

**Senate Committee on Environment and Public Works**  
**Subcommittee on Clean Air and Nuclear Safety**  
**Hearing entitled, “Hearing on the Nominations of Beth Harwell and Brian Noland to be**  
**Members of the Board of Directors, and Katherine Crytzer to be Inspector General, of the**  
**Tennessee Valley Authority.”**

**May 19, 2020**

**Questions for the Record for Ms. Katherine Crytzer**

**Senator Carper:**

Please provide a response to each question, *including each sub-part*.

2. In your work history, what has your interaction, if any, been with the Tennessee Valley Authority (TVA) or with other energy companies?

**While in private practice, I represented a Fortune 500 energy company. Prior to my nomination, I had not had the opportunity to work with the Tennessee Valley Authority (TVA) in a professional capacity, however, I am generally familiar with the TVA through its operations in the Tennessee Valley. If I am fortunate enough to be confirmed, I look forward to bringing a distinct perspective and my outside legal and investigatory experience to TVA.**

3. Describe the specific steps that you will take to conduct oversight on TVA’s management of its fiscal and personnel resources to ensure that the Authority meets its mandate to be a national leader in technological innovation, low-cost power, and environmental stewardship.

**The Tennessee Valley Authority Act charged the Tennessee Valley Authority (TVA) with the objective and mission of being a national leader in technological innovation, low-cost power, and environmental stewardship. The TVA Office of Inspector General, in turn, is charged with independent and objective oversight of the programs and operations of the TVA to promote economy, efficiency, and effectiveness and prevent and detect waste, fraud, and abuse. If I am fortunate enough to be confirmed, I will fully and faithfully execute this mission by conducting and supervising robust and thorough audits, evaluations, and investigations and keeping Congress and the Tennessee Valley Authority Board of Directors fully and currently informed.**

4. I am troubled by recent reports about workforce safety concerns at TVA’s nuclear and coal plants and harassment and retaliation against whistleblowers who raised safety concerns.<sup>1</sup> If confirmed, what will you do to ensure TVA has a culture of safety across its workforce?

**It is critically important that the Tennessee Valley Authority (TVA) has adequate processes and procedures in place for workers to report safety concerns at nuclear and coal plants. If confirmed, I will work diligently to ensure that such processes and procedures are in place so that TVA maintains a culture of compliance and safety across its workforce.**

5. In our conversation before your confirmation hearing, you informed me that one of your responsibilities within the Office of Legal Policy was to assist then-Judge Kavanaugh in his Senate confirmation process to become a Supreme Court justice.

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<sup>1</sup> <https://www.knoxnews.com/story/news/crime/2020/03/06/tva-trouble-nuclear-regulators-over-whistleblower-treatment/4963871002/>

a. As part of this work, you said you reviewed requests made by Congress for information about Judge Kavanaugh's legal decisions and other materials and determined which of requested materials could be produced to Congress. Did you recommend the withholding of any of Judge Kavanaugh's materials from Congress? If so, please briefly describe what those materials were, and what your rationale was for recommending that they be withheld?

**I served on a team of attorneys at the Department of Justice that facilitated the Senate's consideration of then-Judge Brett M. Kavanaugh to serve on the Supreme Court. As part of that process, the Senate Judiciary Committee requested, under the Presidential Records Act (PRA), 44 U.S.C. § 2201(2), (3), certain Presidential records related to Justice Kavanaugh's service as Associate Counsel and Senior Associate Counsel in the White House Counsel's Office during the Administration of President George W. Bush and Justice Kavanaugh's nomination to the U.S. Court of Appeals for the District of Columbia Circuit.<sup>2</sup> I was part of a team that reviewed these records for production to the Senate Judiciary Committee, consistent with the terms of the request by the Senate Judiciary Committee and the requirements of the PRA and relevant privileges. A description of documents the White House determined were necessary to withhold pursuant to applicable privileges and the basis for their withholding was provided to the Senate Judiciary Committee in a letter dated August 31, 2018, from William Burck, to former President George W. Bush (to whom the Senate Judiciary Committee had directed its document request).<sup>3</sup>**

b. Can you confirm that Justice Kavanaugh was the only judicial nominee whom you actively assisted with the Senate confirmation process during your time at the Office of Legal Policy? If you did actively assist other nominees, please list them and describe the nature of your involvement in their nomination(s).

**The Office of Legal Policy (OLP) has a team of staff whose job duties primarily entail assisting the Attorney General with responsibilities in recommending candidates for federal judgeships and coordinating the judicial nomination and confirmation process with the White House and Senate. I have not been a member of that nominations team. During my time as Chief of Staff for OLP, my job duties included managing the various workstreams and operations of staff in the office. As such, as a general matter, my substantive involvement in judicial nominations work was limited, with the exception of my work on the confirmation of Justice Kavanaugh.**

6. Whistleblower laws protect the right of federal employees to make lawful disclosures to agency management officials, the Inspector General, and the Office of Special Counsel. They also have the right to make disclosures to Congress. Specifically, 5 U.S.C. § 7211 states that the "right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied." Further, 5 U.S.C. §2302(b)(8), makes it a violation of federal law to retaliate against whistleblower because of "(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and

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<sup>2</sup> <https://www.archives.gov/files/foia/07.27.2018-grassley-to-bush-library-re-kavanaugh.pdf>.

<sup>3</sup> <https://www.judiciary.senate.gov/imo/media/doc/2018-08-31%20Burck%20to%20Grassley%20-%20Accounting%20of%20Kavanaugh%20WHCO%20Records.pdf>.

specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation ... 11 In addition, pursuant to 18 U.S.C. §1505, it is against federal law to interfere with a Congressional inquiry.

a. If you are confirmed, will you commit to protect the rights of all Tennessee Valley Authority career employees to make lawful disclosures, including their right to speak with Congress?

**If I am fortunate enough to be confirmed as Inspector General of the Tennessee Valley Authority (TVA), within the scope of my work as Inspector General, I will protect the rights of all TVA employees to make lawful disclosures.**

b. Will you commit that you will not prevent or discourage any individual who brings the Office of Inspector General information regarding misconduct within the federal government from also disclosing this information to Congress?

**If I am fortunate enough to be confirmed as Inspector General of the Tennessee Valley Authority, within the scope of my work as Inspector General, I will uphold the rights of individuals who disclose information regarding misconduct within the federal government, consistent with the Inspector General Act and relevant law.**

c. Will you commit to protecting the anonymity of any individual who discloses to the Office of Inspector General information regarding misconduct within the federal government if the informant wishes to remain anonymous?

**If I am fortunate enough to be confirmed as Inspector General of the Tennessee Valley Authority, within the scope of my work as Inspector General, I will protect the rights of individuals who disclose information regarding misconduct within the federal government to remain anonymous, consistent with the Inspector General Act and relevant law.**

d. If you are confirmed, will you commit to protect the rights of all employees of the Office of Inspector General, to make lawful disclosures, including their right to speak with Congress?

**Please see my response to 6(a) above.**

e. Will you commit to communicate employees' whistleblower right via email to all OIG employees within one week of being sworn in?

**If I am fortunate enough to be confirmed, I commit to sending an email about employee whistleblower rights to all Tennessee Valley Authority Office of Inspector General employees within one week of starting my duties.**

7. In recent months, President Trump has attacked several Inspectors General across the federal government, because they have issued reports that have been critical of the President and his administration or they have released information that is inconsistent with the President's preferred narrative. In many cases, he has executed personnel actions, either firing IGs or replacing Acting IGs in order to incapacitate their offices' ability to conduct independent oversight into the Trump Administration. When I asked you for your views on these matters during your confirmation hearing,

you stated that you didn't "know the full situation for each of those instances that you have mentioned" and that you were "not familiar with all the facts in the situation that you have just mentioned." I expect you will have sufficient time to evaluate any information you may not have previously had time to review. A failure to respond with the requested specificity would raise significant concerns associated with your suitability to serve as an Inspector General.

Late last year, Inspector General of the Department of Justice Michael Horowitz released a report on the FBI's investigation of Russian interference in the 2016 election. The report found that while there were "significant inaccuracies and omissions" in some FBI surveillance applications, the FBI's investigation of Trump campaign officials was not influenced by "political bias or improper motivation." In response to this report, President Trump tweeted, "As bad as the I.G. Report is for the FBI and others, and it is really bad, remember that I.G. Horowitz was appointed by Obama. There was tremendous bias and guilt exposed, so obvious, but Horowitz couldn't get himself to say it. Big credibility loss. Obama knew everything"

On April 3, the President fired Michael Atkinson, the Inspector General of the Intelligence Community, because he informed Congress of the existence of a whistleblower complaint, as required by law, which led to impeachment proceedings against the President. When asked why he fired Mr. Atkinson the President said, "He did a terrible job, absolutely terrible. He took a fake report and he brought it to Congress with an emergency, OK? Not a big Trump fan, that I can tell you." Also on April 3, the Office of Inspector General of the Department of Health and Human Services, led by Principal Deputy Inspector General Christi Grimm, released a report highlighting supply shortages and testing delays at hospitals during the coronavirus pandemic. On April 7th, President Trump tweeted, "Why didn't the I.G., who spent 8 years with the Obama Administration (Did she Report on the failed H1N1 Swine Flu debacle where 17,000 people died?), want to talk to the Admirals, Generals, V.P. & others in charge, before doing her report. Another Fake Dossier!" In fact, Ms. Grimm is a career veteran of the federal IG community, with over 20 experience serving under the Clinton, Bush, Obama and Trump administrations. On May 1, the White House announced the nomination of an HHS Inspector General to take over leadership on the office.

On April 7, the President replaced Glenn Fine as the Acting Inspector General of the Department of Defense. This move made Mr. Fine ineligible to serve on the Pandemic Response Accountability Committee, to which he had recently been elected Chairman by his colleagues on the committee. As a result, that panel was left without a permanent chairperson.

Most recently, on May 15, the President fired the Department of State Inspector General Steve Linick, reportedly because he had opened an investigation into whether Secretary Pompeo and his wife were using State Department officials to run personal errands and an investigation in the Trump Administration's decision to approve an arms sale to Saudi Arabia.

a. Was it wrong for President Trump to fire Mr. Atkinson and Mr. Linick for independently pursuing evidence of wrongdoing within the highest levels of the Trump Administration? If not, why not?

**Under the Inspector General Act, an Inspector General "may be removed from office by the President." If an Inspector General "is removed from office or is transferred to another position or location within an establishment, the President shall communicate in writing the reasons for any such removal or transfer to both Houses of Congress, not later than 30 days before the removal or transfer."**

**I am not privy to the information that the President considered in making his decision to remove Mr. Atkinson or Mr. Linick, and it would thus be inappropriate for me to speculate.**

b. With respect to Mr. Horowitz and Ms. Grimm, do you agree with the President's view that reports issued by Inspectors General who have served under multiple administrations are not credible - in his word "fake" - or the implication that inspectors general who were not appointed by the current president are biased? If so, why?

**If I am fortunate enough to be confirmed, I will perform my work in an independent, objective, and unbiased fashion. I am not privy to the information that the President considered in making his tweets, and it would thus be inappropriate for me to comment.**

c. Do you believe that it is appropriate for President Trump to attack Inspectors General or the credibility of their work when their findings are inconsistent with the President's preferred narrative? If so, why?

**I am not privy to the information that the President considered in making his remarks, and it would thus be inappropriate for me to comment.**

d. Do you have concerns that the President's personal attacks on Inspectors General within the federal government are damaging the IG community's ability to conduct independent oversight of federal agencies or harming the public credibility of the IG community? Please fully explain your response.

**The Inspector General Act charges each Inspector General with conducting independent oversight of the relevant agency or organization, and I have no reason to doubt any Inspector General's commitment to fully and faithfully perform his or her duties under the Inspector General Act.**

8. The Council of the Inspectors General on Integrity and Efficiency (CIGIE)<sup>4</sup> is "comprised of all Inspectors General whose offices are established under section 2 or section 8G of the Inspector General Act of 1978 (5 U.S.C. App.), those that are Presidentially-appointed/Senate Confirmed and those that are appointed by agency heads (designated federal entities)." If you are confirmed, you will be a part of this council. Its mission is to "address integrity, economy, and effectiveness issues that transcend individual Government agencies." Please provide a response to each of the following questions. Although you claimed a lack of familiarity with some high-profile events during your confirmation hearing, I expect you will have sufficient time to evaluate any information you may not have previously had time to review. A failure to respond with the requested specificity would raise significant concerns associated with your suitability to serve as an Inspector General.

a. On April 4, 2020, Michael Horowitz, CIGIE's chair, issued a statement<sup>5</sup> following the removal of the IG of the Intelligence Community:

"Inspector General Atkinson is known throughout the Inspector General community for his integrity, professionalism, and commitment to the rule of law and independent oversight. That includes his actions in handling the Ukraine whistleblower complaint, which the then Acting Director of National

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<sup>4</sup> <https://ignet.gov/>

<sup>5</sup> <https://ignet.gov/sites/default/files/files/Statement%20--%20CIGIE%20Chair%20Horowitz.pdf>

Intelligence stated in congressional testimony was done “by the book” and consistent with the law. The Inspector General Community will continue to conduct aggressive, independent oversight of the agencies that we oversee. This includes CIGIE’s Pandemic Response Accountability Committee and its efforts on behalf of American taxpayers, families, businesses, patients, and health care providers to ensure that over \$2 trillion dollars in emergency federal spending is being used consistently with the law’s mandate.”

Do you agree with this statement, and if not, what specifically do you disagree with and why?

**I do not currently serve as a member of the Inspector General community, and I do not possess sufficient information or facts to attest to Michael Atkinson’s reputation in the Inspector General community.**

b. On March 5, 2020, CIGIE sent a letter to Senator Schumer<sup>6</sup> regarding whistleblowers. That letter described the role and responsibilities of IGs to “protect and empower whistleblowers who shine a light on government misconduct.” Is there any element in this letter with which you disagree? If so, which specific element(s) do you disagree with, and why?

**The March 5 letter from the Council of the Inspectors General on Integrity and Efficiency provides “information on the IG community’s collective efforts to empower and protect whistleblowers.” I do not currently serve as a member of the Inspector General community and do not have sufficient information or facts to attest to each of the efforts of the community discussed in the letter. However, when I was an Assistant United States Attorney, I worked with whistleblowers and ensured that their rights were protected. If I am fortunate enough to be confirmed, I commit to protecting the rights of whistleblowers consistent with federal law.**

c. On October 22, 2019, CIGIE wrote a letter<sup>7</sup> to Assistant Attorney General Steven Engel regarding the DOJ Office of Legal Counsel’s memorandum<sup>8</sup> to the Intelligence Community’s Inspector General. The letter was co-signed by dozens of IGs and Acting IGs, including TVA’s. That letter included the following statements:

“That memorandum effectively overruled the determination by the ICIG regarding an “urgent concern” complaint under the Intelligence Community Whistleblower Protection Act (ICWPA) that the ICIG concluded appeared credible and therefore needed to be transmitted to Congress.”

“This letter from the Council of the Inspectors General on Integrity and Efficiency, on behalf of the undersigned federal Inspectors General (IG), expresses our support for the position advanced by the ICIG and our concern that the OLC opinion, if not withdrawn or modified, could seriously undermine the critical role whistleblowers play in coming forward to report waste, fraud, abuse, and misconduct across the federal government.”

“Further, as addressed in detail below, OLC’s interpretation regarding the ICWPA procedure in question, which mirrors the procedure that Congress included in Section 5(d) of the Inspector General Act of 1978 (IG Act), has the potential to undermine IG independence across the federal government.”

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<sup>6</sup> <https://ignet.gov/sites/default/files/files/Statement%20--%20CIGIE%20Chair%20Horowitz.pdf>

<sup>7</sup> [https://ignet.gov/sites/default/files/files/CIGIE\\_Letter\\_to\\_OLC\\_Whistleblower\\_Disclosure.pdf](https://ignet.gov/sites/default/files/files/CIGIE_Letter_to_OLC_Whistleblower_Disclosure.pdf)

<sup>8</sup> [https://ignet.gov/sites/default/files/files/OLC\\_Memorandum\\_on\\_Urgent\\_Concern.pdf](https://ignet.gov/sites/default/files/files/OLC_Memorandum_on_Urgent_Concern.pdf)

“As an initial matter, we find the arguments and concerns raised by the ICIG in his September 17, 2019 response to the OLC memorandum compelling.”

“In his response, by describing and citing to the DNI’s relevant legal authorities, the ICIG showed that the DNI has a broad legal mandate to address intelligence matters related to national security, as well as the specific responsibility to assess instances of possible foreign interference in United States elections and identify, to the maximum extent possible, the methods used and persons and foreign governments involved in the interference. These responsibilities support the ICIG’s conclusion that the protection of federal elections from foreign interference is squarely within the DNI’s ‘operations’.”

“The legal authorities cited in his letter also support the ICIG’s determination that the whistleblower raised a claim of a serious or flagrant problem that relates to an intelligence activity within the DNI’s jurisdiction. It surely cannot be the case that the DNI has responsibilities related to foreign election interference but is prohibited from reviewing the cause of any such alleged interference.”

“We further note that the DNI has jurisdiction over the handling of classified and other sensitive information. As a result, the whistleblower’s allegation that certain officials may have misused an intelligence system also raises an additional claim of a serious or flagrant problem that relates to the operations of the DNI and therefore may properly be considered an urgent concern under the statute.”

“The OLC memorandum also confuses whether the ICIG has jurisdiction to investigate alleged foreign interference with U.S. elections with the question of whether the DNI has the responsibility to address that issue.”

“The two cases cited in the OLC opinion, which narrowly question an IG’s authority to conduct specific regulatory compliance investigations on behalf of its establishment agency, are distinguishable from the ICIG’s ability to accept, review, and transmit whistleblower allegations related to DNI responsibilities. They do not undermine the responsibility, under the ICWPA, for the DNI to transmit to Congress what the ICIG determined to be an urgent concern related to the DNI’s jurisdiction.”

“We also share the ICIG’s concern that the OLC opinion could seriously impair whistleblowing and deter individuals in the intelligence community and throughout the government from reporting government waste, fraud, abuse, and misconduct. Whistleblowers play an essential public service in coming forward with such information, and they should never suffer reprisal or even the threat of reprisal for doing so.”

“It would be wholly inconsistent with the IG Act, and undermine IG independence, if the agency head – instead of forwarding the IG’s concerns to Congress as the law requires – sought OLC’s advice so that OLC could consider, and then potentially second guess, the IG’s determination (a) that the problem, abuse, or deficiency was a ‘serious’ or ‘flagrant’ one, or (b) that it related to the administration of agency programs and operations.”

“In this matter, OLC did not find that production to Congress was limited due to a valid constitutional concern. Rather, OLC substituted its judgment and reversed a determination the statute specifically entrusted to the ICIG because of its independence, objectivity, and expertise to credibly assess the information. In our view, the OLC’s opinion undermines the independence of the ICIG and

wrongly interprets the respective roles and responsibilities of IGs and agency heads under the ICWPA. Further, the opinion potentially creates space for agency heads across government to make their own determinations related to IG jurisdiction or reporting. Such a result would be contrary to IG independence and congressional intent in requiring IGs to maintain independent legal counsel and may impede the ability of Congress and taxpayers to obtain the objective and independent oversight they rely on from IGs.”

“Perhaps most concerning to the IG community, we believe that the OLC opinion creates uncertainty for federal employees and contractors across government about the scope of whistleblower protections, thereby chilling whistleblower disclosures. As the ICIG noted in his letter to OLC, “because OLC’s opinion determined that the DNI is not required to transmit the complaint to the intelligence committees, a question has arisen about whether the Complainant has the statutory protections against a reprisal, or threat of reprisal, for submitting the disclosure pursuant to the ‘urgent concern’ process.” Given their importance to accountability in government, it is critical that the protection of whistleblowers from retaliation not be diminished by OLC’s narrow interpretation of the ICPWA.”

“For these reasons, we agree with the ICIG that the OLC opinion creates a chilling effect on effective oversight and is wrong as a matter of law and policy. We urge you to reconsider the conclusions of the OLC opinion and withdraw or modify it.”

Do you fully agree with every statement from the October 22 letter pasted above? If not, please indicate which element(s) of which statement(s) you disagree with, and why. Would you have co-signed this letter had you been serving in the role you now seek to be confirmed for? If not, why not?

**The October 22 letter from members of the Council of the Inspectors General on Integrity and Efficiency expresses “concern” with a legal opinion issued by the Office of Legal Counsel at the Department of Justice and urges the Department of Justice to “reconsider the conclusion of the OLC opinion and withdraw or modify it.” In my current capacity, I serve as a lawyer for the Department of Justice. As such, it would not be appropriate for me to opine on my agreement or disagreement with an opinion issued by the Department of Justice.**

9. Do you agree, if confirmed as the TVA Inspector General, to appear before this Committee or designated members of this Committee, and other appropriate committees of the Congress, and provide information, subject to appropriate and necessary security protection, with respect to your responsibilities? If not, why not?

**Yes, as legally appropriate.**

10. Do you agree to ensure that testimony, briefings, documents, and electronic and other forms of communication of information are provided to this Committee and its staff and other appropriate committees in a timely manner? If not, why not?

**Yes, as legally appropriate.**

11. In responding to oversight letters, will you commit to providing me with materials responsive at the same time or earlier than they are provided to House Committee Chairs or Freedom of Information Act (FOIA) requestors? If not, please explain why not.

**If I am confirmed, I commit to complying with the Inspector General Act and all other applicable laws and regulations governing disclosure to keep the Senate fully and currently informed and to provide related materials to the Senate promptly.**

12. In order to protect the independence the office of Inspector General, will you commit that if confirmed you will not communicate with officials from the Executive Office of the President or political appointees within this or subsequent administrations about any substantive matter regarding the Tennessee Valley Authority, prior to publishing your findings on the matter, unless you are compelled to do so in an investigative capacity as part of an investigation or audit?

**If I am fortunate enough to be confirmed, I commit to remaining independent and impartial in my undertakings, including investigations, audits, and evaluations. And I will not allow any undue influence to affect the operations of the Tennessee Valley Authority Office of Inspector General.**

13. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed as the TVA Inspector General?

**In connection with the nomination process, I have consulted with the Office of Government Ethics and the Tennessee Valley Authority's Designated Agency Ethics Official to identify potential conflicts of interest. I am not aware of any matter that may present a conflict of interest if I am confirmed as the Tennessee Valley Authority Inspector General.**

14. Has anyone assisted you in the preparing answers to these questions or reviewed your answers or will review your answers prior to submitting them to the Committee on Environment and Public Works? If so, please explain who provided assistance and what assistance they provided.

**The answers contained in this document are my own. I consulted with appropriate officials from the Tennessee Valley Authority, White House, and Department of Justice who reviewed the answers prior to submission to the Committee on Environment and Public Works.**