRADLEY. Yeah. Let me give you one example. You said that, you know, we can share that private information with you. Our question that we must ask as the executive branch is, do you need that information?

Mr. ABRAHAM. But again that is not your——

Ms. BRADLEY. Can I give you an example?

Mr. ABRAHAM. But I don't think that is your call.

Ms. BRADLEY. I don't mean it in a way——

Mr. ABRAHAM. I think that would be our call.

Ms. BRADLEY. Right. So here is an example. So in a veteran's file who commits suicide, there is extensive personal information, about the veteran's child, about the veteran's child's incarceration, drug addiction, attempted suicide. It may in fact be, that this committee does not have use for that information.

Mr. ABRAHAM. But how do you know that?

Ms. BRADLEY. I don't.

Mr. ABRAHAM. Okay so I——

Ms. BRADLEY. Exactly——

Mr. ABRAHAM. And I think that is where the debate begins.

Ms. BRADLEY. That is why I would ask you do you need that information——

Mr. ABRAHAM. We might.

Ms. BRADLEY. About the child, and then you would say——

Mr. ABRAHAM. We might.

Ms. BRADLEY. Yes, we do——

Mr. ABRAHAM. Yes.

Ms. BRADLEY. And we would provide it. But you might say, you know what, it is not pertinent to our oversight request and we will have been doing our part to protect that private information if in fact, you don't need it.

Mr. ABRAHAM. But that is a judgment call on your part.

Ms. BRADLEY. But you—no, for you to make. To help——

Mr. ABRAHAM. But, we also must have say in what is pertinent information and what is important here.

Ms. BRADLEY. So we will share it with you.

Mr. ABRAHAM. So what you are telling me is that you are thinking that maybe your team's judgment overrides ours, or is more im-

portant. And I understand that. We want to make sure that we are on the same page here. And I yield back, Mr. Chairman.

Ms. BRADLEY. Okay.

Mr. ABRAHAM. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. In any of these requests that the committee has made, I am not aware of one single time that the department has asked us about a child or arrest record or anything like that. I think common sense would dictate, you know, but, we are the ones sometimes—we will have to take all of the information because if we let somebody know exactly what we are looking for, they may be tipped off within the department, or somebody could be identifiable.

So, I agree, a communication and dialogue that has not existed. Again, we are still waiting on the Bradley Stone file. We are still waiting on the EEO file. You know, we don't have those. I look forward to getting them but——

Mr. McNerney, you are recognized.

Mr. MCNERNEY. Thank you, Mr. Chairman. It is clear to me that every single person on this committee is determined to get our hands on the information we need to perform our oversight responsibilities, and Dr. Roe was right on when he said that if there was excess expenditures on construction that could have been used to help our veterans, then that is what we would be paying our taxpayers back and paying our veterans back. So, you can find that we are going to be interested in finding a way to get that information.

Now, we have heard about two types of sensitive information so far that the VA can be cautious about releasing. One is personal information, and the other is sensitive bidding information. Is there any other type of information or reason for not being forthcoming, or for being reluctant to be forthcoming?

Ms. BRADLEY. I am glad that I can answer this question. I hate for it to be cast in the light of that we are not forthcoming. For example, we have an office called the Office of Accountability Review, and its primary purpose is to conduct administrative investigation boards. And so if you were to ask us for a draft report that had been prepared by the Administrative Investigation Board, we would push back and say let's talk about it because it is not a final report, and it is going to lead to discipline that the Secretary or other officials may want to take. So we have to do everything in our power to make sure that we have righteous investigations, that we have righteous administrative actions, and that when we take those actions, they will stick either in court or at an administrative body like the EEOC, or the MSPB, so that would be internal deliberative decisionmaking kinds of documents that we wouldn't want to provide to you while they are ongoing. That would be another good example.

Mr. MCNERNEY. Mr. Bopp, do you believe that it is credible that there is communication problems, that have gotten us here that could have been avoided with proper communications? Do you believe that is a credible claim?

Mr. BOPP. It does not appear to me that is certainly the only cause of the problems. I mean, there may be communications barriers or problems between the committee and the agency, but, what

I am gathering is that there are—it appears that there are attempts to find sort of ways to getting to know. And bringing up potential ways or reasons not to provide information to the committee, that are very clearly reasons that are not legally defensible, I see as the core of the problem.

Mr. MCNERNEY. Do you have any recommendations, or will you be able to produce recommendations that will help solve this problem?

Mr. BOPP. I am not sure I can, you know, solve the problem, but yes, absolutely. I think one of the key recommendations is at the very front end if discussions need to be had and there is not enough discussion going on between the agency and the committee as far as, you know, what information is being sought, where that information is, how long it is going to take to produce, those communications, those discussions should take place right away, not after 60 days, not after 90 days. If those communications occur at the front end, and it appears from today's discussion that there is a desire to have those communications, if they happen early on, I think a lot of the—presumably a lot of the problems that have been occurring can be alleviated.

Mr. MCNERNEY. Well, Mr. Chairman, we could include that in a protocol then when we request information.

I have a weird question. Ms. Regan, have you been charged with investigating the department on lack of responsiveness to this Committee? And if you hadn't, how would you investigate, how would you go about answering that question?

Ms. REGAN. We have not as far as I know. And there would be a request, would come in to the Deputy Inspector General, and we would look at that and probably conduct an audit or other review. Usually, we get a lot of requests from the Hill, and we usually conduct some kind of a review or investigation based on those requests.

Mr. MCNERNEY. Would your department be capable of conducting that kind of an investigation?

Ms. REGAN. I would think so.

Mr. MCNERNEY. Mr. Chairman, I yield back.

The CHAIRMAN. Thank you. Ms. Brown.

Ms. BROWN. Yeah, I have a question for Ms. Bradley. Ms. Bradley, we have not met. And nice meeting you. I am sorry this is the first time we have got a chance to meet. But we have had several meetings with the Secretary, and I want to point out your newness and your freshness is very nice, but I think you may be overcommitting the VA and overpromising, like tomorrow I am going to have a meeting and we are going to discuss this. So I think you need to, what is it, back down.

The CHAIRMAN. Stall.

Ms. BROWN. No. I am trying to find a nice word to say that—don't overcommit, because when you commit something and you can't produce it like tomorrow, then it will be headlines, stories tomorrow at 5:00. So I am asking you to kind of back, back, slow down, catch your breath. You are refreshing. We are looking forward to working with you, the chairman and I. We have had several meetings with the Secretary. In fact, the big four have met

several times, and I am looking forward to us meeting this week if it can be scheduled.

But, some of the other things that you have committed to and committed to do in the next day or tomorrow, I don't know that you can do it, so you need to say I am going to try, but don't say I am going to do it. It is the worst thing to say you are going to do something and cannot produce. So you going try, and you going get it done, but you may not be able to get it done tomorrow. I yield back the balance of my time.

The CHAIRMAN. Thank you. Mr. Costello.

Mr. COSTELLO. Thank you, Mr. Chairman. And for the record, the Stone matter is in my congressional district, and I want to thank the chairman for his vigilance in seeing through the records requests, and I may actually have a question for you relative to that.

But first, a more fundamental and constitutional question, Ms. Bradley. Yes or no, are you asserting that the Privacy Act prohibits you from providing certain records to this congressional committee?

Ms. BRADLEY. No.

Mr. COSTELLO. So, the Privacy Act does not bar you from providing information to this committee?

Ms. BRADLEY. That is correct.

Mr. COSTELLO. Okay. And Ms. Regan, is that the same for you?

Ms. REGAN. Under the Privacy Act, that is the same answer. It does not prohibit us.

Mr. COSTELLO. Okay. So, by what measure are you asserting that you are not going to forward information to this committee pursuant to that Act?

Ms. BRADLEY. First of all, we don't assert that we won't provide information to the committee based on the Privacy Act. What we want the committee to understand is that in the executive branch, it is a fundamental interest that we establish trust with veterans, with our patients and with our employees. So, to the extent we can protect personal information and still meet your oversight needs, that is what we want to achieve. We want to accommodate with you so that we can meet your needs, but you need to be mindful that we want to protect privacy interests.

But we don't have any bar from providing you the information, but if you don't need it, it would be an unnecessary disclosure. It would be re-disclosing private information that we try to avoid. It is a high-risk area, and we try to avoid it.

Mr. COSTELLO. Okay. I yield back. Thank you.

The Chairman. Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. And thank you all for being here at this later hour.

First of all, I think the premise we all start from is, is that it is never in question that everyone in this room cares deeply about the care of our veterans and tries to deliver the best quality care we can.

And I also think, and I think the ranking member did a nice job, Ms. Bradley, of summing up here. I think it is refreshing to hear you talk about this, in here, and I think Mr. Bopp call it aspirational, which I think is a very positive character trait. I am a high school teacher and lunchroom supervisor. Aspirational is a good

place to be in. But it also understands that results do matter, and I hope you understand, and we do know you are new at this, but all of us up here, the one thing—we are a pretty surly bunch on this issue of data—and the issue of being concerned about the privacy of the data as one of those veterans who is in the 26 million who the data went out from your office, not us, this is a touchy spot.

And this idea about the determinations, and I am very cognizant of your protecting data and all that, but this is, it is the reality of where we are at. An example is of after Phoenix, great investigations went across the country in depth, and then a list was published of areas, and facilities, and CBOCs that had problems, and those made it on the front page of many of our congressional districts that there is a problem at X CBOC. And then when we ask what the problem was, silence. And then people would come in here, and I would say will you take back to your boss that I need to know what is happening. Picture what happened back in our districts.

There was Phoenix. There were problems. We were on the list. We are a member of the committee, a Member of Congress, and we have to respond, I don't know, they won't tell me. They won't tell me. Request, request, request. That is what you are up against. And the situation is we are on the same team. We are trying to get there, but it created this friction. So even if it is one case from one Member who didn't get an answer, that is the most important request that you have ever gotten because it is a veteran in that district. So that is what you are up against.

Now with that being said, Ms. Regan, how many times have you testified here?

Ms. REGAN. I lost count, maybe seven, eight.

Mr. WALZ. Sure. When I got here in 2007, we had a lot of them, and that is when we first met. And I think at that time I would make the assumption—you don't have to—that I felt the IG was underfunded, and I felt the criticalness of IGs across the government are absolutely critical. What is Ms. Bradley's oversight over you? What leverage does she have over you?

Ms. REGAN. None.

Mr. WALZ. So, you are two separate issues here. My point on this hearing is what I would say is this issue of transparency, or and I will say at times the lack thereof of on the numerous issues that Mr. Bopp and the Professor brought up, about how we get this, I fall in their camp on this, because the one thing you will get us to agree on—this is a pretty bipartisan committee—but the issue of congressional, prerogative and privilege, we are together on this. We want it. We need it. We are Article 1 for a reason. Deliver it. I think this is an important one. We need to get answers, and we need to figure that out.

What I am concerned about is the sensitive nature of the IG because two things are at work here. The integrity of the IG is being questioned, or the integrity of the IG has been compromised, or both or neither, I guess in terms of if it hasn't been. That has been brought into this. And this is something new, and this is something that I think is critical. It needs to be looked at. I just think by—and I know it crosses into this issue of getting information on this,

but I am, at least at this point, uncomfortable in this because of that absolute sacredness of the IG being independent from you and being able to do what Mr. McNerney just asked, I want that report to be done. I want you, Ms. Regan, to ask—this is why we are so mad because we asked for a request, and Ms. Walorski waited 7 months.

So I guess and, again, as a statement as we all make them, and it may have been said before, there is some great questions brought up. You hear a common thread going through here. We want the information to serve our veterans, as you want. I believe you are trying to protect them. Our situation is, is that is good, but let us decide. Send it to us.

And this issue of the IG of what has happened here with Treasury and an employee or whatever, this is very sensitive ground that I am not comfortable at 10:00 at night in another hearing of this being there, so I will just respectably ask the chairman and the ranking member—I think they have already done this—is maybe taking this to a different level, the communications with the Secretary and the two principals that are here, taking that and then figuring out where we go next.

But, I am grateful for the opportunity. This is a critical issue, and I want to say while, and being a teacher myself, I am sorry I didn't ask you a question. I know we like to talk, so I would have let you, Professor. But, I think you two bring up a good point. While this may be theoretical, it is an important theoretical discussion we are having here on this Freedom of Information Act and what we have, and I will tell you this issue has frustrated me from the beginning. And you have inherited, Ms. Bradley, but what I am hearing tonight is I think you have the potential to fix it. I think you have the right attitude to do so, and I would encourage you to work with us to get that done. I yield back.

The CHAIRMAN. Thank you, Mr. Walz. Dr. Wenstrup, you are recognized.

Mr. WENSTRUP. Well thank you, Mr. Chairman. I found a lot of this conversation very interesting and disturbing at the same time tonight, and in many ways since I have been in Congress, and I am in my second term. I am a doctor, and my specialty is foot and ankle. Sometimes I would be called to the hospital to see patients that are in the mental health ward. Now, they don't redact everything that is in that chart about the patient. There is an understanding that when I see that patient, that I understand that is private. And that is what is missing here. There is no understanding.

I don't see where you are any more professional than I am when it comes to what information should be shared and what isn't. I have to make that decision and be professional, and know what is private, but I need to get the information. And we have the authority to get that information. It is not up to you. You don't have any higher certification than I do when it comes to making decisions about privacy. And that is an attitude we have here.

We go to classified briefings as Members of Congress. You know, I served in Iraq as a soldier. I would get special briefings on battles that were coming up. I was trusted there. I am trusted as a doctor. But here we see things like the Bergdahl exchange where the law

says that you are supposed to inform Congress of this, and both sides of the aisle were upset about that because they just did it. And this is the attitude that tends to pervade down to us here in Congress.

And as Mr. Walz said, you are asked a question. I don't know. You are a Member of Congress. You can't find that out? That is the problem. And really the—I trust every single person that sits around this table, both sides of the aisle, to be professional and do the right job and try and take care of veterans. It is an attitude that has to change. If you can tell me why you are more professional than I am to read personal information and to make a judgment on things that we need to do, I would like to know what that is.

And you said a couple of times about the executive branch. Does the VA only work for the executive branch? No, they work for the legislative branch as well, and we the people. And that is an attitude that has got to change. Do you think you only work for the executive branch? I ask that question, and I would like to know the answer.

Ms. BRADLEY. Well, we are a part of the executive branch, but I will tell you who we think we work for, it is our Nation's veterans.

Mr. WENSTRUP. So do we.

Ms. BRADLEY. It is a privilege to work for them.

Mr. WENSTRUP. But please—please work with us. I am encouraged by what you are saying tonight. This is water under the bridge, a lot of the things that we are talking about, but it is not just in this committee, and it is throughout, where agencies feel they don't have to work with us. And I hope that that changes as we move forward, and with that, Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Dr. Wenstrup. Ms. Brown, do you have any closing comments?

Ms. BROWN. Ms. Bradley, it has been nice meeting you. I am looking forward to working with you, and make sure you stand down, I think that is the word. Let everybody know where you stand, because you made a lot of commitments around the room, and I want you to be able to produce, you know, your promises. And I just know in the timeframe, some of the promises, like tomorrow, you may not be able to do it, but maybe you will be able to do it Wednesday. Thank you, and I yield back the balance of my time.

The CHAIRMAN. Thank you very much. And I would say that the new Secretary has been a breath of fresh air for all of us. He is doing the very best that he can, given the hand that he has been dealt. He has brought some able folks in, and is moving some unable folks out, in regards to their ability to do their jobs. I have said to him time and time again, we want to be a partner.

Ms. Bradley, you and this committee will work very well together. I know we will. Ms. Regan, we will always have friction between the IG's office and us as it relates, but I can tell you, as Dr. Wenstrup has already said, we know how to protect private information. We are not going to release private information. I would take exception. I would like to speak with you briefly before we all depart in private so we know exactly what the two areas that you

have alluded to. I know of one I think, but I dispute that and tell you that that was all redacted. Just because you write or somebody writes on it that it is for official use only, doesn't necessarily mean that that is the case. We have redacted numerous documents that we have provided to the media and in order to further this committee's investigations and causes.

But I would like to know the second. If I have hit on one, but I would like to know the second. And this committee, again, commits itself to working with the Secretary, to working with the, is it the deputy IG? I guess he is the deputy now. Used to be the acting, but he has been in office for so long he is now the deputy IG. And I have encouraged the President to fill that slot permanently, because I think it is important that it be done.

But we do all have the exact same end goal, and that is to serve the veterans of this country and get them the benefits that they have earned in a timely fashion.

And with that I ask that all members have 5 legislative days to revise and extend their remarks or add any extraneous material.

The CHAIRMAN. Seeing no objections, this hearing is adjourned.

[Whereupon, at 10:12 p.m., the committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF CHAIRMAN JEFF MILLER

I want to welcome everyone to tonight's hearing titled, "The Power of Legislative Inquiry Improving the VA by improving transparency."

This hearing will examine some of the legal objections raised by the Department of Veterans Affairs (VA), including its Office of Inspector General (OIG), in responding to Committee requests for documents and information.

I want to emphasize that an essential goal of this Committee is to use its constitutional oversight authority to discover and address problems so that VA can serve veterans more effectively.

While I am willing to work with Secretary McDonald to implement needed reforms, I am unwilling to let the secretary or anyone at the department dictate how the Committee conducts oversight or performs investigations.

Nor am I willing to permit the department to place any limits on the information we receive. Simply put, the Committee's constitutional obligation to conduct oversight requires that it receive complete and unfettered access to all documents requested.

This Committee requests transparency from VA.

Such transparency was absent, last year, when the Committee uncovered the national wait time scandal.

Scheduling data manipulation was exposed despite repeated and false denials by VA officials that there was anything wrong.

When VA tried to impede the Committee's investigation, we were forced to issue subpoenas to get answers. Ultimately, leadership at VA was forced out, though accountability for the national scandal remains incomplete. Unfortunately, it's uncertain whether VA understands the lessons in transparency it should have learned.

Currently, in excess of one hundred (100) requests for information remain outstanding, sixty-three (63) of which are months past due.

Based on its general counsel's advice, VA has insisted on chairman's letters for many requests and has taken to second-guessing whether there exists a legitimate purpose for each request.

Equally problematic, VA and OIG assert they can withhold sensitive information based on the unfounded fear that such information might be publicly released by the Committee.

The Supreme Court has consistently found Congress' oversight powers to be broad in scope due to its constitutionally enumerated powers. Regardless, VA and, more troubling, its OIG, continue to assert a number of meritless rationales to delay, limit, and even deny information to the Committee.

For example, VA recently invoked the Trade Secrets Act to avoid disclosing a risk assessment evaluating the costs of options for completing the Denver hospital construction project which is already hundreds of millions of dollars over budget. Given that Congress must authorize and appropriate funds for the hospital, the reluctance to share this needed information is perplexing.

In addition, VA recently raised undefined "privacy interests" to refuse producing all records of a veteran who tragically committed murder/suicide, a request that was made months ago.

Also, due to an unnecessary and unjustified privacy act review by VA general counsel, VA has failed to produce several boxes of EEO documents from Philadelphia that I requested months ago, even though a member of my staff was told by VA representatives that the files could be available in a "few days."

In a briefing with Committee staff last Monday, VA representatives suggested that VA and the Committee work together to balance equities and minimize disruption to the department. They suggested that the Committee entertain briefings in lieu of document requests and, to the extent documents remained necessary, the Committee accept "in camera" reviews.

With full notice of this hearing, they even tried a late gambit to get ahead of criticism by offering "to allow" my staff to see the long-sought veteran medical files and Philadelphia EEO files, meaning VA would retain physical custody of relevant documents and the Committee would only get a time-limited, VA supervised viewing.

My flat out answer to this arrangement is no.

The Committee is not a junior partner with VA in any respect and certainly not when it concerns our obligation to conduct oversight.

We request documents for a number of reasons within our oversight role.

Although we endeavor to share what we can with VA regarding the purpose of an inquiry, there are legitimate reasons for stopping short of full disclosure.

Among other things, VA's efforts to co-opt Committee investigations could place in jeopardy our ability to cultivate whistleblowers within the department.

Further, the independence of an investigation could be compromised or frustrated by deliberate delay if the full purpose of an inquiry is revealed to the entity that is the subject of an investigation.

Let there be no mistake or misunderstanding, when this Committee requests documents, I expect production to be timely, complete, and accurate.

I do not expect a litany of questions about the purpose of a request, a negotiation about how or when it will be answered, or a tutorial from VA officials about how the Committee should do its business.

Perhaps most disappointing is that even VA's inspector general has adopted a similar restrictive posture with the Committee.

The OIG failed to include the Committee in the distribution of an early report on wait times at Phoenix and more recently, a report on serious medication management issues at Tomah.

Notwithstanding the inspector general act mandate to keep Congress currently and fully informed, the IG has taken the stilted position that other than a semi-annual report specifically mentioned in the IG act and others mandated by separate statute, reporting to Congress is fully within its discretion.

This position was articulated most recently in refusing to provide the Committee with all underlying documentation for an IG report finding serious improprieties of a former senior procurement official.

Among reasons for the denial were the Foia, The Privacy Act, and The Trade Secrets Act.

This case deserves special attention and is illustrative of the too-cozy relationship between the VA OIG and VA.

Given the gravity of the findings and that the official had taken a position with the treasury department, we referred the report to the treasury IG.

The VA OIG refused to cooperate with the treasury IG's investigation citing unfounded privacy act concerns.

The treasury IG conducted its own independent investigation and issued a letter to the Committee this past Wednesday that "calls into question the integrity of VA OIG's actions in this particular matter."

I ask unanimous consent to include this letter into the hearing record. Hearing no objection, so ordered.

In addressing continuing scandals at VA, deputy secretary Sloan Gibson recently said, "I don't expect anybody to give that trust back."

"I expect that we're going to have to earn it back."

"One of the ways we will work to earn that trust back is through transparency and openness."

If VA truly wants to be transparent and open, one of the first things it needs to do is stop impeding the Committee's oversight investigations.

PREPARED STATEMENT OF RANKING MINORITY MEMBER CORRINE BROWN

Thank you, Mr. Chairman.

I will be brief in my remarks given the time. I know that I speak for many of our Members when I question the urgency and the need to hold this hearing in the evening, and not in the course of the regular order of this Committee.

I believe that the topic of this hearing, on the oversight power of this Committee, and the limitations to that power, including a recognition that there are sometimes legitimate interests that the Executive Branch has that we should try to accommodate, is an important one. This goes to the very heart of the doctrine of Separation of Powers.

I believe this discussion, rooted in Congress's broad, but not unlimited oversight power, is a discussion that, from time, many of our committees should engage in.

Our job as a committee is an important one, and we need to have access to information that enables us to fulfill our valid legislative purposes. It is well settled that Congress does not have a general power of investigation, and does not have the power to "expose for the sake of exposure."

I look forward to hearing from the VA how the new process they have undertaken will lead to more complete and more timely responses to legitimate Committee requests.

For too long Members on both sides have expressed frustration at not getting answers to the questions we have. I hope that this new process will fix this problem, and not just be the same old process dressed up as something new.

I have long believed that this Committee works best when we work together, when we work together to uncover problems, and work together to ensure that we find solutions to these problems.

This working together includes informing all Committee members of actions taken in the name of the Committee, including oversight requests made of the VA, the Inspector General, and other agencies and individuals that fall within the jurisdiction of our Committee.

I am troubled that I have not been informed of many of these requests, and I hope that you will assure me, Mr. Chairman, that my staff, and I, will be informed in the future.

I look forward to this hearing on the important issue of oversight. I look forward to hearing from the new VA General Counsel, regarding the VA's efforts to better respond to Congressional requests. I look forward to hearing from the VA Inspector General how we can work together to uncover waste, fraud, and abuse and the important work that the IG does to assist this Committee. I also look forward to the opinions and insight of our two experts, Professor Tiefer (Tea-fer) and Mr. Bopp.

I believe their contributions will be helpful to all of us in order to enlighten us on this complex area of law and as we look at ways to improve the manner and process by which we as a Committee conduct our oversight responsibility in the future.

Thank you and I yield back the balance of my time.

PREPARED STATEMENT OF MAUREEN T. REGAN

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide information on the laws and requirements that the Office of Inspector General (OIG) must follow when releasing information to Congress and the public.

The primary responsibility of the OIG for the Department of Veterans Affairs (VA) under the Inspector General Act of 1978, (IG Act) as amended, is to conduct oversight of VA's programs and operations. In addition to planned audits, inspections, and evaluations, we conduct investigations, reviews, audits, and inspections in response to complaints received through the OIG Hotline as well as from Members of Congress. In the last 6 years we opened 690 cases based on requests from Members of Congress.

Our purpose today is to discuss the OIG's responses to congressional requests and discuss our commitment to transparency. As discussed in detail below, the OIG is transparent in reporting the findings and conclusions of our work as permitted under existing laws and regulations. Furthermore, the OIG has complied with applicable legal requirements for reporting to Congress and responding to congressional requests.

TRANSPARENCY

With respect to the issue of transparency, in the past 6 years, the OIG has issued more than 1,700 reports; made 3,000 arrests; provided testimony at 67 congressional hearings; conducted 400 briefings to Members of Congress and staff for various congressional committees; and responded to written requests for information from various Members and committees. In addition to the 400 briefings, on a daily basis we respond to telephone calls and emails from committee and Members' personal staffs and the media seeking additional information regarding our reports. During this 6-year time period, we also processed 1,860 requests for information under the Freedom of Information Act.

As required under the IG Act, all report titles are posted on our website within 3 days of being issued to VA. If the information in the report is not protected under the Privacy Act or another confidentiality statute, the website includes a link to the report. If the report contains protected information, the title and a brief summary are posted. However, once we release a report in either redacted or unredacted form under the Freedom of Information Act (FOIA), the report itself can be accessed on the website. Our official distribution list include our congressional oversight committees. We also include other Members of Congress when the report is about a facility in their district or state or if that Member of Congress requested the review. All receive email notification when reports are posted on the OIG's website.

In an effort to release our findings and conclusions publicly, all reports are reviewed by our Information Release Office, which is a component of the Office of the Counselor to the Inspector General, for a determination whether the report can be published on our website in its entirety or in redacted format when issued. The Office of the Counselor works closely with the various OIG Directorates to write re-

ports that the findings and conclusions are clear and supported and in such a way that the reports can be made public without redactions. As one example, on December 8, 2014, we issued a report, Review of Allegations Regarding the Technical Acquisition Center's Award of Sole-Source Contracts to Tridec for the Virtual Office of Acquisition, Report No. 12–02387–59. The report was referenced on our website the same day it was issued but was not accessible because it was protected from disclosure under the Privacy Act. We subsequently received FOIA requests for the report and it became accessible in its entirety on the website on December 15, 2014, within days of receiving the FOIA requests.

The OIG has procedures in place to authorize us to review certain allegations and provide information to individual Members of Congress who have requested that we review or investigate a complaint from a constituent. For example, as discussed below, the IG Act prohibits us from disclosing the identity of complainants. Due to the nature of many complaints, it is often not possible to review allegations without disclosing directly or indirectly the identity of the complainant. To this end, we developed a waiver of confidentiality form for the complainant's signature that we provide the Member. When we complete our work we provide follow-up information to the Member for the constituent. Similarly, when we close a Hotline case, those complainants whose identity is known are notified of the closure and advised of their right to make a request under FOIA.

RESPONDING TO REQUESTS FROM CONGRESS

In responding to congressional oversight committees, the OIG has fully complied with applicable laws. We have reviewed applicable Federal statutory and case law and consulted with the Department of Justice. We have made every effort to be responsive and provide requested information without violating the law or waiving any applicable privilege based upon requests in any form from a committee Member or staff. Our responses have ranged from providing briefings, answering questions, and providing records.

However, we have a responsibility to comply with laws and regulations regarding the release of information and a right to request justification when responding to requests for non-public information maintained by the Executive Branch. Some of the laws that impact decisions to release non-public information to congressional oversight committees include:

The Inspector General Act

Section 2 of the IG Act states that the intent of the Act was "to create independent and objective units" to "conduct and supervise audits and investigations relating to the programs and operations" of the agency and to "provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action."

Section 4 (a)(5) of the IG Act provides: "[T]o keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action."

The only specific means identified or mandated in Section 5, or for that matter anywhere else in the IG Act, for meeting this requirement are the Semiannual Reports to Congress and the "seven day" letter described in Section 5(d). This section requires the IG to report immediately to the head of the establishment involved whenever the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment." The head of the establishment, not the IG, is required to transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

In addition to our semiannual reports, to ensure that Congress is currently informed, the OIG routinely provides copies of reports, sometimes in redacted form, to our oversight Committees usually before the report is posted on our website. When requested or when we believe there are significant findings we offer to brief the Committees on the findings and conclusions and answer questions. As noted above, our oversight Committees receive an email notification when reports are posted on our website.

The IG Act does not mandate that reports or other information protected from disclosure under a provision of law be provided to oversight committees or otherwise made public. Section 5(e) of the IG Act states that "nothing in this section shall be

construed to authorize the public disclosure of information which is "(A) specifically prohibited from disclosure by any other provision of law" . . . and "(C) a part of an ongoing criminal investigation." In other words, there is no requirement under the IG Act to provide any congressional committee or subcommittee with an unredacted copy of a report containing information that is protected under the Privacy Act or other confidentiality statute.

Section 7(b) of the IG Act prohibits the OIG from disclosing the identity of employees who submit complaints or provide information to the OIG. Similarly, Section 8(m) of the OIG Act protects the identity of all other complainants. The failure by the OIG to maintain confidentiality by releasing the identity of complainants without their authorization would have a chilling effect on individuals or entities who want to report fraud or other criminal behavior, violations of laws, rules, or regulations, public health or safety issues, gross mismanagement, etc.

The Privacy Act

Information contained in reports issued by the OIG and the information contained in the supporting documents are maintained in a Privacy Act system of records. The Privacy Act prohibits the disclosure of information that is maintained, or should be maintained, in a Privacy Act system of records without the consent of the individual to whom the record pertains. The term "disclosure" includes any means of communication including oral disclosures. The Privacy Act provides for civil and criminal penalties for the unauthorized disclosure of records or information contained in those records.

There are 12 exceptions to the "no disclosure without consent rule." These exceptions include responding to requests for information received under FOIA, Section 552a (b)(3). When information protected by the Privacy Act is requested under FOIA, and is not prohibited from disclosure under any other FOIA exemption, the agency is required to conduct a balancing test in which the individual's right to privacy is weighed against the public's right to know [FOIA Exemptions (b)(6) and (b)(7)(C)]. When the public's interest outweighs the individual's privacy interests, the information can be released without the consent of the individual. The decision to release information in OIG systems of records resides with the Inspector General or designee.

Section 552a(b)(9) authorizes (but does not mandate) a disclosure "to either House of Congress, or, to the extent of a matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee." OMB Guidelines specifically state that this exception does not authorize the disclosure of information protected under the Privacy Act to an individual Member of Congress acting on his or her behalf or on behalf of a constituent. OMB Guidelines, 40 Fed.Reg. 28,948–28,955 (July 9, 1975). The decision by the agency to disclose Privacy Act protected information to an oversight body is at the discretion of the agency and requires a written request. Neither the Privacy Act nor any other statute mandates that an agency release Privacy Act protected information to either House of Congress when requested.

In our discussions with staff from the House Veterans' Affairs Committee and another committee, they have told us that the Privacy Act does not apply to Congress. As we pointed out in both discussions, while the Privacy Act does not apply to records in the possession of congressional committees, it does apply to the agency that maintains the record when making a decision whether the record can be released.

Title 38 U.S.C. Confidentiality Statutes

In addition to the Privacy Act, certain VA records are also protected from disclosure under various VA confidentiality statutes, Title 38 U.S.C. Sections 5701, 5705, and 7332. The plain language of these sections shows that the decision whether to release the information resides with the Secretary. Each statute identifies the circumstances under which the Secretary is required to disclose or the discretion to disclose the protected information without the consent of the individual. None of the statutes authorize the OIG to disclose protected information. As with the Privacy Act, each of these the statutes include civil and/or criminal penalties for unauthorized disclosures.

- 38 U.S.C. Section 5701—Prohibits the disclosure of VA claims records, including the names and addresses of veterans and other beneficiaries. With the exception of deceased veterans, these records are also protected under the Privacy Act. Unlike the Privacy Act, Section 5701 is still applicable after the death of the individual.
- 38 U.S.C. Section 5705—Prohibits the disclosure of medical quality assurance records. Regulatory requirements implementing this statute are set forth in 38 C.F.R. 17.500 et. seq.

• 38 U.S.C. Section 7332—Prohibits the disclosure of records of the identity, diagnosis, prognosis, or treatment of any patient or subject that are maintained in connection with the performance of any program or activity relating to drug abuse, alcoholism or alcohol abuse, infection with HIV, or sickle cell anemia.

In responding to requests for information, including requests from our oversight committees we take seriously our responsibilities to protect the identity of individuals, especially employees and veterans, who could be harmed if the information became public. Statute dictates that veterans have both a right and expectation that their private medical and other claims information not be disclosed without their consent unless otherwise authorized by statute. As such, we have both a right and an obligation to ask questions and obtain clarification from an oversight committee or subcommittee seeking information protected from disclosure.

THE ACCOMMODATION PROCESS

A memorandum issued on June 19, 1989, by the Department of Justice, Office of Legal Counsel (OLC), summarized the principles and practices governing congressional requests for confidential executive branch information. 13 Op. OLC 153 (1989). The memorandum addressed "the duty of Congress to justify its requests." Id., 159. As noted in the OLC memorandum, "the process of accommodation requires that each branch explain to the other why it believes its needs are legitimate." Id. Justifications for not providing the information requested may include whether the entity responding has the legal authority to release the information and whether the records are privileged.

The OIG is and has always been prepared to accommodate legitimate oversight requests but we need to do so in a manner consistent with veterans' expectations to privacy, statutes, and appropriate guidance of the Executive Branch.

CONCLUSION

The OIG is committed to carrying out vigorous oversight of VA programs and operations and keeping the VA Secretary, Congress, and the American public informed of our oversight results. Our prolific public reporting on the OIG Web site (*http://www.va.gov/oig/*) and information sharing with Congress thru briefings, hearing testimony, and regular staff contacts are among the highest in the Inspector General community. In doing so, we will continue to carefully balance the public's right to know against the privacy of individual veterans, and to work with Congress in accommodating legitimate oversight requests to further our mutual goal of helping VA improve delivery of services to America's veterans.

PREPARED STATEMENT OF CHARLES TIEFER

Mr. Chairman and Members:

Thank you for the opportunity to testify.

This testimony concerns the Committee's right to obtain oversight materials about VA and VA OIG (both referred to here sometimes as "VA") programs, beyond what the agencies choose to make public. Advice from the VA General Counsel raises various objections to the Committee obtaining documents for oversight, amounting to a comprehensive program of denying meaningful access.

For 15 years, I was counsel to Congress (1979–84, assistant Senate legal counsel; 1984–1995, General Counsel, and, Deputy General Counsel, of the House of Representatives). During that time, I testified and submitted briefs to court a very large number of times on questions like the one before us. Since then, I have been a professor at the University of Baltimore Law School. I have continued to study these subjects, testifying from time to time, and, publishing at length, on these subjects. Charles Tiefer, "The Specially Investigated President," 5 Univ. of Chicago Roundtable 143–204 (1998).

I was Chairman Issa's (R–Cal.) lead witness at his hearing on the demand for Justice Department materials about the "Fast and Furious" scandal that became the House's contempt case against Attorney General Holder when the President invoked executive privilege.[1] I gave full-length written (and oral) testimony in 2002 about a similar issue during the Bush Administration involving an FBI informant

[1] "Congressional Committee Conducting Oversight of ATF Program to Sell Weapons to Smugglers, Notwithstanding Pending Cases," in Hearing on Justice Department Response to Congressional Subpoenas: Hearing Before the House Committee on Government Oversight. June 13, 2011.

program.[2] Ultimately a claim of executive privilege by the President himself was overcome by that investigation.

This Committee has "Penetrating and Far-Reaching" Power to Obtain Oversight Materials From Agencies, Including Inspectors General

The Supreme Court described the Congressional oversight power as "penetrating and far-reaching" in *Barenblatt* v. *United States*, 360 U.S. 109, 111 (1959):

The power of inquiry has been employed by Congress throughout our history, over the whole range of the national interests concerning which Congress might legislate or decide upon due investigation not to legislate; it has similarly been utilized in determining what to appropriate from the national purse, or whether to appropriate. The scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.

Congress enacted the Inspector General Act of 1978 to create investigative machinery for more than one purpose. Of course, one purpose was for law enforcement. But, another purpose was to keep Congressional oversight about agency problems, which involves cooperating with Congressional committees' own efforts to oversee the same. The House General Counsel's office, when I served there, wrote what became the authoritative opinion in the House about that inspectors general must provide committees with oversight material. (The opinion has been separately furnished to this committee. It was about a Justice Department memo known as the "Kmiec Memo".)

Let us lay out the argument made unsuccessfully then, and made again now by the VA OIG. Specifically, section 4(a)(5) of the Inspector General Act plainly and explicitly requires each OIG "to keep . . . The Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs, abuses, to the operations . . ."

The response now by the OIG is that "The only specific means identified or mandated in Section 5 . . . for meeting this requirement are the Semiannual Reports to Congress and the 'seven day' letter described in Section 5(d)." In other words, the OIG would shrink down the duty and obligation of the OIG to keep Congress "fully and currently informed" to the published reports. It is as if the statute said "the OIG shall withhold from Congress anything to keep it 'fully and currently informed' except what the whole world is told too." The Inspector General statute would become the opposite of what Congress intended. It would create an entire layer of shielding and withholding to surround what Congress pointed to as the "fraud and other serious problems, abuses, and deficiencies" of agencies like the VA. From living contemporary experience at the time, and from the legal materials sources, we know the Inspector General Act of 1978 was part of a wave of post-Watergate legislation intending to restore Congressional oversight. But, the OIG argument would make it the opposite, a statute meant to shut the windows and bar the doors for Congress peeking in at the failings of agencies like the VA.

But, taking the OIG's argument and looking at the Inspector General Act's words, if the OIG was to withhold and deny needed documents for Congressional oversight, and just to make the reports, then there would be no purpose to the statute's key words saying the OIG was to keep Congress "fully and currently informed, by . . . reports . . . and otherwise." The statute would have stopped with "by . . . reports" if all that the OIG was obliged to provide were reports. Rather, the OIG claim that the Inspector General need not go beyond giving Congress access to public record material like his reports, is refuted by the highly significant "and otherwise" language.

Moreover, as the House Counsel memo responded back at that time to the unsuccessful Kmiec Memo, the legislative history of the act shows the contrary to the OIG's position. Chairman Jack Brooks (R–Tex) was House floor manager of the Inspector General Act of 1978. A bipartisan chair who worked closely with his ranking minority member Frank Horton (R–NY), he was a strong exponent of Congressional oversight. Not surprisingly, his legislative history spells out the exact opposite of the OIG position. In a discussion on the House floor Representative Bauman (R–Md) agreed with Chairman Brooks—that "It would just seem to me to be pointless to pass this legislation unless, as part of each committee's oversight function, the committee had complete access to all records of the investigations of these Inspectors

[2] "Overcoming Executive Privilege at the Justice Department," in The History of Congressional Access to Deliberative Justice Department Documents: Hearings Before the House Committee on Government Reform, 107th Cong., 2d Sess. (Feb. 6, 2002).

General. Otherwise, the bill is unnecessary." (Underlining added) Chairman Brooks agreed and explained: "If the gentleman will yield further, Mr. Speaker, we will have complete access to the records if we request them. It just will not be part of the routine [of OIG reports]. I would say to my distinguished friend, the gentleman from Maryland (Mr. Bauman), that there is no prohibition with respect to filing all the information which Congress wants. We will be able to get it. There is no problem about it. It is just that it will not be routinely printed in the semiannual reports." 124 Cong. Rec. 32032 (1978).

Committees Have Vast Oversight Powers That Go Far Beyond What the 435 Individual Members Doing Casework Can Obtain

Another OIG argument reduces the authority of the VA Committee to that of one of the 435 individual Members who do casework. The OIG justifies not providing records to the VA Committee because they are covered by the Privacy Act. If the Privacy Act barred providing information to oversight committees, it is hard to see how they could function, as a substantial fraction of the waste, fraud, and abuses of agencies affect individuals. Now, even the OIG does not dispute that Congress carefully provided in section 552a(b)(9) for disclosure "to either House of Congress, or, to the extent of a matter within its jurisdiction, any committee or subcommittee thereof . . . ."

The provision furthering oversight is not surprising, for the Privacy Act, like the Inspector General Act, was a product of the post-Watergate era when Congress restored the oversight power of its committees. See, e.g., Murphy v. Department of the Army, 612 F.2d 1151 (DC Cir. 1979) (noting in that case "the obvious purpose of the Congress to carve out for itself a special right of access to privileged information not shared by others").

But, even more, there is a further nuance of that statutory language. Congress did not provide equivalent treatment for committees like the VA Committee, and for the 435 individual Members doing casework. It referred to "any committee or subcommittee," while it did not refer to individual Members.

Yet the OIG asserts the power to reduce this committee to the level of a caseworker. The OIG argument now continues:

OMB Guidelines specifically state that this exception does not authorize the disclosure of information protected under the Privacy Act to an individual Member of Congress acting on his or her behalf or on behalf of a constituent. OMB Guidelines, 40 Fed. Reg. 28,948–28,955. (July 9, 1975).

Having conflated committee oversight requests, with individual casework, OIG then says:

The decision by the agency to disclose Privacy Act protected information to an oversight body is at the discretion of the agency and requires a written request. Neither the Privacy Act nor any other statute mandates that an agency release Privacy Act protected information to either House of Congress when requested.

This same argument runs through the rest of the OIG and VA positions—that the VA Committee has no more authority than an individual Member doing casework, to overcome VA and OIG withholding.

No one with any understanding of the Congressional investigatory power would ever mistake the vast authority of committees (including, when pertinent, subcommittees) to conduct oversight, with the work of the 435 individual Members on casework. Congress delegates vast oversight authority to committees for agencies and matters within their committee jurisdiction. It is constitutional authority, upheld in literally dozens of decisions in the Supreme Court and the other federal courts. In citing *Barenblatt* v. *United States* above, what was cited for "penetrating and far-reaching" authority was a House Committee's oversight power, fully respected, honored, and accepted by the Supreme Court. The Supreme Court was not talking about casework.

Normally, this point is so well-understood, so fundamental, so undisputed, that no further discussion would be necessary. But, the testimony of the agency witness, again and again, conflates the ability of an agency to be unhelpful, if it chooses, with individual Members doing casework, with the contrasting full authority of House Committees, like the Veteran's Affairs Committee (and its oversight subcommittee) to perform committee oversight on agencies, like the VA, within the committee's jurisdiction.

What is the difference?

For House Committees:

Rules of the House of Representatives confer jurisdiction, including oversight jurisdiction, and authority, on House committees. Moreover, they create a structure with committee rules, including witness rights, all to further evolve the committee oversight authority.

Rules of the House, and firmly established precedent, confer authority for hearings and subpoenas, the main formal tools of inquiry, on House committees.

Criminal statutes, and firmly established precedent, confer the classic investigative sanctions on those who impede committees by committing contempt, perjury, and obstruction. This contrasts with the 435 individual House Members doing casework, at the level down to which the VA puts this Committee.[3]

House Rules do not establish such jurisdiction and authority for casework, and do not create a structure with specific rules including witness rights;

House Rules do not confer authority for hearings and subpoenas.

Criminal statutes do not establish contempt, perjury and obstruction for creating obstacles to casework by the 435 individual Members.

This is just the superstructure. Under this rubric, House Committees—not the 435 individual Members—conduct a vast quantity of oversight on the agencies within their jurisdiction and authority, like the VA for the VA Committee. Committees publish many hundreds of hearings and reports every Congress. Committees are the eyes and ears of the Congress and the nation for oversight like this committee's of the VA.[4]

To put it bluntly: the VA has lost touch with legal reality, and is having a flight of fantasy, to withhold documents from the VA Committee by equating the Committee with doing casework.[5] Section 552(b)(9) has not been in the past, is not now, and never will be, authority to withhold material from Congressional oversight committees.

For the VA to Block Committee Inquiries Into Health Care Matters Lacks Support in Congressional Investigatory Law

The VA invokes statutory provisions that keep medical records of individual beneficiaries nonpublic. It conjures this issue in the abstract, as though the committee were about to throw open the doors to VA medical facilities and flinging all the records outside to be public, and for no reason at that. The OIG argument strikes at the heart of Congressional oversight by rejecting Congressional committees' right to anything but public records.

For several reasons, the OIG argument lacks support. First, the VA argument treats oversight as invalid because it must not be allowed to view nonpublic records. That is contrary to how oversight is conducted—namely, with the understanding and full acceptance that House Committees must obtain some nonpublic records. The House has a rule about closed or executive sessions, and nonpublic records may be deemed to be received that way. The examples of this are legion. Virtually every Senate committee receives confidential FBI inquiries on nominees, which starts nonpublic and is kept nonpublic.[6]

The Armed Services Committees receive defense information from a wide variety of nonpublic arrangements, treated likewise. As House Counsel, I dealt with any number of oversight committees, from the House Banking Committee to the House Government Reform and Oversight Committee, with material from inquiries that was nonpublic. To put it differently, it would hobble the House oversight power to restrict it only to public information.[7] Taken as a whole, if House committees could

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[3] For individual Member casework:

[4] That has been true since the administration of George Washington, when a House Committee inquired into an Indian war. Indeed this was true in state and colonial legislatures and the British Parliament, as the precedents for the Framers writing Article I of the Constitution. Nothing could be firmer as a matter of constitutional principle.

[5] A different question is posed when an individual Member seeks, not the sword of formal authority to inquire, but the shield of Speech or Debate Clause privilege for informal self-informing. Different considerations apply. That question is not posed here.

[6] The House and Senate Intelligence Committees receive information at the highest levels of classification, which starts nonpublic and is kept nonpublic. The Joint Committee on Taxation receives taxpayer information of an extremely private rigidly undisclosed nature, which starts nonpublic and is kept nonpublic.

[7] If the Armed Services Committee could only see the documents about our defenses what we post on open Web sites for viewing by everyone, it would know little about our military and its judgments for the defense authorization bill would be unsupported. If Chairman Issa's inquiry about "Fast and Furious" only knew about what the posts on Web site for viewing by everyone, it would have learned little and its judgments would be unsupported.

obtain nothing more than is publicly posted, their hearing rooms would be stale, boring, and completely empty, and their reports would go completely unread.

Second, when Congress passes statutes that would preclude, selectively or wholesale, the constitutional processes of Congressional oversight, it says so expressly.[8] There is no possible equating of the statutes cited by OIG, which do not mention precluding oversight, and these other statutes, which do. There is no comparison between the statutes that expressly constrain being obtained by Congress, and those that simply say, like these VA-related statutes do, that the information is nonpublic. Such statutes do not bar oversight, they put Congress on notice that the agency has held these in a nonpublic status, and the committees understand this and proceed consciously and appropriately.

Third, as to statutory provisions about individual medical record privacy in particular, as committee counsel has pointed out, a HIPAA section related to the one cited by the VA says "A covered entity may disclose protected health information to a health oversight agency for oversight activities[.]" 45 CFR Sec. 164.512(d). And, official VA practices ("Notice of Privacy Practices", Sept. 23, 2013) state that "VHA May Disclose Your Health Information" to "Law Enforcement Health Care Oversight (*e.g.*, giving information to the Office of Inspector General or Congressional Committees."[9] The pertinent statutes and regulations should be interpreted together to authorize committee oversight.

Fourth, the above points make clear how a legitimate House Veterans Affairs Committee investigations into, say, certain specific causes of death for specific beneficiaries who did not get appointments, differs from throwing open the doors at VA facilities and tossing out to the public all the records. The Committee may have a specific oversight inquiry, such as the extent to which delays in making appointments were a cause of certain specific deaths. It may have a different focus or standard than, say, the Inspector General.[10] The Committee has a different responsibility. It must do its oversight work, even though this means reviewing nonpublic documents.

Fifth, it is said to be a concern of the VA that it might be liable for providing the records to Congress in the face of these statutes. This is no reason to block oversight. I have heard this kind of argument since I started as a Congressional counsel in 1979. I do not know of one single occasion during that time when agencies have provided something for Congressional oversight and suffered damages from a lawsuit. It is a red herring. It is what general counsels raise up as a reason not to act, rather than a live probable problem to mitigate on the way to actually assisting the oversight.

In light of the statutes and regulations just recited, an agency would say it was legally justified in providing the records. But, perhaps the VA actually needs reassurance—say, it has some example of something that actually happened that gives it legal worries. Then it should approach the Committee very differently. Rather than using its concerns as an excuse to preclude oversight, it should use its concerns as a reason to provide the records under some kind of an arrangement that provides such safety. It should have said to the Committee "we are ready to provide the records, but we wish to show we are acting under legal obligation. Can you provide us with a legal memorandum that we are under such an obligation?"

I researched and issued such memos as House Counsel. It was one of various ways to mitigate the agency's concerns and to confirm to the agency that providing information was the right thing.[11] The agency was expressing its concerns, and yet,

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[8] For example, tax legislation meant to keep individual tax return information inviolate expressly precludes committees (other than the tax committees) from obtaining the information. 26 U.S.C. 6103(f). House Rules expressly precludes classified information in the hands of the Intelligence Committee from being released (except either by negotiated declassification or similar special processes). The wiretap statute expressly constrains the occasions when Congressional committees obtain wiretap records. I worked with these types of provisions when I was detailed from House Counsel to being Special Deputy Chief Counsel for the Iran-Contra Committee.

[9] *http://www.va.gov/vhapublications/ViewPublication.asp?pub—ID=3048.K*

[10] For a hypothetical, the Inspector General for his office's specific purposes may decide only to pursue the matter when there is strong evidence that the delays were the main or probable cause. The Committee for their broader legislative purposes might still be interested if there was suggestive evidence the delays were a contributing or possible cause. I am speaking for myself. I have not discussed with the Committee whether this illustration fits or does not fit any of their inquiries.

[11] Purely as an example, there were some times when an agency asked for a committee subpoena—not as part of a desire to actually oppose the investigation, but rather to address their unusual need to show compulsion. For example, a state agency with records implicating privacy

Continued

its positive attitude, and its embracing a solution under which it provides the material, makes all the difference.

Arguments From 18 U.S.C. 1905 and From Pre-Decisional Privilege Are Without Merit

VA and OIG have made a number of arguments to the Committee which are not at the heart of their testimony today. These warrant only brief comment.

They have mentioned the statute at 18 U.S.C. 1905, the Trade Secrets Act, which provides for criminal sanctions for an agency official who discloses trade secrets "unless authorized by law." As discussed above, the Congressional investigatory power is well recognized as authority to obtain agency documents, and satisfies the statute. Opinion of the Attorney General 221 (1955). The invocation of this statute purports to justify withholding, as proprietary, of records of procurement. This claim could not have merit without putting out of the oversight business a large part of the activity of House committee inquiries doing exactly what the House as a whole, and the public, want them to do.[12]

There has also been impugning by the VA of the inquiring communications of Congressional committee counsel, also known as the VA seeking to impose the requirement of a specific letter from the Chairman himself even for limited requests. This is not persuasive. Committees must delegate. The VA is enormous.[13] The VA is not going to have the Secretary do everything himself.[14] It should reserve its arguments in this regard for when it has a focused, supportable issue that it wants to raise up to the level of the Chairman, not for all requests.[15]

The VA has also tried to make a claim of deliberative process privilege. However, it has done little of what it must do to make such a claim. It has not focused the claim on some specific narrow agency decision or category of documents. Nor has it provided an index for the documents. And, this is a claim that ultimately evaporates unless backed up by an invocation of executive privilege by the President himself. (Currently, the "Fast and Furious" litigation is about this issue, and the President himself invoked executive privilege.)

Even with all those steps taken, the claim would be weak, because none of the deliberative process involves communications with the President. In regards to Sealed Case (Espy), 121 F.3d 729 (DC Cir.). There is no particular sign that the President would support a privilege claim in this matter.[16] Without some documentation from the VA that the White House stands ready to invoke executive privilege, it should be regarded as not specifically invoked in this matter.

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might say it needed a subpoena because that "translated" into an expression of compulsion that was clear between federal and state levels. I do not see in this case a need for a subpoena.

[12] Virtually every committee of the House looks into procurement as to the agency under its jurisdiction. And, from experience with procurement protests at the GAO, it is clear that in an instance of procurement dispute over contract award, a claim of proprietary will sweep up a great deal. Conversely, few subjects deserve oversight as much as procurement.

[13] It outclasses in size almost any agencies other than Defense and HHS. The VA has hundreds of thousands of employees, and has large numbers of facilities scattered around the country. Does the VA Counsel claim the power to dictate that the Chair himself must visit them all in person, eschewing staff (and still handle his gigantic flow of work in Washington)? The VA has hundreds of matters warranting oversight, involving all together, directly and indirectly, perhaps millions of documents and perhaps gigabytes of data. The VA can hardly insist that the Chair read and analyze them all in person, and still handle also the duties of legislating, communicating, voting, and so on.

[14] For that matter, oversight inquiries from various sources flow into the VA. Is the VA Counsel going to make the Secretary of the VA himself show up in person, meet in person, join visitations in person, take calls in person, fill out questionnaires in person, answer inquiries in person, and scrutinize himself millions of documents and gigabytes of data in person, and, in short, do everything for the whole vast department as to inquiries in person—and not delegate to his staff?

[15] There always has to be delegation from Chairs—and Secretaries—for others to handle the large extent of matters under their jurisdiction. And, each side must tolerate a degree of delegation on the other side. A wholesale refusal by the VA to respond to delegated inquiries makes as much sense as a wholesale insistence by the VA Committee that the Secretary in the VA respond in person. The VA should not use this point as a basis for blanket refusal to answer inquiries. Rather than that, the VA should step back from a refusal, recognize the need for delegation on both sides, stop treating committee counsel as nullities, figure out some far more finely-tuned approach that would meet its real needs and proceed from there.

[16] The VA had a large scandal in recent years, and Congress conducted oversight, without contest from the White House. Congress passed a remedial statute, and the Secretary of VA left office and was replaced, without argument from the White House.

PREPARED STATEMENT OF MICHAEL D. BOPP, PARTNER AND HEAD OF CONGRESSIONAL INVESTIGATIONS GROUP

Chairman Miller, Ranking Member Brown, other members of the House Committee on Veterans' Affairs thank you for inviting me to testify before you this evening. My name is Michael Bopp and I am a partner at the law firm, Gibson Dunn & Crutcher. I also head our firm's Congressional Investigations Group.

I spent more than a decade conducting investigations on Capitol Hill, in House and Senate committees, and on special committees convened to investigate a particular issue or problem. I have helped orchestrate more than one hundred hearings, I have taken countless depositions and interviews and I have managed massive document discovery efforts both pursuant to letter and subpoena. I have been at Gibson Dunn for more than six years and have represented individuals, companies and other organizations in dozens of congressional investigations. In other words, I have been on both sides of the dais; seeking documents and information, and being asked to provide them.

The power of Congress to investigate, though not explicit in the Constitution, is woven into its fabric. As George Mason noted, Members of Congress "are not only Legislators but they possess inquisitorial powers."

The U.S. Supreme Court has also concluded that Congress has the authority and obligation to investigate. In one seminal case, *McGrain* v. *Daugherty*, the Supreme Court held: "We are of opinion that the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function."

Why is that the case? What is the reason for this investigative authority? Because Congress needs up-to-date, granular information to legislate effectively. After the terrorist attacks of September 11, 2001, Congress did not rush immediately to pass legislation reforming the intelligence community based on available information. Instead, Congress created the 9/11 Commission, waited for its report, then embarked on its own investigation of our intelligence community. The legislation that ensued effected a seismic change in how intelligence is collected, analyzed and shared by government agency. And it was the result of cooperation and information-sharing by the intelligence community with Congress.

In 2005, when Hurricane Katrina hit the Gulf Coast, both the House and Senate initiated investigations into what went wrong with federal, state and local preparations for—and responses to—the hurricane. As part of the Senate investigation, we interviewed more than 325 (mostly government) witnesses, held 22 public hearings and reviewed more than 800,000 pages of documents. There was a lot to look at. What followed was legislation that overhauled the way FEMA addresses natural and other disasters. This legislative action would not have occurred absent the thorough investigative actions taken by the House and Senate.

It is important to note that Congress need not investigate with the sole purpose of drafting or amending legislation. During the Katrina inquiry, were we investigating specific ways to amend federal response protocols? No. We were investigating what happened; what went wrong. So, too, the Supreme Court in McGrain held that it is entirely appropriate for Congress to investigate matters "on which legislation could be had."

The Executive Branch—no matter which party is in control—might not always like Congress' investigative authority, or the way that it chooses to exercise that authority. But it should respect it, because congressional investigations help Congress perform its constitutional functions more effectively. Congressional oversight of executive agencies helps ensure that the government is functioning the way it should: In how are systemn the best interests of the American people. The Executive Branch should respect Congress's power to investigate and legislate just as Congress must respect the Executive Branch's responsibility to ensure that laws are implemented and enforced—even when they are enforced against Members of Congress.

Vigorous oversight and investigative activities will always cause some degree of friction between Congress and the Executive Branch. In fact, that is how our system was designed. But they should not cause agencies to look for questionable ways to withhold information from congressional committees, to hide the ball. In the private sector context, the types of obfuscation alleged here would not be tolerated. In the case of investigations of the Executive Branch, such activities are not unique to a particular agency or office of inspector general, and they are also not unique to a particular political party. But they are all too common.

I applaud the Committee for standing up for the prerogatives of Congress through this hearing.

And I welcome any questions you may have.

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