ASSESSING THE STATE DEPARTMENT INSPECTOR GENERAL

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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ASSESSING THE STATE DEPARTMENT INSPECTOR GENERAL

WEDNESDAY, NOVEMBER 14, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room 2154, Rayburn House Office Building, Hon. Henry A. Waxman (chairman of the committee) presiding.

Present: Representatives Waxman, Cummings, Watson, Braley, Norton, Lynch, Higgins, Yarmuth, McCollum, Hodes, Sarbanes, Welch, Shays, Platts, Cannon, Issa, McHenry, and Foxx.

Staff present: Phil Schiliro, chief of staff; Phil Barnett, staff director; Kristin Amerling, chief counsel; David Rapallo, chief investigative counsel; Theodore Chuang, deputy chief investigative counsel; David Leviss, senior investigative counsel; Margaret Daum and Steve Glickman, counsels; Christopher Davis, professional staff member; Earley Green, chief clerk; Teresa Coufal, assistant clerk; Caren Auchman, press assistant; Ella Hoffman, press agent; Leneal Scott, information systems manager; Kerry Gutknecht and William Ragland, staff assistants; David Marin, minority staff director; Larry Halloran, minority deputy staff director; Jennifer Safavian, minority chief counsel for oversight and investigations; Keith Ausbrook, minority general counsel; John Brosnan, minority senior procurement counsel; Steve Castor, A. Brooke Bennett, and Emile Monette, minority counsels; Nick Palarino, minority senior investigator and policy advisor; Patrick Lyden, minority parliamentarian and member services coordinator; Brian McNicoll, minority communications director; Benjamin Chance, minority clerk; and Ali Ahmad, minority deputy press secretary.

Chairman WAXMAN. The meeting of the committee will come to order.

This year, our committee has given a special focus to two areas: finding waste, fraud, and abuse, and examining how to make Government effective again. Today's hearing on the performance of Howard Krongard, the State Department's Inspector General, bridges both of these fundamental issues.

Just as Congress tries to do its job of oversight, we set up inspectors general for many of the departments and agencies to do the job of trying to stop abuse, waste and fraud of taxpayers' dollars, and to make sure that the Government is working more effectively.

When we look at the State Department actions in Iraq, we look at the reason for this whole hearing. As we examine the construction of the new Baghdad embassy, the oversight of Blackwater, and

corruption in the Iraqi government, seven current and former officials in the Inspector General's Office expressed concerns about Mr. Krongard's own oversight of the State Department.

These officials, and others who spoke with the committee during our investigation, raised fundamental questions about Mr. Krongard's judgment, actions, and effectiveness. They described their serious concern about his inadequate oversight of the construction of the Baghdad embassy, his failure to assist the Justice Department's investigation of Blackwater for arms smuggling, his refusal to pursue charges of procurement fraud implicating DynCorp, his intervention in the investigation of Kenneth Tomlinson, and his lack of independence in auditing the State Department's financial statements.

The committee was told that due to Mr. Krongard's abusive management style, the Office of the Inspector General is bleeding people right and left. What these officials told the committee is summarized in a staff report I am releasing today, and, without objection, it will be made part of the official record.

One of Mr. Krongard's key responsibilities is providing oversight for the State Department's construction of the new Baghdad embassy. In a previous hearing, we learned that the project will cost $144 million more than projected, is far behind schedule, and has potentially life-threatening construction deficiencies. There are also allegations that the building's contractor, First Kuwaiti, was involved in labor trafficking. When Mr. Krongard heard that his staff might investigate this issue, he sent them an e-mail that said, as one official described it, "Cease and desist all work. I am taking care of this."

Mr. Krongard conducted his own personal and unprecedented investigation of this potential scandal. According to Mr. Krongard, he interviewed six employees who had been handpicked by First Kuwaiti. He questioned them without a translator present and took virtually no notes. Mr. Krongard then concluded that there was no evidence that First Kuwaiti had committed human rights violations.

The reaction of Mr. Krongard's senior staff to this investigation is remarkable. Mr. Krongard's deputy said the effort was "unorthodox, didn't comply with any standards, and was the furthest thing from an investigation." Another official warned that Mr. Krongard's investigation ran the risk of inadvertently ruining a future prosecution.

The former head of Mr. Krongard's audit division told us that the report "would never pass muster in my organization and in any IG investigation that I have ever worked in." She also said, "It is an embarrassment to the community." A special agent was even more blunt, calling Mr. Krongard's report "an affront to our profession."

Given the strong condemnations from the professional staff in the Inspector General's Office, this incident alone would justify today's hearing. Unfortunately, it is not an isolated incident. In fact, I don't believe it is even the most serious allegation raised against Mr. Krongard. In the course of our investigation, Mr. Krongard's investigators told us he placed First Kuwaiti off limits to investigation. They said he refused to pursue credible complaints about fraud, waste, and abuse in the embassy project, and rejected pro-

posals to audit the construction process during construction so that problems could be addressed as they happened.

When the Justice Department wanted to investigate these matters, it asked Mr. Krongard for cooperation. He refused repeatedly. In one instance, Mr. Krongard e-mailed his staff "stand down on this and do not assist." In one mind-boggling sequence, Mr. Krongard, against the advice of his most senior staff, insisted on meeting "a person of interest" in an investigation involving the embassy without assistance of counsel or investigators. Three days after meeting with Mr. Krongard, the potential suspect canceled the scheduled meeting with audit officials and left the United States.

Shortly after that, Mr. Krongard insisted on meeting with another potential suspect during a trip to Iraq. This time, his senior staff not only advised him to cancel the meeting, but asked the Justice Department to instruct Mr. Krongard not to conduct haphazard witness interviews. Despite the additional warning from the Justice Department, Mr. Krongard met with the individual. When he returned to Washington, he wanted to debrief his investigators on his meeting. The agents were worried that the information might taint them and ruin any credible investigation. They specifically asked Mr. Krongard not to share his impressions with them, but he ignored their request and sent one of the agents an e-mail summarizing his conversation with the potential suspect.

Well, none of these actions make any sense. When the Justice Department asked for cooperation, Mr. Krongard refused. When they warned him that his freelance investigations would jeopardize potential prosecutions, he ignored that. When his own staff tried to advise him on proper investigative procedures, he ignored them.

If the reports the committee has received from the Justice Department and the Inspector General's senior staff are accurate, Mr. Krongard has acted with reckless incompetence.

And the questions about Mr. Krongard's performance aren't limited to the embassy in Baghdad. The Justice Department sought Mr. Krongard's cooperation as it investigated reports that a large private security contractor was smuggling weapons into Iraq. Instead of cooperating, Mr. Krongard apparently created a series of obstacles to the inquiry. One of Mr. Krongard's aides told our committee: "There was absolutely no justifiable investigative management or any kind of reason for us to stop that investigation."

The Justice Department shares that view and told the committee: "At this juncture, we cannot determine all of the ramifications of the IG's conduct, but some of his actions have certainly impacted the investigation. For reasons that remain unclear, the line IG agents have been forced to funnel requests within their own agency through a congressional and public relations official. This is not the usual practice. The Inspector General also issued a statement, without advanced cooperation with Department attorneys, confirming the existence of this investigation, which is inconsistent with our law enforcement interests." That was from what the Justice Department told our committee.

Well, the Justice Department has advised us that "Mr. Krongard's action resulted in a cumbersome and time-consuming investigative process and added multiple layers to our investigative

efforts." As of this last Friday, the Justice Department still has not received the State Department materials it has requested.

As Mr. Krongard revealed through some ill-advised comments, the company implicated in the weapon smuggling is Blackwater. We have now learned that Mr. Krongard's brother, Buzzy Krongard, serves on Blackwater's advisory board. We have also learned that Mr. Krongard concealed this apparent conflict of interest from his own deputy, even as he remained actively involved in monitoring the Justice Department's criminal investigation.

In the course of today's hearing, we will also examine allegations about Mr. Krongard's actions regarding investigations into DynCorp and its subcontracts, his decision to allow the State Department to replace unfavorable financial audits with favorable ones, his contact with Kenneth Tomlinson to alert him to a possible investigation of wrongdoing, and his management approach to the Inspector General's Office.

It is a staggering list of allegations from Mr. Krongard's own staff. In committee interviews and depositions, the Deputy Inspector General, the Assistant Inspector General for Investigations, the Assistant Inspector General for Audits, their deputies, and the counsel to the Inspector General, along with many others, all criticize Mr. Krongard or his performance. And a long list of top officials, including an Assistant Inspector General for Investigations, a Deputy Assistant Inspector General for Investigations, a Deputy Assistant Inspector General for Audits, the head of the Office for Information Technology Valuations, and a counsel to the Inspector General have all resigned since Mr. Krongard became Inspector General in 2005. As one current senior official told us, "Joining Mr. Krongard's office was the worst mistake of my life."

Now, I know that the Republicans on this committee take a different view on this matter. Today's hearing and Mr. Krongard's testimony will help us sort through the facts. I think we all understand the preeminent role the State Department now has in Iraq. The Department has to be operating on all cylinders if we have any hope of achieving real and lasting political reconciliation in Iraq. Countless lives and billions of dollars are at stake. There is no margin for error. That underscores why Mr. Krongard's office is so essential, why it needs to meet the highest standards and why this hearing is so important.

I want to now recognize Mr. Shays, who is sitting in for Mr. Tom Davis, the ranking member of the committee, and is acting on his behalf, and I want to yield him time for his statement.

[The prepared statement of Chairman Henry A. Waxman follows:]

Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
Hearing on Assessing the State Department Inspector General
November 14, 2007

This year our Committee has given a special focus to two areas: finding waste, fraud, and abuse and examining how to make government effective again.

Today's hearing on the performance of Howard Krongard, the State Department's Inspector General, bridges both of those fundamental issues.

The origins of this hearing begin with the Committee's oversight of the State Department's actions in Iraq. As we examined the construction of the new Baghdad Embassy, the oversight of Blackwater, and corruption in the Iraqi government, seven current and former officials in the Inspector General's office expressed concerns about Mr. Krongard's own oversight of the State Department. These officials — and others who spoke with the Committee during our investigation — raised fundamental questions about Mr. Krongard's judgment, actions, and effectiveness.

They described their serious concern about his inadequate oversight of the construction of the Baghdad Embassy, his failure to assist a Justice Department investigation of Blackwater for arms smuggling, his refusal to pursue charges of procurement fraud implicating DynCorp, his intervention in the investigation of Kenneth Tomlinson, and his lack of independence in auditing the State Department's financial statements. The Committee was told that due to Mr. Krongard's abusive management style, the Office of the Inspector General is "bleeding people right and left."

What these officials told the Committee is summarized in a staff report I am releasing today, and without objection it will be made part of the record.

One of Mr. Krongard's key responsibilities is providing oversight for the State Department's construction of the new Baghdad Embassy. In a previous hearing, we learned that the project will cost $144 million more than projected, is far behind schedule, and has potentially life-threatening construction deficiencies.

There are also allegations that the building's contractor, First Kuwaiti, was involved in labor trafficking. When Mr. Krongard heard that his staff might investigate this issue, he sent them an e-mail that said, as one official described it, "cease and desist all work, I'm taking care of this."

Mr. Krongard conducted his own personal and unprecedented investigation of the potential scandal. According to Mr. Krongard, he interviewed six employees who had been handpicked by First Kuwaiti. He questioned them without a translator present and took virtually no notes. Mr. Krongard then concluded that there was no evidence that First Kuwaiti had committed human rights violations.

The reaction of Mr. Krongard's senior staff to his investigation is remarkable. Mr. Krongard's deputy said the effort was "unorthodox," "didn't comply with any standards," and was "the furthest thing from an investigation." Another official warned that Mr. Krongard's investigation ran the risk of inadvertently ruining a future prosecution.

The former head of Mr. Krongard's audit division told us that the "report would never pass muster in my organization and in any IG investigation that I have ever worked in." She also said, "it's an embarrassment to the community." A special agent was even more blunt, calling Mr. Krongard's report "an affront…to our profession."

Given the strong condemnations from the professional staff in the Inspector General's office, this incident alone would justify today's hearing. Unfortunately, it is not an isolated incident. In fact, I don't believe it is even the most serious allegation raised against Mr. Krongard.

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Shortly after that, Mr. Krongard insisted on meeting with another potential suspect during a trip to Iraq. This time his senior staff not only advised him to cancel the meeting, but asked the Justice Department to instruct Mr. Krongard not to conduct haphazard witness interviews. Despite the additional warning from the Justice Department, Mr. Krongard met with the individual.

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None of these actions makes any sense. When the Justice Department asked for cooperation, Mr. Krongard refused. When they warned him that his freelance investigation could jeopardize potential prosecutions, he ignored that. When his own staff tried to advise him on proper investigative procedures, he ignored them. If the reports the Committee has received from the Justice Department and the Inspector General's senior staff are accurate, Mr. Krongard has acted with reckless incompetence.

And the questions about Mr. Krongard's performance aren't limited to the Baghdad Embassy. The Justice Department sought Mr. Krongard's cooperation as it investigated reports that a large private security contractor was smuggling weapons into Iraq. Instead of cooperating, Mr. Krongard apparently created a series of obstacles to the inquiry.

One of Mr. Krongard's aides told our Committee that "there was absolutely no justifiable investigative, management…or any kind of reason for us to stop that investigation."

The Justice Department shares that view, and told the Committee:

> At this juncture, we cannot determine all of the ramifications of the IG's conduct, but some of his actions have certainly impacted the investigation. For reasons that remain unclear, the line IG agents … have been forced to funnel requests within their own agency through a congressional and public relations official. This is not the

usual practice. The Inspector General also issued a statement, without advance coordination with Department attorneys, confirming the existence of this investigation, which is inconsistent with our law enforcement interests.

The Justice Department has advised us that Mr. Krongard's actions resulted in "a cumbersome and time-consuming investigative process" and "added multiple layers to our investigative efforts." As of last Friday, the Justice Department still had not received the State Department materials it requested.

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It is a staggering list of allegations from Mr. Krongard's own staff. In Committee interviews and depositions, the Deputy Inspector General, the Assistant Inspector General for Investigations, the Assistant Inspector General for Audits, their deputies, and the Counsel to the Inspector General — along with many others — all criticized Mr. Krongard or his performance.

And a long list of top officials — including an Assistant Inspector General for Investigations, a Deputy Assistant Inspector General for Investigations, a Deputy Assistant Inspector General for Audits, the head of the Office for Information Technology, and a Counsel to the Inspector General — have resigned since Mr. Krongard became Inspector General in 2005.

As one current senior official told us, joining Mr. Krongard's office was the "worst mistake of my life."

I know the Ranking Member takes a different view on this matter. Today's hearing —and Mr. Krongard's testimony — will help us sort through the facts.

I think we all understand the pre-eminent role the State Department now has in Iraq. The Department has to be operating on all cylinders if we have any hope of achieving real and lasting political reconciliation in Iraq. Countless lives and billions of dollars are at stake. There's no margin for error.

That underscores why Mr. Krongard's office is so essential, why it needs to meet the highest standards, and why this hearing is so important.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. Krongard, welcome to Congress. I just want to say, before I read my statement, you have been trashed by this committee. They sent a 14 page letter to you and released it to the press. All were accusations and allegations, and now you have a time to respond. Regretfully, there aren't as many Members on our side of the aisle here yet, but I am sure this committee will be fair to you, and I want you to take every one of those allegations and deal with them as you will.

Here we go again: oversight by accusation and personal attack. Today, the committee is not assessing the State Department Inspector General, as advertised. We will not be conducting an evidence-based appraisal of Inspector General [IG], Howard Krongard or the office he runs. Instead, we will ask to focus on a litany of salacious allegations in the futile hope loud repetition will do what exhaustive investigation so far has not: confer legitimacy on unproven conclusions. It is another sad example of the majority's high-profile, low-proof approach to oversight that yields far more rancor than reform.

This so-called investigation also confirms an unfortunate penchant by the committee to leap to politically convenient conclusions before looking carefully at witnesses who happen to be saying what the majority wants to hear. One whistle-blower at a previous hearing turned out to have a past so checkered his motives and veracity were highly suspect. But easily discoverable evidence undermining his credibility was overlooked in the committee's unseemly haste to advance its anti-administration narrative.

Here, again, information from several whistle-blowers forms the basis of the chairman's charges that the State IG interfered with ongoing investigations out of political loyalty to the State Department and the White House, censored damaging inspection and audit reports, and prevented investigations into allegations of wrongdoing in Iraq and Afghanistan.

But in responding to questions on the record after those allegations had been made public, not one of the so-called whistle-blowers had any direct evidence to support claims of political manipulation. Nor did they provide information to substantiate the alleged dereliction of duty by the IG. They disagreed with the IG's judgment, but that alone does not make those judgments wrong or corrupt. One whistle-blower said his conclusions about Mr. Krongard's political leanings was nothing more than a hunch.

It is telling none of those whistle-blowers will testify today. Their absence speaks volumes about the lack of substance behind this investigation, but their response to specific questions about the chairman's charges are contained in a Republican staff report being released today. That report attempts to bring some balance to this discussion of how the State Department Office of Inspector General operates under Mr. Krongard. I ask that be made part of the hearing record today.

Chairman WAXMAN. Without objection, that will be the order.

[The information referred to follows:]

Governing by Accusation: The Committee's Assault on the State Department Inspector General

Staff Report
U.S. House of Representatives
110th Congress
Committee on Oversight and Government Reform

Tom Davis, Ranking Member
November 14, 2007

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On November 14, 2007 at 10:00 a.m., the Committee will hold a hearing entitled, "Assessing Whistle Blower Allegations Against the State Department Inspector General." The hearing is part of an investigation Chairman Waxman initiated in response to whistleblower allegations against State Department Inspector General Howard Krongard by seven current and former employees of the Office of Inspector General.[1] On September 18, 2007, the Chairman wrote to Krongard outlining "allegations involving [his] conduct as Inspector General of the State Department."[2] The Chairman "invited" the Inspector General to address the allegations in the September 18 letter at the Committee hearing.[3]

I. Executive Summary

The Committee's investigation into the management of the State Department's Office of Inspector General ("OIG") has descended to governing by personal attack. Chairman Waxman's September 18 letter made multiple allegations of wrongdoing against the State Department Inspector General Howard Krongard. These allegations, unsubstantiated at the time, remain unsubstantiated even after interviewing or deposing on the record 13 current and former State Department OIG employees, including employees whose initial allegations formed the basis for the Chairman's September 18 letter. Even they were unable to substantiate, or even direct the Committee to evidence that would support, their claims, other than that the State Department IG had an abrasive and abusive personality.

The Majority's expenditure of time and taxpayer funds proving that the State Department IG is abrasive and abusive is itself an abuse of the Committee's authority. Concerns about the direction and management of the State Department's OIG could have been addressed calmly and professionally. For example, the President's Council on Integrity and Efficiency often conducts investigations of allegations of mismanagement or misconduct by inspectors general.

Instead, these issues were aired publicly with highly charged personal attacks against the IG for which there was no evidence, other than the unsupported allegations of current and former employees. These attacks and the ensuing investigation have sapped the morale of the already demoralized State Department OIG, belying the Majority's alleged desire for the State Department's OIG to be more aggressive in investigating waste, fraud, and abuse. Under attack by this Committee, including a direction from the Chairman that senior staff not speak with any staff called as a witness by the Committee, the OIG has even less capacity to do its job.

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[1] Letter from Rep. Henry A. Waxman, Chairman, H. Comm. on Oversight and Gov't Reform (Oversight Comm.) to U.S. Dep't of State (State Dep't) Inspector General Howard J. Krongard (Sept. 18, 2007) [hereinafter Waxman Letter, Sept. 18, 2007]; Transcribed Interview of State Dep't Office of Inspector General Assistant Special Agent in Charge for Investigations Brian Rubendall by Oversight Comm. Staff, in Wash., D.C. (Oct. 11, 2007) at 19.
[2] *Id.* at 1.
[3] *Id.* at 2.

The Majority has simply fabricated the claim that the State Department IG believed his "foremost mission [was] to support the Bush Administration . . . rather than act as an independent and objective check on waste fraud and abuse of U.S. taxpayers." Nor is there any evidence that he had a "strong affinity with State Department leadership" or had "partisan political ties" that would suggest any motive to protect the Department.

Witness after witness denied any first-hand knowledge of any evidence of such connections. One witness called it a "hunch." If these whistleblowers told the Majority before the September 18 letter that there was such motivation, they quickly recanted when they were questioned about it in their interviews or depositions. Not one of them could identify a shred of evidence linking the IG to the White House or the leadership of the State Department. Some admitted that they knew there was no connection.

Even if underlying claims regarding the way investigations were handled were true, these allegations of improper motives were and are outrageous abuses of the Committee's prestige. This Committee should be known for the credibility of its investigations, not the credulousness of the Majority whenever witnesses appear who say what the Majority wants to hear. The failure to conduct even a modicum of inquiry into the allegations has resulted in these wild attacks that garner headlines but then evaporate under even a cursory examination.

Even accusations regarding the IG's involvement in specific investigations could have been examined without the wild public accusations contained in the Chairman's September 18 letter. The letter is filled with bogus accusations that the State Department OIG failed to investigate matters in Iraq and Afghanistan. These accusations reflect a willful disregard of the budget and capabilities of the State Department OIG and the multiple other investigative bodies conducting the very same investigations: the Special Inspector General for Iraq Reconstruction, the Multinational Force - Iraq Inspector General, the Government Accountability Office, the FBI, and even the State Department's own Bureau of Diplomatic Security, to name a few. It is like accusing the Metropolitan Police Department of not investigating the theft of millions of dollars from the District of Columbia Office of Tax and Revenue. The FBI handled it. It did not require interviewing or deposing 13 witnesses and several hearings on State Department OIG matters to learn this.

The public can and should justly wonder at the purpose of the Majority's sensational charges. It is irresponsible for the Committee to make charges that it cannot support. It is even more irresponsible for the Committee to fabricate claims of partisan political or other corrupt motives and ascribe them to political appointees.

It is not enough to say that whistleblowers raised questions the Committee should examine. Such an examination need not include public and personal accusations that do great injury to the reputation and morale of the State Department OIG and inhibit its ability to carry out its work. The public has a right to responsible investigations, not just efforts to get headlines in pursuit of partisan political objectives.

The Majority recognizes the hallmark of inspectors general is their independence. That independence gives them credibility. The Majority, however, fails to recognize that an inspector general must also be independent from the partisan political agenda of the majority in Congress. Wearing the sheep's clothing of good government, the Majority seeks to co-opt agencies into doing their bidding. This is Congress's version of politicizing the agencies.

II. The Attack on the Inspector General

On September 18, 2007, Committee Chairman Henry A. Waxman wrote an 18 page letter to State Department Inspector General Howard J. Krongard concerning "allegations involving your conduct as Inspector General of the State Department."[4] The letter attacks Krongard personally, using the words "you" or "your" 136 times. It is also, in some places, condescending and patronizing, and reflects premature judgments of unsubstantiated allegations.[5] Concurrent with the letter the Majority initiated a media blitz[6] haranguing the Inspector General.[7]

Relying heavily, if not exclusively, on otherwise unsupported allegations by seven whistleblowers the Majority's conclusory claims included: "[Y]ou believe your foremost mission is to support the Bush Administration . . . rather than act as an independent and objective check on waste, fraud, and abuse on behalf of U.S. taxpayers."[8] The letter further alleges "[Y]our strong affinity with State Department leadership and your partisan political ties have led you to halt investigations, censor reports, and refuse to cooperate with law enforcement agencies."[9] Finally, it was alleged: "You routinely berate and belittle personnel, show contempt for the abilities of career government professionals, and cause your staff to fear coming to work."[10]

The Chairman's letter can be categorized as follows:

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[4] *Id.* at 1.

[5] *See, e.g.*, "If you have a personal conflict of interest, the appropriate response would be to recuse yourself, not to shut down any investigation by your staff." Waxman Letter, Sept. 18 at 6.

[6] Oversight Comm., Questions Raised about the Conduct of the State Dep't Inspector General (IG), Sept. 18, 2007, http://oversight.house.gov/story.asp?ID=1482 (last visited Nov. 11, 2007).

[7] *See, e.g.*, David Stout, *Democrat Opens Inquiry Into Whether State Dept. Official Impeded Investigations*, N.Y. TIMES, Sept. 19, 2007, at A10; Glenn Kessler and Karen DeYoung, *State IG Accused of Averting Probes*, WASH. POST, Sept. 19, 2007, at A21; Neil King, Jr., *House Committee Sets Probe Over Contracting*, WALL STREET JOURNAL, Sept. 19, 2007, at A12; Lolita C. Baldor, *State Dep't IG Target of Congressional Probe*, AP, Sept. 18, 2007; UPI, *Waxman: State IG Blocked Iraq Probes*, UPI, Sept. 18, 2007; Wolf Blitzer, Ed Henry et al., *State Dep't's IG Accused of Blocking Embarrassing Investigations*, CNN, Show: The Situation Room, 5:00 PM EDT, Sept. 18, 2007.

[8] Waxman Letter, Sept. 18 at 1.

[9] *Id.* at 1-2.

[10] *Id.* at 2.

1. **Partisan Republican Motivations:**

   You believe your foremost mission is to support the Bush Administration . . . rather than act as an independent and objective check on waste, fraud, and abuse on behalf of U.S. taxpayers.[11]

2. **Too Close to State Dep't Leadership:**

   Your strong affinity with State Department leadership and your partisan political ties have led you to halt investigations, censor reports, and refuse to cooperate with law enforcement agencies.[12]

3. **Abrasive Management Style:**

   You routinely berate and belittle personnel, show contempt for the abilities of career government professionals, and cause your staff to fear coming to work.[13]

4. **The Travel Charge:**

   Although the State Department has expended over $3.6 billion on contracts in Iraq and Afghanistan, you refused to send any investigators to those countries to pursue investigations into wasteful spending or procurement fraud and have concluded no fraud investigations relating to the contracts.[14]

5. **New Embassy Compound (NEC) Matter:**

   You prevented your investigators from cooperating with a Justice Department investigation into waste, fraud, and abuse relating to the new U.S. Embassy in Iraq and followed highly irregular procedures in exonerating the prime contractor, First Kuwaiti Trading Company, of charges of labor trafficking.[15]

6. **Counterfeit Computers Matter:**

   You prevented your investigators from seizing evidence that they believed would have implicated a large State Department contractor in procurement fraud in Afghanistan.[16]

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[11] *Id.*
[12] *Id.* at 1-2.
[13] *Id.* at 2.
[14] *Id.*
[15] *Id.*
[16] *Id.*

7. **Weapons Smuggling Matter:**

   You impeded efforts by your investigators to cooperate with a Justice Department probe into allegations that a large private security contractor was smuggling weapons into Iraq.[17]

8. **The Karl Rove Charge:**

   You interfered with an on-going investigation into the conduct of Kenneth Tomlinson, the head of Voice of America and a close associate of Karl Rove, by passing information about the inquiry to Mr. Tomlinson.[18]

9. **Censorship of Inspection Reports:**

   You censored portions of inspection reports on embassies so that critical information on security vulnerabilities was dropped from classified annexes and not disclosed to Congress.[19]

10. **Financial Statement Audit:**

    You rejected audits of the State Department's financial statements that documented accounting concerns and refused to publish them until points critical of the Department had been removed.[20]

11. **Refusal to Produce Documents**

    On November 1, 2007, the Counsel's Office notified Committee staff that the Inspector General had refused to produce certain documents requested by the Committee because they purportedly related to ongoing investigations.

III. Findings

Partisan Republican Motivations

- No witness provided any first-hand evidence to support the allegation that the IG's foremost mission is to support the Bush Administration. The IG does not have a political background, has never met or spoken to the President, or any other person in the White House, and has never even been inside of the White House (except as a tourist). The IG has never contributed any money to President

[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*

Bush. To the contrary, the IG is a career audit professional, having served for more than twenty years with the now-Big Four accounting firms. Ironically, the IG is the prototypical candidate called for by then-Ranking Member Waxman in a January 2005 staff report observing the lack of audit experience among inspectors general.

Too Close to State Department Leadership

- No witness provided any first-hand evidence to support the allegation the IG has a "strong affinity" for the State Department's top brass. Among the whistleblowers, opinions abound. One said, "I have no proof. I want to make that clear it is just my opinion." Another observed, "That was our perception, rightly or wrongly." A former agency employee thought he was motivated by the glamour of being with Condoleezza Rice. Furthermore, there is no evidence to support the charge the IG weakened reports that were harsh on the State Department. To the contrary, the Committee heard testimony the IG strengthened reports, making them tougher on the agency and the Administration.

Abrasive Management Style

- The record shows the IG employs an extraordinarily abrasive management style. The testimony reveals the IG as a difficult individual to work for. Witnesses observed: "It's just common knowledge he yells and screams and gets loud and gets abusive;" he is a self-proclaimed "equal-opportunity abuser;" "it was common knowledge not to speak in the staff meetings because he was very heavy handed;" the IG would ask if you "were smoking dope;" and even attempted to have one employee, who was later asked to leave the organization, execute affidavits "saying you basically knowingly deceived" him. One witness described this incident as a "drive by shooting."

The Travel Charge

- The testimony shows OIG's investigations division was not well-suited for complex acquisition-related investigations involving travel to Iraq and Afghanistan. The IG's alleged failure to send investigators to Iraq and Afghanistan was **more** a function of having the right types of investigators, rather than a question of whether there ought to be an investigation. The testimony shows only one OIG investigator was, at the time, willing to travel to Iraq. Moreover, early in his tenure the IG established a policy whereby investigative matters in Iraq would be handled by better-equipped agencies. The record shows numerous agencies were examining the allegations raised by the Chairman. Agencies such as the Special Inspector General for Iraq Reconstruction, the State Department's Bureau of Diplomatic Security, the Inspector General for Multi-national Force – Iraq, the Department of Defense Inspector General, among others were involved in substantial oversight activities in Iraq and Afghanistan.

New Embassy Compound Matter

- The evidence shows the IG did not impede efforts by the Justice Department to pursue False Claims Act and Qui Tam actions relating to the new embassy compound in Iraq. The testimony shows 10-12 different entities were pursuing allegations relating to the new embassy. According to the witnesses, the IG did not impede the Justice Department's efforts to recover taxpayer dollars through civil proceedings. Rather, the IG insisted that he be informed of what his organization was responsible for providing to the Justice Department. The witnesses explained how the IG became frustrated with the investigative staff's unwillingness to brief him.

- The charge the IG used irregular procedures in preparing an investigative report exonerating First Kuwaiti is a straw man. The IG did not conduct an investigation, audit, or inspection. He merely surveyed the scene, determined the allegations needed to be examined more closely, and documented his findings in a memorandum. Former Deputy Assistant Inspector General for Audits Patti Boyd did not disagree.

Counterfeit Computers Matter

- The allegation claiming the IG thwarted the easy pick-up of counterfeit computers in Afghanistan is misplaced. The computers were located in multiple locations throughout a very dangerous country. As the whistleblowers would have it, retrieving the computers was as easy as renting a "U-Haul" in Afghanistan and driving around to retrieve them. The testimony shows the IG was concerned for lives of his personnel. Before travel to Afghanistan was to be approved, the IG insisted on a safe and responsible plan of action.

Weapons Smuggling Matter

- No evidence provided to the Committee lends credible support to the claim the IG delayed a Justice Department probe into weapons smuggling. It is alleged that the IG's request for a briefing by the Justice Department concerning the resource requirements needed for the investigation caused delay. Quite to the contrary, it was the Justice Department's delay that caused the case to be put on hold for two or three weeks.

The Karl Rove Charge

- The IG was accused of sharing confidential investigative information with Karl Rove confidant and subject of an OIG investigation Kenneth Tomlinson. The IG's office faxed a congressional request letter to Tomlinson. Attached to the letter were the charges from a confidential whistleblower. The line investigator maintains the investigation was compromised by the IG's actions. No testimony

or other evidence provided to the Committee shows the accidental faxing of the letter affected the outcome of the investigation.

Censorship of Inspection Reports

- No witness provided information that the IG censored inspection reports.

Financial Statement Audit

- The testimony shows the IG and his senior staff had professional differences about how the State Department's financial statements were presented. The witnesses told the Committee about the technical arguments and differences the IG had with the staff. Essentially, the IG wanted the outside auditors to be given an extension to ensure the audited financial statements were as accurate as possible. The senior staff disagreed, desiring to document the qualifications, and move on. Both courses of action occur transparently to the user of the financial statements. Ultimately, the IG acquired the blessing of two prominent accounting and financial information system authorities – one from the Office of Management and Budget and one from the Government Accountability Office. No testimony suggests this internal professional disagreement relates to the IG's desire to remove information critical to the agency from the agency's financial statements. Such a claim belies even a rudimentary understanding of financial accounting.

Refusal to Produce Documents

- The IG has recused himself from the document production. Accordingly, the IG has not refused to produce anything. This claim is demonstrably false.

IV. Background

A. The Investigation

The Committee conducted interviews or depositions of 13 present or former officials from the Office of Inspector General:[21]

- Deputy Inspector General William Todd
- Acting Counsel Erich Hart
- Assistant Inspector General for Inspections Robert Peterson
- Assistant Inspector General for Audits Mark Duda
- Former Deputy Assistant Inspector General for Audits Patti Boyd
- Senior Auditor Gayle Voshell
- Former Assistant Inspector General for Investigations John DeDona
- Former Deputy Assistant Inspector General for Investigations Ralph McNamara
- Assistant Special Agent in Charge for the Office of Investigations Brian Rubendall
- Special Agent for Investigations Ronald Militana
- Special Agent for Investigations Peter Lubeck
- Director of Congressional and Public Affairs Terry Heide
- Budget Officer Elizabeth Koniuszkow

[21] Deposition of State Dep't Office of Inspector General (OIG) Assistant Inspector General for Audits Mark Duda by Oversight Comm. Staff, in Wash., D.C. (Sept. 26, 2007) [hereinafter Duda Deposition]; Deposition of State Dep't OIG Assistant Inspector General for Inspections Robert Peterson by Oversight Comm. Staff, in Wash., D.C. (Sept. 27, 2007) [hereinafter Peterson Deposition]; Telephonic Deposition of State Dep't OIG Acting Counsel Erich Hart by Oversight Comm. Staff, in Wash., D.C. and Kabul, Afghanistan (Oct. 3, 2007) [hereinafter Hart Telephonic Deposition]; Transcribed Interview of State Dep't OIG Special Agent Peter Lubeck by Oversight Comm. Staff, in Wash., D.C. (Oct. 4, 2007) [hereinafter Lubeck Interview]; Deposition of State Dep't OIG Senior Auditor Gayle Voshell by Oversight Comm. Staff, in Wash., D.C. (Oct. 5, 2007) [hereinafter Voshell Deposition]; Transcribed Interview of State Dep't OIG former Deputy Assistant Inspector General for Investigations Ralph McNamara by Oversight Comm. Staff, in Wash., D.C. (Oct. 5, 2007) [hereinafter McNamara Interview]; Transcribed Interview of State Dep't OIG former Assistant Inspector General for Investigations John DeDona by Oversight Comm. Staff, in Wash., D.C. (Oct. 9, 2007) [hereinafter DeDona Transcribed Interview]; Transcribed Interview of State Dep't OIG Special Agent Ronald Militana by Oversight Comm. Staff, in Wash., D.C. (Oct. 10-11, 2007) [hereinafter Militana Transcribed Interview]; Transcribed Interview of State Dep't OIG Assistant Special Agent in Charge for Investigations Brian Rubendall by Oversight Comm. Staff, in Wash., D.C. (Oct. 11, 2007) [hereinafter Rubendall Transcribed Interview]; Deposition of State Dep't OIG Deputy Inspector General William Todd by Oversight Comm. Staff, in Wash., D.C. (Oct. 12, 2007) [hereinafter Todd Deposition]; Transcribed Interview of State Dep't OIG former Deputy Assistant Inspector General Patti Boyd by Oversight Comm. Staff, in Wash., D.C. (Oct. 23, 2007) [hereinafter Boyd Transcribed Interview]; Deposition of State Dep't OIG Budget Officer Elizabeth Koniuszkow by Oversight Comm. Staff, in Wash., D.C. (Nov. 2, 2007) [hereinafter Koniuszkow Deposition]; Deposition of State Dep't OIG Director of Legislative and Public Affairs Terry Heide by Oversight Comm. Staff, in Wash., D.C. (Nov. 8, 2007) [hereinafter Heide Deposition].

The Committee also propounded broad document requests. OIG produced 10,977 pages of materials covering a wide range of topics. These materials include:

- Documents relating to staffing levels;
- Internal and external audits and reports;
- Travel requests submitted by investigations personnel;
- Travel documents relating to trips by the Inspector General;
- Communications with the IG regarding inspection reports, audits of the State Department's financial statements, and investigations relating to Iraq or Afghanistan; and
- Documents relating to the Karl Rove Charge – the investigation of Kenneth Tomlinson of the Broadcasting Board of Governors.

Pursuant to Department of Justice directive, OIG has stated that it is unable to produce materials responsive to document requests concerning open investigations.[22] Unimpressed, on November 7 Mr. Waxman issued a subpoena for the documents relating to the open investigations.[23]

Some of the subpoenaed documents may have been produced by the whistleblowers. The September 18 letter includes references to some of these documents. Documents believed to have been supplied by the whistleblowers have been used at depositions. One whistleblower, Special Agent Ron Militana, brought a large document collection to his interview. Included in his materials were documents relating to a number of investigations, including those involving the embassy construction, the weapons smuggling charges, and other matters described in the September 18 letter. As of November 13, the Majority has not shared the documents produced to the Committee by the whistleblowers.[24]

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[22] E-mail from Karen Holcomb Outz to [Comm. Staff] on Nov. 7, 2007 11:57 AM.

[23] Subpoena by Oversight Comm. Chairman Waxman to State Dep't IG Howard Krongard, Nov. 8, 2007.

[24] The Minority has raised concerns with the Majority about their practice to withhold documents and other foundational information relating to the Committee's investigative function. Exhibits used at interviews and depositions have included documents obtained by the Majority, and kept from the Minority until they were made part of the record at the interview or deposition. Such late production, allows the Minority little time to fully understand the significance and meaning of the documents.

The Minority staff was not invited to participate in the due diligence phase leading up to the September 18 letter to the Inspector General. According to the September 18 letter, the Majority met with seven whistleblowers. The whistleblowers gave the Committee documents to support their charges. Some of these documents were cited in the September 18 letter. None have been produced to the Minority. Instances like this demonstrate that the Minority has not had an opportunity to participate meaningfully in all phases of this investigation.

As a result, the Minority is concerned the Majority may not have exercised sufficient, if any, due diligence before making wildly unsupportable accusations. Testimony taken by the Committee concerning some of the most prominent allegations, such as whether the IG was acting to protect the Bush Administration and senior State Department leadership, did not lend any support to the serious allegations raised by the Majority. Consequently, the Minority is concerned about whether the Majority vetted any of the information provided by the whistleblower witnesses.

B. The Whistleblowers

The original claims by the whistleblowers have not been substantiated and should not have been relied upon. The Majority has some recent history of relying on questionable whistleblowers. According to the *Wall Street Journal*, one of the Committee's witnesses at the July 26, 2007 hearing concerning "Allegations of Waste, Fraud, and Abuse at the New U.S. Embassy in Iraq" was tarnished. Rory Mayberry, "a 45-year-old medic-turned-whistleblower," was called by the Committee to testify about allegations the new Iraq embassy was being built by "kidnapped" workers from the Philippines.[25] Extensive police and court records, however, show Mayberry has a string of convictions going back to the mid-1980s. Mayberry's legal troubles are not in the too distant past. In 2004, for example, according to the paper, Mayberry was fined $4,000 for working as an embalmer without a license in the state of Oregon. Mayberry, who provided testimony against his employer (albeit only for five days) First Kuwaiti, was fired for want of proper qualifications.[26] In its story the *Wall Street Journal* posited the following question: "Did Rep. Henry Waxman, committee chairman, have any idea who Mayberry was when he asked him to testify before his oversight panel?"[27]

The September 18 letter says the Majority has heard from a total of seven purported whistleblowers. Two were named in that letter: former Assistant Inspector General for Investigations John DeDona and former Deputy Assistant Inspector General for Investigations Ralph McNamara.[28] A subsequent letter from the Chairman, on September 28 identifies two additional whistleblowers – also from the Investigations division – Assistant Special Agent in Charge Brian Rubendall and Special Agent Ronald Militana.[29] Special Agent Peter Lubeck identified himself as a whistleblower – the fifth so identified – during the course of a transcribed interview.[30] According to Rubendall there were a total of seven whistleblowers. He told Committee staff:

> After [meeting with Director of Legislative and Public Affairs] Terry Heide . . . Ron and I decided it was time that we had to let Bill Todd, the Deputy IG, know that we were two of the seven who had initially contacted the committee about these issues.[31]

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[25] Neil King, Jr., *Tarnished Witness in Iraqi Kidnapped-Labor Allegations*, WALL ST. JOURNAL, Wash. Wire, Sept. 21, 2007. (available online at http://blogs.wsj.com/washwire/?s=Rory+Mayberry).
[26] *Id.*
[27] *Id.*
[28] Waxman Letter, Sept. 18, 2007 at 1.
[29] Letter from Oversight Comm. Chairman Henry A. Waxman to State Dep't IG Howard J. Krongard (Sept. 28, 2007) at 1.
[30] Lubeck Interview at 15.
[31] Rubendall Interview at 19.

Rubendall told Committee staff how he and Militana contemplated being named in the September 18 kick-off letter:

> Q The September 18th letter from the committee to [the IG], the big letter that kicked off this investigation, I guess you were glad that you weren't named in that letter, as Mr. DeDona and Mr. McNamara were?
>
> A Well, actually, we had discussed that possibility, and actually Mr. Militana and I had decided that we would prefer not to be, at that time.[32]

1. Bias

During the interviews there was discussion about whether any of the whistleblowers might maintain a vendetta against the Inspector General. Rubendall conceded to Committee staff, indeed DeDona and McNamara might have cause to be disgruntled because they had been forced to resign.

> Q Are you aware of anything about Mr. DeDona that might leave him to have a . . . be biased against [the IG]?
>
> A **Well, there is the fact that he had to take a two grade downgrade to leave our office and was pretty much, as I understand it, told that he didn't have any choice by [the IG] in that regard.** So certainly that would be a factor, obviously.[33]
>
> * * *
>
> Q How about Mr. McNamara?
>
> A Kind of the same thing I would say about Mr. DeDona. He took a two grade downgrade to leave our office. **The way basically, as I understand it, he was told by [the IG] he didn't have any choice about it, that he had to go. You could say there is a motivation for coming forward.** Mr. McNamara was a little more enthusiastic about this process than Mr. DeDona was . . . .[34]

Bob Peterson testified to this fact as well:

> Q Are you aware of any . . . given some of the person[ne]l problems that may have resulted due to [the IG's] management

[32] *Id.* at 66.
[33] *Id.* at 180 (emphasis supplied).
[34] *Id.* at 183 (emphasis supplied).

style, do you have any reason to believe that people might be out to prosecute a personal vendetta against him?

A I think he has created an environment that that would be more likely, yes.[35]

Both DeDona and McNamara resigned from OIG. They have not contested the circumstances surrounding their departure.

2. Militana's Documents

Some of the whistleblowers brought documents to their interview. Special Agent Militana brought his office files relating to a number of on going Iraq-related investigations – including materials relating to DynCorp, First Kuwaiti, Blackwater, Berger Group, as well as the hotline files relating to the NEC.[36] He was asked to describe the materials he brought to the Committee.

The breadth of information Militana brought with him to his interview raises the question of whether he has supplied the Majority with law enforcement-sensitive information concerning on-going Justice Department investigations. On October 24, 2007, the Justice Department wrote the Chairman to advise of the Department's "concerns regarding the disclosure of information covered by the court's seal in connection with a pending law enforcement investigation."[37] The sensitivity concerns are substantial considering the breadth of law enforcement activity relating to the allegations raised in the September 18 letter (and the investigations were well under way prior to the letter). The Majority is, apparently, concerned only when **others** interfere with criminal investigations.

C. Office of Inspector General

The State Department Office of Inspector General (OIG) was established by 1986 legislation which amended the Inspector General Act of 1978.[38] The 1986 legislation created an independent office within the Department of State (State or the Department) with a mission to prevent and detect waste, fraud, abuse, and mismanagement, and to improve the efficiency, effectiveness, economy, integrity, and accountability of the Department. The original 1978 legislation created independent and objective Offices of Inspectors General to conduct and supervise audits and investigations.[39] The Office of Inspector General provides oversight of the State Department, the Broadcasting Board of

[35] Peterson Deposition at 118.
[36] Militana Interview at 47-49.
[37] Letter from U.S. Dep't of Justice Principal Deputy Assistant Attorney General Brian A. Benczkowski to Oversight Comm. Chairman Henry A. Waxman (Oct. 24, 2007).
[38] Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, Title IV, § 413, 100 Stat. 853, 867-68 (Aug. 27, 1986); Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (Oct. 12, 1978), codified as amended at 5 U.S.C. App.
[39] Gov't Accountability Office (GAO), Activities of the Dep't of State OIG, GAO-07-138, Mar. 2007, at 1 [hereinafter GAO Report].

Governors, and the foreign affairs community through audits, inspections, and investigations.[40]

Inspections-oriented IG

According to GAO, the OIG provides oversight coverage of the department primarily through a combination of audits and inspections, with a heavier emphasis on inspections.[41]

The Office of Inspections provides the Department and Congress with evaluations of the operations of the agency, its posts abroad, and related activities.[42] OIG schedules an inspection of each post and bureau within a five-year cycle in accordance with the Foreign Service Act of 1980. The Office of Audits conducts and coordinates audits and program evaluations of the management and financial operations of the Department.[43] These audits include performance and financial audits of internal operations as well as financially related audits of external activities funded by the Department through contracts or financial assistance, such as loans, grants, and cooperative agreements.[44]

There are fundamental differences between inspections and audits. Audits are more detailed and require heightened evidence to support findings and conclusions.[45]

Assistant IG for Audits Mark Duda was asked to explain the difference:

> Q What's the difference between an audit and an inspection? Let me give a little bit of what my understanding is. As I understood it, at least in GAO speak, an inspection would be something that was a lot less comprehensive. . . . . whereas an audit would be something that is more detailed and comprehensive. Is that so?
>
> A Yes, that's accurate. An inspection is a high level broad brush, so to speak, high level review of operations, programs and so forth. It's typically a quicker turn around time. Many times you have a multidisciplined team that works on it. An audit, on the other hand, is something that is more detailed, a specific issue, usually can take a lot longer. You are going into a lot of documentation, you are doing actual testing, you are following the yellow book. Inspections is following what they call a blue book, standards for inspections.
>
> Q Right.

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[40] *Id.*
[41] *Id.* at 16.
[42] State Dep't OIG, Office of Inspections, http://oig.state.gov/isp/ (last visited Nov. 11, 2007).
[43] State Dep't OIG, Office of Audits, http://oig.state.gov/audits/ (last visited Nov. 11, 2007).
[44] *Id.*
[45] GAO Report at 19.

A An inspection is a mile wide, and an audit is a mile deep.[46]

In a November 8 letter to Rep. Delahunt, the IG has explained what occurs during the course of an inspection:

> Inspections are performed by teams led by a former Ambassador. A team would typically consist of experts or specialists in political/economic, public diplomacy, consular, management, information technology, security, and intelligence/law enforcement. . . . a typical team will consist of around 10-12 members and will be at the embassy for six to eight weeks following four or five weeks of preliminary work doing interviews, surveys and questionnaires and preceding another four to six weeks or more finalizing a report.[47]

The inspections function dates to 1906 when Congress created a corps to inspect U.S. consulates at least once every two years.[48] These obligations were assigned to the State Department Inspector General in Section 209(a) of the Foreign Service Act of 1980.[49] It states: "The Inspector General shall periodically (at least every 5 years) inspect and audit the administration of activities and operations of each Foreign Service post and each bureau and other operating unit of the Department of State . . . ."[50]

Since 1996, the Congress, through Department of State appropriations acts, annually waives the language in 209(a).[51] That being said, OIG only narrowly misses the requirement. For example, according to GAO, over the course of fiscal years 2001 through 2005, OIG completed inspections of 223 of the 260 bureaus and posts throughout the world.[52] The Department has found the results of inspections very significant and useful.[53] Therefore, the OIG continues to plan for inspections on a cyclical basis using a risk-based approach.[54]

The annual waiver is misleading, however, as the waivers have come three to six months after the commencement of the fiscal year, and their eventual grant by Congress cannot be assumed.[55] The result of this is OIG has to go into each fiscal year with work

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[46] Duda Deposition at 49-50.
[47] Letter from State Dep't IG Howard Krongard to Rep. William D. Delahunt, Chairman, Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs (Nov. 8, 2007) [hereinafter Krongard Letter to Delahunt].
[48] GAO Report at 8.
[49] Pub. L. No. 96-465, Title I, ch. 2, § 209, 94 Stat. 2071, 2080. (Oct. 17, 1980).
[50] *Id.*
[51] Section 209(a) of the Foreign Service Act.
[52] GAO Report at 11.
[53] *Id.*
[54] *Id.*
[55] Letter from State Dep't IG Howard Krongard to Jeanette M. Franzel, Director, Financial Management and Assurance, GAO (Mar. 2, 2007) at 2.

plans, staff, and resources designed to comply with existing law.[56] Furthermore, the Department has come to rely on the deterrent effects and constructive evaluations and recommendations that come from the inspection process.[57] The IG has stated the statutorily mandated inspections function largely inhibits OIG's ability to provide discretionary oversight.[58]

Witnesses have confirmed the inspections orientation. Patti Boyd, who for 10 months served as Deputy Assistant Inspector General for Audits explained, OIG is required by statute to perform the inspection function.[59] When questioned by Committee staff if it would be fair to hold the Inspector General accountable for failing to re-orient the organization toward more of an investigative entity, Boyd said, "No."[60]

> Q and th[e inspections-oriented] methodology, good, bad or indifferent, preceded [this IG]?
>
> A Yes, yes.
>
> Q I mean this is not his idea?
>
> A No no. And there are other IGs who have strong inspection groups. HHS has a huge inspection group. You know, their mission is equal to that of the Office of Audits. I'm trying to think of the other agent. HHS and because they were when we looked at inspections and evaluations, we looked at other IGs who have huge, huge inspection missions.[61]
>
> * * *
>
> Q Part of his responsibility certainly is to do these inspections?
>
> A Absolutely.
>
> Q And there is a statutory, albeit one that can be waived requirement that they be done?
>
> A Right.
>
> Q So I mean, it's not something that he's cooked up

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[56] *Id.*
[57] *Id.*
[58] Krongard Letter to Delahunt at 10.
[59] Boyd Interview at 50; 51.
[60] *Id.* at 52.
[61] *Id.*

A No, no, no, no.[62]

Investigative Function Small

The Office of Investigations conducts investigations of criminal, civil, and administrative misconduct related to organizational programs and operations.[63] Investigations examine specific allegations, reports, or other information indicating possible violations of law or regulation. Individuals and employees suspected of violating federal statutes are referred to the Department of Justice for prosecution.

The investigative function at OIG is small. According to a March 2007 Government Accountability Office (GAO) report to Congress, the investigative function claims nine percent of the office's staff (17). By way of comparison, the inspection function has 32 percent of the office's staff (62), the audit function, 28 percent (54), and support functions, including information technology, 31 percent (58).[64] The IG has explained, "It has been very difficult to manage in, and attract and retain qualified people to" work in the investigations division.[65] According to the IG, the investigations division has typically had 10-13 line investigators, and "extremely limited discretionary funds for travel . . . and investigative costs . . . ."[66]

OIG Has Not Enjoyed a Strong Reputation

The OIG has not enjoyed a strong reputation. William Todd told Committee staff, "because there had been two temporary senior leaders, they hadn't been able to recruit or retain any senior people. . . . **the IG is not viewed as a career enhancing assignment.**"[67] Patti Boyd agreed, "Everybody thinks the State Department and they think, oh, my God, that's the premiere agency. It's the flagship of the departments. **Well, it's got the worst IG reputation of anybody out there.**[68] Former Deputy Assistant Inspector General for Investigations John DeDona – a named whistleblower in the September 18 letter – agreed too, "The office didn't have a real good reputation . . . ."[69]

Budget Challenges

The budget for the Office of Inspector General is approximately $30 million. From fiscal year 2001 through 2005, its overall budget saw an increase of approximately one percent.[70] Over the same period of time, State's overall budget authority increased approximately 50 percent in constant dollars.[71] The significant increase at the

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[62] *Id.* at 54.
[63] State Dep't OIG, Office of Investigations (http://oig.state.gov/inv/) (last visited Nov. 11, 2007).
[64] GAO Report at 15., Figure 3: Distribution of State IG Onboard Staff.
[65] Krongard Letter to Rep. Delahunt at 17.
[66] *Id.*
[67] Todd Deposition at 14 (emphasis supplied).
[68] Boyd Interview at 63-65 (emphasis supplied).
[69] DeDona Interview at 45-46.
[70] GAO Report at 13.
[71] *Id.*

Department reflects initiatives in transformational diplomacy, particularly in Iraq and Afghanistan, and substantial increases in programs for counter narcotics, counterterrorism, and embassy construction and security.[72] The OIG has also suffered a 16 percent reduction in staff.[73]

The OIG's limited resources are further constrained from new initiatives by the significant number of mandated OIG oversight programs, i.e., the requirement to inspect the 260 U.S. consulates once every five years.[74]

In deposition testimony, Deputy Inspector General William Todd observed OIG was not a budget priority for the Office of Management and Budget (OMB), or the Congress. He said, "there wasn't anybody . . . investing in the IG on a long term basis. And so the Hill didn't fund it, the staffing requests and increase didn't get filled, so anybody who could have left left."[75] An official from the Audit function observed, "[o]ur budget's been cut for many years. So we've lost a lot of staff."[76]

The Majority has charged the Inspector General with abdicating his responsibility to conduct oversight in Iraq.[77] The OIG's budgetary constraints, however, made planning travel difficult, especially limiting the Investigations function at OIG. Of late, OIG has been funded through continuing resolutions.[78] Office of Investigations Special Agent Peter Lubeck explained, "under a continuing resolution, . . . it [is] much more difficult to plan ahead. Unlike the audits or inspection shops, where they can predict and plan out travel years down the road, [the investigative division is] more reactive. If something comes in, you've got to respond, you got to go. If the money is there, you go; if not, you can't go."[79]

V. The Allegations

A. Partisan Republican Motivations

You believe your foremost mission is to support the Bush Administration . . . rather than act as an independent and objective check on waste, fraud, and abuse on behalf of U.S. taxpayers.

The record does not support this allegation. The whistleblowers may have believed this to be the case and reported this to Chairman Waxman, but the evidence does not bear this out. The Committee interviewed 13 witnesses, none of whom possessed any

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[72] *Id.*
[73] *Id.*
[74] *Id.* at 14.
[75] Todd Deposition at 11.
[76] Voshell Deposition at 35.
[77] Waxman Letter, Sept. 18, 2007.
[78] Todd Deposition at 22-23.
[79] Lubeck Interview at 62.

first-hand evidence to lend any credence to the proposition the Inspector General performed the responsibilities of his office "to support the Bush Administration."

Whistleblower Brian Rubendall conceded he had no first-hand evidence about the Inspector General's motivations. Like Rubendall, the closest evidence any witness has regarding this allegation is based on a "hunch."

> Q . . . . But these are big, hundreds of millions of dollars contracts that are being given out to these companies, and if they are politically connected companies, that any investigation of their activities could be politically embarrassing. But you have no first hand evidence?
>
> A **I have no first hand evidence. It is all a hunch.** When I say I could not make a statement about [the IG's] motives, it's absolutely true, I could not. I cannot because I don't know.[80]

If the Chairman is alleging the IG is a political supporter of the President, no evidence supports the claim. For example, the IG does not have a history of significant political contributions.

1. Political Contributions

The Inspector General's political contribution history does not lend support to the proposition he is a prominent supporter of the Bush Administration. Going back to 1994, Krongard has made contributions totaling $3,350.[81] There is no record in the Open Secrets database of Krongard contributing any money to George W. Bush. Krongard has donated to his then-employer's political action committee ($500), the National Republican Senatorial Committee ($1,350) and to Senator Mitch McConnell ($500). In 1999, Krongard gave $1,000 to Democratic Senator Bill Bradley, who was then running for President of the United States.[82] Indeed Krongard's largest contribution to an individual candidate was to Bradley – a Democrat.

If the Chairman is alleging the IG has politicized the Office of Inspector General by purposefully ignoring the mandate to act as an independent check on waste, fraud, and abuse, to afford a measure of protection to a Republican president and a Republican administration, there is no evidence to support the claim.

2. Partisan Republican Motivations

To this charge, the IG has said:

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[80] Rubendall Interview at 103 (emphasis supplied).
[81] Opensecrets.org, Donor search for Howard Krongard, http://www.opensecrets.org/ (Oct. 16, 2007).
[82] *Id.*

> In view of the allegations . . . that I have "politicized" the office, have acted from partisan political ties, and believe my foremost mission is to support the Bush administration, I should point out that I have never had any political ties whatsoever. I have never been involved in any political party activities; I have never worked in a political campaign; I have never been a major contributor to any one party; I have made contributions to candidates of each party; and I do not recall even making a political contribution since the year 2000. When I was considered for and offered the IG job, I had never met or spoken to the President or any other person in the White House; and even today, after 2½ years in office, I have never met or spoken with the President or any person in the White House (except for one person whom I had known from working for a volunteer organization long before coming to Washington). Except as a tourist, I have never been inside the White House.[83]

In 2004 and again in 2005, Mr. Waxman published a staff Report entitled, "The Politicization of Inspectors General."[84] In it he called on President Bush to appoint IGs with audit backgrounds, and no prior political ties. Howard Krongard fits that description. The Report said:

> To ensure their independence, the Inspector General Act of 1978 specifically mandates that the President appoint IGs without regard to political affiliation. . . . IG appointments have become increasingly politicized under President Bush. Whereas most of the IGs appointed by President Clinton had previously held positions as nonpartisan auditors and few had had prior political experience, approximately two-thirds of the IGs appointed by President Bush had prior political experience and fewer than one-fifth had prior audit experience. This growing politicization of IGs threatens public confidence in the independence and objectivity of the Inspectors General.

Not only does Krongard not have any political ties or experience, but, by trade he is an audit professional. For more than two decades the IG served in various positions with the then-Big Eight and Big Six accounting firms, including service as General Counsel of Deloitte & Touche.[85] If anyone qualifies as a nonpartisan auditor, Krongard does.

The Committee took testimony from 13 current and former OIG personnel. Not one witness provided any first-hand evidence the Inspector General was motivated by

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[83] Krongard Letter to Delahunt.
[84] Minority Staff, H. Comm. on Gov't Reform, 109th Cong., "The Politicization of Inspectors General" (Oct. 21, 2004 and Jan. 7, 2005).
[85] Krongard Letter to Delahunt; State Dep't OIG, Biography of Howard Krongard, http://oig.state.gov/about/c12822.htm (last visited Nov. 11, 2007).

partisan Republican interests. Special Agent with the Office of Investigations Ronald Militana testified:

> Q The partisan political favoring allegation, did you have any awareness of those before they were outlined in this letter?
>
> A That I mean well I can't answer no, I can't really answer that.[86]
>
> * * *
>
> Q The letter has an aspect to it that suggests [the IG] has been acting as a partisan Republican and that maybe his official decisions at the agency were based on a desire to protect [Republican-interests from] . . . investigation. Do you have any firsthand information with regard to those types of allegations?
>
> A No.[87]
>
> * * *
>
> Q For example, page 1 of the committee's letter alleges that [the IG] interfered with ongoing investigations to protect the State Department and the White House from political embarrassment. Do you have any idea what political embarrassment that might be?
>
> A Again, you're asking for . . . any knowledge that I have relating to
>
> Q Well, I'm asking for direct firsthand information.
>
> A No.[88]

Assistant Inspector General for Inspections Robert Peterson testified:

> Q Is this particular IG especially aligned with the current administration in any way that you are aware of?
>
> A I wasn't aware.[89]
>
> * * *

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[86] Militana Interview at 85-86.
[87] *Id.* at 153.
[88] *Id.* at 153-154.
[89] Peterson Deposition at 76.

> Q Is there anything that you've witnessed firsthand that the IG has engaged in that was just overtly partisan politicking . . . using the official business of the agency to further partisan or political purpose?
>
> A No.[90]
>
> * * *
>
> Q Let me ask it this way. Do you believe that [the Inspector General's] foremost mission is to support the Bush administration?
>
> A I couldn't say that, no.[91]

Assistant Special Agent in Charge, Office of Investigations Brian Rubendall testified:

> Q I had asked you whether you had any direct evidence of [the IG] being influenced by his partisan political leanings, and you said you didn't have any direct evidence?
>
> A No direct evidence.[92]

Assistant Inspector General for Audits, Mark Duda testified:

> Q Has he ever taken political considerations into account when making decisions about the work of the OIG?
>
> A Not that I know of.[93]

Gayle Voshell, an official with the Office of Audits testified:

> Q All right. Have you do you think that [the IG's] actions are dictated by any particular political interests?
>
> A I have no knowledge one way or the other.
>
> Q You haven't observed him engaging in anything that you would consider partisan political activities or
>
> A I haven't personally.
>
> Q Cheerleading or any of that stuff?

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[90] *Id.* at 76-77.
[91] *Id.* at 117.
[92] Rubendall Interview at 185-186.
[93] Duda Deposition at 163.

A I haven't personally observed that, no.[94]

Special Agent Peter Lubeck testified:

Q . . . . Have you ever witnessed personally the IG engaged in partisan political discussions or efforts that relate to the official duties of the IG office?

A Partisan political? No.

* * *

Q Limited to this question.

A Have I witnessed it? No, no, I haven't seen any partisan political activity.[95]

Patti Boyd, who for 10 months was the Deputy Assistant Inspector General for Audits testified:

Q He hasn't made any political statements or anything?

A No, no, nothing.[96]

* * *

Gov't Reform

Q The letter . . . the committee sent to [the IG] on September 18, the big letter . . . makes allegations that he interfered with ongoing investigations to protect the State Department and White House from political embarrassment. Do you have any firsthand information regarding [the IG's] motivations?

A Huh uh [negative].

Q So it's a "no"?

A **No. No. I don't have firsthand knowledge of why I believe he would do such a thing. No.**

Q And you don't have any sort of firsthand evidence to support allegations that he was motivated by political reasons?

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[94] Voshell Deposition at 43.
[95] Lubeck Interview at 156-157.
[96] Boyd Interview at 85.

A No.[97]

* * *

Q **Are you aware of any connections [the IG] has to important members of the Bush administration or**

A **No. I am not aware of any connection that he has.**

Q Was it your sense that he was a confidant of anyone in the administration? Did you ever have that sense?

A No, I did not.

Q Are you aware of any facts that would support an allegation that [the IG] was linked to any contractors that the State Department has?

A No. I don't have any facts to support any of those allegations.[98]

Acting OIG Counsel Erich Hart testified:

Q It also said that [the IG] believed that his foremost mission was to support the Bush administration rather than to act as an independent and objective check on waste, fraud and abuse on behalf of the U.S. taxpayers. Would you agree with that?

A **I have no idea whether what he did was to protect the administration. I have no idea.**[99]

* * *

Q Are you aware of any other activities on the part of [the IG] that you would characterize as political, partisan?

A I'd say I don't know.[100]

Deputy Inspector General William Todd testified:

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[97] *Id.* (emphasis supplied).
[98] *Id.* at 148 (emphasis supplied).
[99] Hart Telephonic Deposition at 61 (emphasis supplied).
[100] *Id.* at 59.

Q **Do you have any knowledge of any connection that he has to individuals who work or have worked at the White House?**

A **No.**[101]

* * *

I mean, my sense is, having worked in a bureau in the State Department, if you are in the front office of your average bureau, you get invited to the White House for a lot of stuff if your boss is a political appointee. **In my year and a half here, he has been invited, to the best of my knowledge, to zero stuff at the White House.**

Q Has he ever said anything to the effect that his job is to support the administration?

A Not at all. Absolutely not.[102]

* * *

Q And it has been alleged that [the IG] has quashed investigations for partisan motivations. Have you any firsthand evidence that any of [the IG's] official agency decisions have been motivated to protect anyone at the administration?

A I have no knowledge, none that I know of.

Q I guess a similar question would be, do you have any knowledge that any of [the IG's] official decisions have been motivated by helping a contractor that is operating in the war zone?

A None that I know of.[103]

* * *

I consider him apolitical in that he'll give anybody, any time, anywhere a hard time, if they deserve it. If they don't, they'll be okay.[104]

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[101] *Id.* at 302 (emphasis supplied).
[102] Todd Deposition at 306.
[103] *Id.* at 248.
[104] *Id.* at 249 (emphasis supplied).

Former Deputy Assistant Inspector General for Investigations, who was asked to leave by the IG, Ralph McNamara even conceded as the IG was not motivated by political interests:

> Q . . . . Do you attribute this behavior, these actions, to any political motives?
>
> A Do I?
>
> Q Yes.
>
> A No.[105]

3. No Evidence of Corrupt Motives of Any Kind

There is no evidence the IG has corrupt motives. If the Chairman is alleging the IG has foregone aggressive oversight of acquisition-related matters because he is corrupt, there is no evidentiary support for that claim.

No witness provided testimony that suggests the IG is corrupt. As to corruption, whistleblower Rubendall testified:

> Q And do you get a sense that there is an allegation that [the IG] is corrupt at all with this letter?
>
> A Allegation that he is corrupt? Again, I haven't seen enough to support that, or haven't seen enough information to support that.[106]
>
> * * *
>
> Q . . . . But these are big, hundreds of millions of dollars contracts that are being given out to these companies, and if they are politically connected companies, that any investigation of their activities could be politically embarrassing. But you have no first hand evidence?
>
> A **I have no first hand evidence. It is all a hunch. When I say I could not make a statement about [the IG's] motives, it's absolutely true, I could not. I cannot because I don't know.**[107]
>
> * * *

[105] McNamara Interview at 74.
[106] Rubendall Interview at 86.
[107] *Id.* at 103 (emphasis supplied).

> Q Who would have first hand evidence?
>
> A Evidence of
>
> Q That [the IG] was a partisan hack, that he was making official business decisions in the Agency to protect Republicans?
>
> A I don't know. I have no idea.[108]

Boyd testified:

> Q So some of the allegations that were raised about First Kuwaiti, about the Berger Group and about some of the other companies that were named in the letter, you have no facts or information that supports an allegation that he has a financial interest in those?
>
> A No, I do not.
>
> Q Or that he was trying to protect the financial interests that a friend of his or a family member of his had?
>
> A No, I do not.[109]

One witness mentioned he thought there might be rumors on the internet connecting the IG to Blackwater. Mark Duda testified:

> The only other issue I heard . . . rumors about the IG having some connection to Blackwater. And just doing a Google I could see, you know, certain connections. But I have no idea what on the Web is accurate or not, and I have no firsthand knowledge about that.

Any such connection is unsupported by the evidence the Committee has obtained. Conversely, there is evidence the IG rejected opportunities to protect Blackwater. In an e-mail to Erich Hart in the Counsel's office, the IG wrote concerning OIG's willingness to redact information requested by this Committee.[110] The IG wrote:

> Are there issues of sensitivity or classification of information . . . or are we just being a 'front' for keeping Blackwater information confidential? This should be considered in light of the criticism SIGIR and others have recently directed at KBR for trying to mark

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[108] *Id.* at 105.
[109] Boyd Interview at 148-149.
[110] E-mail from Howard Krongard to Erich Hart (Nov. 21, 2006) (2640).

so much information as 'proprietary,' as well as the age and relevance of Blackwater information.[111]

B. Too Close to State Dep't Leadership

Your strong affinity with State Department leadership and your partisan political ties have led you to halt investigations, censor reports, and refuse to cooperate with law enforcement agencies.

The record does not support the allegation. The Committee interviewed 13 witnesses, none of whom possessed any first-hand evidence to lend credibility to the proposition the Inspector General had an "affinity" – let alone a "*strong affinity*" – for the State Department's leadership.

1. No Evidence of an Affinity for Agency Brass

While whistleblower Ralph McNamara speculated to the Majority concerning the IG's purported affinity to State Department leadership, he had no first hand evidence to back these allegations. He told the Committee:

> So, in my opinion, our ability or lack of the ability to do any contract procurement fraud cases at the Department, where the Department spends a lot of money overseas, **kind of led me to believe that he was protecting the Department, maybe too close to the Department and was not objective enough.**[112]
>
> * * *
>
> A [I was] . . . led . . . to believe that based on the lack of investigative activity of the Department as a whole as far as procurement fraud goes that . . . he doesn't want to do anything that would bring embarrassment or trouble to the Department. . . . . **I don't know the reasons. So it was my opinion, based on the rest of the environment, the lack of ability to investigate the Department, that led me to believe that. So I filled in the blanks.**
>
> Q . . . . That is your opinion.
>
> A **As I say, I have no proof. I want to make clear it is just my opinion.**[113]

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[111] *Id.*
[112] McNamara Interview at 124 (emphasis supplied).
[113] *Id.* at 145-146 (emphasis supplied).

* * *

> Q I think you mentioned that at least there was some speculation that [the IG], perhaps, was motivated to delay this because of some potential embarrassment to the Department because this individual had something to do with finances. Do I have that right?
>
> A Like **I say, I have no facts to back that up. It's just my opinion, because I cannot think of any other reason** why he would hold this particular investigation up and only this one. The person is a senior official.[114]

* * *

> Q Why do you think [the IG] has not [taken action]?
>
> A My personal opinion?
>
> Q Sure.
>
> A My personal opinion and this is just my opinion. I have no facts to back this up, of course.[115]

No witness had any first-hand information to support the Committee's charge. Robert Peterson testified:

> Q Are you aware of any . . . impairments to [the IG's] independence?
>
> A No.[116]

Rubendall told the Committee:

> The **perception** was, among us at the worker bee, the lower levels, was that he was trying to protect the administration. **That was our perception, rightly or wrongly.**[117]

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[114] *Id.* at 81 (emphasis supplied).
[115] *Id.* at 51-52.
[116] Peterson Deposition at 106.
[117] Rubendall Interview at 102-103 (emphasis supplied).

Duda testified:

> Q Under the Inspector General Act of 1978, the inspector general is supposed to be independent and objective. Are you aware of any impairments to [the IG's] independence?
>
> A **I don't have firsthand knowledge, you know. . . . . I mean, I can't . . . state that he . . . wasn't independent**.[118]

Voshell testified:

> Q **Do you have any reason to doubt [the IG's] independence?**
>
> A **I'm not aware of anything that would make me doubt his independence, no.**
>
> Q Do you have any reason to believe he is too close to the State Department?
>
> A I'm not aware of anything, no.[119]

Patti Boyd conceded accusations regarding the IG's lack of independence do not stand up. She told Committee staff:

> Q Okay, okay, okay. So that's the one. I mean, I'm trying to parse it through. I understand that he appears to be a difficult guy to work for and I understand the differences in policy judgments as to whether you should do more inspections or more audits or more investigations and whether it's appropriate or not to be maybe overly hands on from the standpoint of improving audits and [whatnot], **but it's a very different, it seems to me, subject to sort of accuse somebody of being not independent . . . .**
>
> A **[Witnesses answers in the affirmative] Uh huh.**[120]
>
> * * *
>
> He is, you know I know he's rich. But I believe he's motivated by the glamo[urs] of being the IG for the State Department and being with. . . Condoleezza Rice and just having that and being . . . **and I have no evidence to support my observations.**[121]

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[118] Duda Deposition at 160-161 (emphasis supplied).
[119] Voshell Deposition at 37 (emphasis supplied).
[120] Boyd Interview at 83 (emphasis supplied).
[121] *Id.* at 84 (emphasis supplied).

Hart testified:

> Q On page 1, the letter says that [the IG] interfered with ongoing investigations to protect the State Department and White House from political embarrassment. Do you have any knowledge about that?
>
> A I mean, I don't know whether . . . you mean whether he was trying to protect the State Department or the White House from political embarrassment? **I have no idea.**[122]
>
> * * *
>
> Q Are you aware of any personal relationships he might have that would impair his conduct of the activities of the Office of Inspector General?
>
> A I have no specific knowledge, no. I don't have general knowledge either. I don't know.[123]
>
> * * *
>
> Q **[A]re you aware of any impairments to [the IG's] independence?**
>
> A **No, not specifically.**
>
> Q **Are you aware of anything in general?**
>
> A **No, I'm not.**[124]

2. Weakening of Reports

There is no evidence that the IG exercised anything but his professional judgment with respect to the content of OIG reports. In some cases, witnesses said the **IG strengthened reports**, making them tougher on the State Department or the Bush Administration.

When asked if the IG edited reports to weaken findings, Gayle Voshell testified:

> Q Does he frequently change language in reports?

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[122] Hart Telephonic Deposition at 60-61 (emphasis supplied).
[123] *Id.* at 138.
[124] *Id.* at 137-138 (emphasis supplied).

> A I would say he occasionally changes language in reports. But I've never had him make any substantive changes. It's normally word changes, you know very minor word changes.
>
> Q **So he's never made a change that has weakened the report?**
>
> A **Not any of the reports that I've been involved with, no.**[125]

Duda concurred:

> A He occasionally would have a question. In most cases, the audit reports, I didn't get a lot of feedback from him. If there was an issue and we may have a meeting on it or something if there was a big issue, but in most cases the audit reports have gone through him and have been fine, because it's been through counsel.[126]
>
> * * *
>
> Q Ha[s the IG] . . . ever requested changes to reports that would weaken them?
>
> A Yeah, I've had I've had instances where he's made or suggested changes that would appear to weaken the report. **But I've also had instances where he's made changes or suggested changes that strengthen the report**, to basically that we were being too soft, we had serious findings and we weren't presenting it in a way that made the reader know that hey, these are big issues.[127]

Peterson provided similar testimony:

> Q And have you ever observed a situation where the IG was thinking one thing, had some dialogue with the group, and, as a result of that back and forth, the IG realized that perhaps where he was going, so to speak, was maybe not the right way to go?
>
> A Where he had that thought?
>
> Q Yes.

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[125] Voshell Deposition at 34 (emphasis supplied).
[126] Duda Deposition at 119.
[127] *Id.* at 155-156 (emphasis supplied).

> A Yes. There's there [i]s that. It's a lot of back and forth on issues, trying to get at the best way to present an issue and make sure it's accurate.[128]

Boyd does not recall the IG making frequent changes to OIG reports. She told Committee staff:

> Q Do you remember any other reports [prior discussion concerned a joint OIG-SIGIR report discussed infra] where he would have added language, like what happened here at the request of somebody in the Department?
>
> A But I can't, I can't remember anything else.[129]
>
> * * *
>
> Q But do you remember additions to other reports?
>
> A . . . No, I don't.[130]

3. DynCorp Joint OIG/SIGIR report

The only evidence the IG changed a report that may have had some benefit to the State Department was a joint report with SIGIR reviewing a DynCorp International contract in support of the Iraqi Police Training Program.[131] In an otherwise highly critical report, he added one paragraph to recognize the efforts of the State Department to correct the problems identified in the report.

Patti Boyd testified as follows:

> Anyway, we had to add comments that were reflective of work [the State Department bureau involved] had done because they didn't think the Department. . . was very balanced. So, I mean, again. . . and it came down to us that the IG wanted to make the Department happy, and we had to insert language in that report to show, you know and it was to me, it was just. . . whatever kind of thing. But that's the instruction we got. I thought it was a great report. I thought they were . . . but we had and if I had the report, I could show you the language that we had to add in there to make the

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[128] Peterson Deposition at 66-67.
[129] Boyd Interview at 169.
[130] *Id.* at 170.
[131] SIGIR and OIG, Review of DynCorp International, LLC, Contract Number S LMAQM 04 C 0030, Task Order 0338, for the Iraqi Police Training Program Support, SIGIR No. 06-029, OIG Audit No. 07-20.

> Department happy because it seemed like. . . that it didn't recognize the efforts that Anne Patterson had done.[132]

Boyd conceded, however, the report was highly critical of the Department.

> Q Right. Having read that report, I'm sure the Department was not exactly doing back flips when that was issued.
>
> A Huh uh [witness responds in the affirmative].[133]

Boyd further conceded these types of changes occur in the ordinary course of report drafting.

> Q But. . . at least in my experience, that's a fairly standard kind of operation when you issue a report, do a draft report. You send it to the agency. The agency then comments. And at least my experience has been a bit that particularly the folks that I don't know if you expect the same that worked on it directly don't want to change anything; and very often folks up higher up in the management chain say, hey, okay, let's soften this thing. Not that it particularly changes anything.
>
> A I agree. That happens, yes.
>
> Q To me, it's happened [with] almost every report. I did the legal stuff, and I would do the same thing. I would come to you guys and everybody would kind of get mad at me.
>
> A That happens. You're absolutely right. That does happen.
>
> Q So I guess I don't see that, as you're describing it, as that unusual. That is what I've experienced pretty much consistently.[134]
>
> * * *
>
> Q So that was added to reflect that INL had actually. . . participated in the discussion?
>
> Ms. Boyd. Uh huh. Uh huh. And yeah. And they wanted to show that they had taken action, that they their point was, we had taken action, and we want it reflected that we did something, and

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[132] Boyd Interview at 70.
[133] *Id.* at 70-71.
[134] *Id.* at 71.

> this report makes it look like we did nothing. So I know that we added this statement.[135]

Boyd agreed the one paragraph change did not weaken the report's ultimate findings.

> Q Do you remember if any of the changes weakened the meaning of the report?
>
> A No, I don't I don't I don't (sic) believe so. I don't believe that I would have that I would have agreed to that.[136]
>
> * * *
>
> Q **Okay. Do you think it weakens the report?**
>
> A **No.**[137]

C. Abrasive Management Style

You routinely berate and belittle personnel, show contempt for the abilities of career government professionals, and cause your staff to fear coming to work.

The record provides substantial support for this allegation. Employees consistently told the Committee that the IG employs an abrasive management style.

1. Abrasiveness is Detrimental to the Organization

McNamara told Committee staff the organization is dysfunctional as result of the IG's abrasiveness:

> Q His manner affected your ability to do your job?
>
> A It affected everybody's ability to do their job, and it affected the flow of information, because nobody wanted to be creative. Nobody wanted to come up with a new idea to make the OIG better, because you were going to be looked at, you were going to be cross examined, so to speak, and scrutinized.
>
> Q Did that hurt the mission of the OIG?

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[135] *Id.* at 163-164.
[136] *Id.* at 167.
[137] *Id.* at 172 (emphasis supplied).

> A I think so. I think it did. I think, in any organization, you need the communication. You want folks to be creative. You want folks to be the best and the brightest. If they can't be the best and the brightest because they're living in fear, you don't have a good employee and you don't have a good organization.[138]

The record provides substantial support for this allegation. Lubeck told Committee staff that the IG employs an abrasive management style:

> I just think his natural demeanor, I think, is confrontational. That's just the way he is, by nature. He's had a lot of run ins with a lot of people. A lot of people have left his office because he's got an abrasive personality. That's just his way.[139]

* * *

> Q I mean any other incidents of harsh language or language you thought that was inappropriate?
>
> A Nothing I directly heard. But I'm saying there's a list of a lot of employees. I heard that Terry Heide had even gotten yelled by him and experienced his wrath. It's just common knowledge he yells and screams and gets loud and gets abusive.
> But. . . excuses. That's how they do it in the private sector.[140]

Hart testified:

> [The IG] has said publicly that he is a tough person to get along with. I mean, he has said that, he's made it clear. I think he used the term "equal opportunity abuser." So it's very difficult. That's a tough environment. I come from a military background, and I can take it, but a lot of people can't.[141]

Duda testified:

> Q What sorts of comments has he made about you, personally?
>
> A He can't trust me, I am out to get him, I don't share information with him, et cetera, et cetera.
>
> Q And this happens regularly?

---

[138] McNamara Interview at 122-123.
[139] Lubeck Interview at 113.
[140] *Id.* at 115.
[141] Hart Telephonic Deposition at 56.

A It goes through periods where it can happen quite often.[142]

* * *

Q Has he made these comments to you when the two of you were alone or in front of other people?

A Both.[143]

* * *

Q Did you think it was inappropriate for the workplace?

A In my experience, in all the supervisors I have had in my career, yes.[144]

* * *

If you send him an e mail, he will use your exact words back at you and critique and pick every little thing. And many times which has happened you will get into an email string with him and spend hours.[145]

Voshell testified the IG was highly critical of Duda on e-mails addressed to subordinates.

A But . . . criticizing Mr. Duda that he doesn't keep him informed about things, that he wasn't responsive to questions. I received an e mail once from [the IG] to Mr. Duda and myself saying that the IG's had to rely on me because Mr. Duda hadn't provided timely responses to a financial statement question.[146]

Several witnesses observed that the IG had a poor regard for government workers. Hart testified the IG was condescending about the low standards of government work.

And [the IG] said he thought about things over the weekend and then he did a visual. He had, let's say, his left hand and he put it down near the table or the floor and he said this is where the public

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[142] Duda Deposition at 106.
[143] *Id.* at 107.
[144] *Id.* at 109.
[145] *Id.* at 121.
[146] Voshell Deposition at 33.

> servant standards are. And then he went through a recitation of different firms he had worked for. And he said our standards were up here. And he said I would just ask that you meet me halfway. And I think everybody in that room was personally offended by that statement. I was offended. I come from a military background and my standards are exceedingly high.[147]

According to Hart, the IG went through secretaries. He described how one of the IG's secretaries resigned.

> Q Was there any employment action or counseling taken for [the IG's] secretary?
>
> A No. She, at some point she . . . one day did not come to work, and she went to she showed up at our offices and said she would not return to the front office.
>
> Q Did she explain why?
>
> A I have no idea why. I was I have no idea.[148]

Boyd told Committee staff it was advisable to keep quiet at staff meetings.

> It was common knowledge not to speak in the staff meetings because he was heavy handed. He just really didn't enjoy, I don't think from my observations of the staff meetings, he didn't like a lot of discussion. People were actually afraid to say anything. So they actually said nothing. You know, I have nothing, sir. Unless he actually asked them a specific question about the status of something and they had to speak. They actually would prefer not to speak to him during the staff meeting. And so that was all preached to me, Patti don't say anything unless he asks you a question. And then if you only know the answer, don't guess, don't hypothesize, just stick strictly to what you know. And if you don't know it, say I don't know, sir. So that was kind of the atmosphere that we operated under around [the IG].[149]

Boyd thought the IG disliked most of his staff.

> A It was my observation that he disliked everyone. I saw him treat Bob Peterson bad. I saw him treat John DeDona bad, and I

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[147] Hart Telephonic Deposition at 56.
[148] *Id.* at 117.
[149] Boyd Interview at 10.

> witnessed him treating Mark [Duda] bad, and I witnessed him treating Erich Hart bad.[150]

2. Especially Abrasive to DeDona

The witnesses told the Committee the IG was especially abrasive with Assistant Inspector General for Investigations John DeDona. McNamara told Committee staff:

> Q Did you ever see him yell or speak inappropriately to any of his managers?
>
> A John.
>
> Q John DeDona?
>
> A Yes.
>
> Q What do you recall of that?
>
> A Well, it's not it wasn't it was like in an e mail, where he would just dredge him down in an e mail, but he would CC me. And I worked for John, and I told John, "John, please tell him not to CC me. If he is going to chew your ass, I don't want to be included in that. Besides, I don't think it is appropriate because I work for you, and that just makes you he is demeaning you in front of me, and that is going to cause issues with me and you because you're my boss. I'm supposed to think you're the best thing since sliced bread, and if he says otherwise, that causes problems." I always learned in the military and leadership training in the civilian life, in the civilian environment, that if somebody is doing wrong and you want to chew them out, you chew them out one on one. You don't draw a crowd or let everyone know you're chewing them out. It is not necessary. It is just plain mean and wrong.[151]

Likewise Hart testified:

> The most egregious, and I did not hear it directly. And I will tell you right up front I got this from John DeDona immediately following the meeting. But John was very, very upset and said that [the IG] I believe this was the same meeting, and it was shortly before John left. But I guess [the IG] had sarcastically said are you smoking dope or something like that, or are you smoking dope.

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[150] *Id.* at 147.
[151] McNamara Interview at 119-120.

> Which you don't say things like that, particularly to a police officer. And he compared him to a wall. . . questioning his intelligence.[152]
>
> * * *
>
> During these meetings [the IG] would basically go after John. You know, [the IG] would get frustrated and go after him and you could just see the sweat coming off of John's head and he would get very, very stressed. My conflict was that I thought that at some point, and it's happening right now, I might have to testify concerning how [the IG] treated John. And I was very uncomfortable.[153]

Todd referred to one episode between the IG and DeDona as a "**drive by shooting**." The IG had determined that DeDona was either untruthful or mistaken about whether he had sent an e-mail to a Department official concerning an investigation. DeDona had maintained he did not. The IG, through other means, found out DeDona was either lying or mistaken. Todd told of the IG's confrontation with DeDona:

> So [the IG] comes into my office and says, come on, we've got to go to a meeting. I said okay, let's go to a meeting. Walk down the hall, we get . . . our DS adviser. He says, come on, we're going to a meeting, we've got to do something. We have no idea what we're doing. **Walk down the hall, walk into DeDona's office and [the IG] says, would you go turn on your PC, we're about to go to a meeting, but could you turn on and look at I don't remember the date, but say May 28th. And he goes 28th. He says, will you print out the e mail you sent out at 8:04 this morning or whatever time it was. And lo and behold, there was communication with this person. And at that point [the IG] said he pulled out of his briefcase a document and said, I would like for you to sign this saying you had an e mail, you told me in the following e mails that you don't have any records, but in this one you do, so I would like you to sign this saying you basically knowingly deceived me or something to that effect.** And DeDona said, I'm not going to do that. And [the IG] said, what's with this? And [the IG] said, can you go to another date, and there was another document. . . . . And I mean, **I felt like it was a drive by shooting**, I had no idea what was going on.[154]

Erich Hart told the Committee he believed DeDona was ultimately hospitalized due, in part, to the stress caused by the IG.

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[152] Hart Telephonic Deposition at 95.
[153] *Id.* at 88.
[154] Todd Deposition at 233-238 (emphasis supplied).

> John had been talking to me for . . . he talked to a lot of people. John is a very expressive person. I think everybody knows that he has high blood pressure and issues like that and that he was hospitalized. It had quite an effect on everybody. At least in John's mind that was caused by [the IG].[155]

D. The Travel Charge

Although the State Department has expended over $3.6 billion on contracts in Iraq and Afghanistan, you refused to send any investigators to those countries to pursue investigations into wasteful spending or procurement fraud and have concluded no fraud investigations relating to the contracts.

The record does not support the allegation. The Majority's claim the Inspector General quashed travel to Iraq and Afghanistan are misplaced.

Charging that OIG does not conduct meaningful oversight in Iraq and Afghanistan reflects a failure to examine OIG's Semiannual Reports to Congress. The Reports show that OIG has been active in Iraq and Afghanistan-related oversight. The Office has used its limited resources to conduct focused surveys, management assessments and audits of Department programs that affect both countries. The Semiannual Reports identify the following reports, all involving travel to the countries, completed by DOS IG dating back to March 2005:

- Blackwater Invoicing (November 2004);[156]
- Assessment of Iraqi Police Training Program (July 2005);[157]
- Survey of Embassy Bagdad Rule of Law Program (October 2005);[158]
- Inspection Reports of Embassy Kabul (January 2006);[159]
- Report of the Inspection of the Broadcasting Board of Governors Operations in and Broadcasting to Afghanistan (January 2006);[160]
- Review of Anti-corruption Programs, Embassy Bagdad (August 2006);[161]
- Assessment of Afghanistan Police Training (November 2006);[162]
- Review of a DynCorp Contract for Civilian Police Training Support in Iraq (January 2007);[163]
- Accounting for Government Owned Personal Property Held by Contractors in Afghanistan (July 2007);[164]

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[155] Hart Telephonic Deposition at 93.
[156] OIG Semiannual Report to the Congress, Mar. 31, 2005, at 18 and 59.
[157] OIG Semiannual Report to the Congress, Sept. 30, 2005, at 5, 27, and 69.
[158] OIG Semiannual Report to the Congress, Mar. 31, 2006, at 1, 29, and 57.
[159] *Id.* at 2, 34, and 57.
[160] *Id.* at 69 and 75.
[161] OIG Semiannual Report to the Congress, Sept. 30, 2006, at 1, 27, and 56.
[162] OIG Semiannual Report to the Congress, Mar. 31, 2007, at 1, 29 and 53.
[163] *Id.* at 2, 17, and 52.

- Assessment of Afghanistan Counter Narcotics Program (July 2007);[165] and
- Inspection of Rule of Law Program in Afghanistan (in progress, fieldwork completed October 2007).[166]

Some witnesses expressed concern about OIG's perceived unwillingness to be active in the Iraq contracting oversight arena. It was the perception of several individuals that the IG actually impeded Iraq-related investigations. For example, Counsel Erich Hart testified:

> Q Are there other investigations that you feel that his actions may have I'm trying to use nonlegal language.
>
> A . . . . I think what concerns me is I've worked with law enforcement a good part of my career. **And . . . right or wrong, the perception of every agent I talked to over there was that [the IG] at some point or another impeded an investigation, and that disturbed me and it still disturbs me.**[167]

Five categories of facts have emerged to reconcile the Majority's overheated allegation that the IG "refused" to send investigators to Iraq and Afghanistan:

1) The testimony shows OIG's Office of Investigations (INV) only had one investigator – Ron Militana – willing to travel to Iraq;

2) Militana testified that he only requested Iraq travel 4 times. Militana also testified that no OIG official discouraged him from requesting travel;

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[164] OIG Semiannual Report to the Congress, Sept. 30, 2007, at 5, 25, and 73.

[165] *Id.* at 6, 39, and 74.

[166] OIG Inspection of Rule of Law Program in Afghanistan (fieldwork completed Oct. 2007). OIG Counsel Erich Hart was deposed by the Committee telephonically from Kabul, Afghanistan. He was supporting this Rule of Law Inspection mission. The Majority, however, was skeptical of whether Hart was on OIG business in Afghanistan. At his deposition the following discussion occurred:

> Q All right. Just a couple of questions to clarify what [the Minority Staff] was talking about. If I understand correctly, you were not in Afghanistan as part of your work for the OIG, is that correct?
>
> A I don't understand your question.
>
> Q Are you in Afghanistan as part of your work for the Office of Inspector General?
>
> A Yes.
>
> Q Could you describe what you're doing there?
>
> A Yes. This particular inspection is a Rule of Law inspection, and I could go on for 3 days what that means.
>
> * * *
>
> Q But is this organized through the OIG Office of Inspections?
>
> A Yes. [Assistant IG for Inspections] Bob Peterson and I spoke at some length. I spoke with him about my desire to go on this.

Hart Telephonic Deposition at 68-69.

[167] *Id.* at 133-134 (emphasis supplied).

3) OIG's resources for travel were exceedingly limited;

4) Even if OIG had investigators willing to travel to Iraq, its investigations division was acutely not suited for complex acquisition-related investigative activity;

5) The IG lost confidence in his investigative staff – the two senior-most officials in the investigations division had to be relieved of their responsibilities; and

6) Other better-equipped oversight entities were and are active in Iraq – these entities, include: State Department Bureau of Diplomatic Security (DS), State Department Bureau of Overseas Building Operations (OBO); the Special Inspector General for Iraq Reconstruction (SIGIR), the U.S. Government Accountability Office (GAO), the Inspector General for Multi National Force – Iraq (MNF-I IG); the U.S. Agency for International Development (AID); the Department of Defense Inspector General (DOD IG) and Defense Criminal Investigative Service (DCIS); the Federal Bureau of Investigation (FBI); among others. These oversight entities were better-resourced than OIG. Furthermore, the testimony supports the conclusion these entities had investigative personnel with a more appropriate investigative skill-set, i.e., a facility for complex acquisition-related subject matter.

1. Only One OIG Investigator Willing to Travel to Iraq – Ron Militana

Militana told Committee staff:

> Q He said that of all his investigators or the people that he could send to Iraq, you're it. You're the only guy who is willing to go to Iraq. Is that a fair statement? . . . .
>
> A So I agree that. . . I'm the only person who actually volunteered to work those cases . . .[168]

So, when the IG is criticized for not sending investigators to Iraq, the Chairman's allegation should be amended to investigator (singular). Militana it is.[169]

> Q But as I understand it, you are the only guy, the only investigator willing to go to Iraq at the State Department. So it is you. If it is going to be the State Department, if it is going to be OIG, it is you. Right?
>
> A Yes.[170]

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[168] Militana Interview at 219.
[169] The Committee has been advised that after the September 18 letter was published, a second investigator – Special Agent Peter Lubeck – has agreed to travel to Iraq. Indeed, both Militana and Lubeck, have both recently traveled to Iraq on OIG business.
[170] Militana Interview at 166.

Todd testified:

> Q . . . And then over the course of the last couple weeks, we've had a chance to speak with folks in the investigations function. And as it turns out, according to his supervisor, Mr. Militana is the only investigator that has announced a willingness to travel to the region. Is that a fair assessment, that he's the guy if there's going to be personnel going to Iraq, that Mr. Militana would be the person?
>
> A Yeah.[171]
>
> * * *
>
> We've reached out to the staff several times about their willingness to go to Iraq and Afghanistan and there are **very few of our staff in both INV and in the Office of Audits that are willing to go.** Most of the people that are willing to go are in our inspection group.[172]
>
> * * *
>
> But candidly, other than Militana, no one else has indicated any willingness to go.[173]

Militana's supervisor, Brian Rubendall told Committee staff:

> The people in the Fraud Division, specifically Ron Militana. **He was at the time he was the only agent we had who had volunteered to go to Iraq**, and the State Department's policy is nobody goes who doesn't volunteer, so we really only had one agent who had volunteered at that point, so it was Ron.[174]

Ironically, even primary whistleblower Ralph McNamara agreed.

> Ron did a lot of work, because he volunteered to go to these places nobody else really wanted to go, like Afghanistan or Iraq.[175]

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[171] Todd Deposition at 244.
[172] *Id.* at 245 (emphasis supplied).
[173] *Id.*
[174] Rubendall Interview at 41 (emphasis supplied).
[175] McNamara Interview at 109.

So did Peter Lubeck:

> Q Have you attempted to open any other investigations about Iraq or Afghanistan
>
> A Me, personally?
>
> Q in the past? You, personally.
>
> A No. Ron Militana is the primary case agent in . . . that region, that area. And I assisted him in other matters.[176]

Militana conceded to the Committee that there is not a wealth of eligible investigators desirous of Iraq travel.

> Q And I guess what I'm trying to flesh out here is there's not like 68 investigators back in your department clamoring to get on a plane and go over and look at some of these issues; that your department is lean, and . . . for all intents and purposes your supervisor said, you're the guy, it's you. And so . . . to the extent we're going to, "we" meaning your agency, is going to sort through some of these things, it's going to be you, Mr. Militana. So I just wanted to sort of get your sense as to whether I'm missing anything?
>
> A I understand. The cases that we're discussing are probably the best cases. And that's why they were selected for follow up investigation.[177]

The IG made efforts to encourage OIG personnel to consider traveling to Afghanistan and Iraq. In an August 2007 message to the Staff, the IG wrote:

> As we get our projected Middle East Regional Office up and running, OIG's involvement in Afghanistan and Iraq – and other places in the region – will greatly increase. **While I have asked several times in the past for people who are willing to travel to Afghanistan and Iraq, I ask again that you consider such opportunity and let your office head know if you would want to go to those locations.**[178]

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[176] Lubeck Interview at 119.
[177] Militana Interview at 219-220.
[178] Howard J. Krongard, Message from the Inspector General, OIG Briefs, State Dep't OIG, August 2007 (emphasis supplied).

2. Only Four Travel Requests Were Made Involving Travel to Iraq or Afghanistan

Deputy Inspector General William Todd told the Committee that the overwhelming majority of travel requests were approved. In speaking of the Letter, Todd testified:

> I know that he . . . one of the ironic things about your letter, I would say at least 85 to 90 percent of the travel that they put forward was approved when it was justified.[179]

Todd said the investigators did not always follow OIG processes when considering and requesting travel.

> All I know is that of the cases that they ultimately justified again, **this is the government, there is a process**. You can't obligate money to put travel together without them telling us why they are going.[180]

* * *

> I know he's made requests to his management, but we and I could show you if you want to see it, we have a . . . **a policy where basically you want to travel, I need you to have a justification.** I've not seen any, except for this Jordan trip, justifications for travel for Militana to Iraq. I have seen e mails, I've been talked to in the hallway, but I've never seen a justification.[181]

Militana was asked about all his travel requests. There were four for Iraq. One of the four was for an undefined 45 day survey tour.

Q How many travel requests have you made?

A I've made

Q Ball park, are we looking at 10, 20?

A No.

Q One hundred and fifty eight?

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[179] Todd Deposition at 34.
[180] *Id.* at 36 (emphasis supplied).
[181] *Id.* at 246-247 (emphasis supplied).

A No. **Well, on each of these cases, so four, four.**[182]

Militana further told the Committee:

> Q I guess, just to recap . . . but there was a travel request for the Berger Group matter, right?
>
> A Right.
>
> Q That's one. There was a travel request for DynCorp for the counterfeit computers. That was two?
>
> A Yes.
>
> Q What was three and four? The human trafficking was in there?
>
> A Human trafficking was one, yes.
>
> Q Was that three or four? And then what was the other one?
>
> A Then there was a concept paper for establishing an investigative presence in Iraq or somewhere in the Middle East.
>
> Q Okay. So that wasn't an investigative matter. That was just a concept paper?
>
> A Yeah.
>
> Q **So for investigative matters we have three then . . . .**
>
> A Uh huh [witness answers in the affirmative].[183]

Militana summarized:

> So it was just a matter of requesting travel. . . pretty much via e mail. And I requested travel on **Berger Group**, and that was denied. I requested travel on **DynCorp on the counterfeit computers in Afghanistan**. And initially that was approved at the initially it was approved. And I was scheduled to leave on a Monday, and I went to I went out of town on Friday and when I . . . got a call over the weekend saying that travel had been cancelled for whatever reason so I just call that a cancel. It was approved by my supervisor, but then it came down from above that it was it was

[182] Militana Interview at 70 (emphasis supplied).
[183] *Id.* at 143 (emphasis supplied).

> not approved. **And then I requested travel to conduct interviews related to the human trafficking case** that was denied.[184]

Militana confirmed he was never discouraged from requesting travel.

> Q You put the . . . requests in, but did anyone else tell you reasons why it is not a good idea to even ask the question whether you may travel?
>
> A No.[185]
>
> * * *
>
> Q Did you have an understanding, generally, travel requests for Iraq and Afghanistan would be denied under all circumstances?
>
> A No. In fact, early on, one of the first times I ever saw [the IG], there was a lot of discussion about travel to Iraq and actually placing an agent over there. And in fact, that's how I got tasked with conducting the Iraq and Afghanistan cases because I was the only person that was willing to go.[186]

Deputy IG Todd said 85 to 90 percent of complete travel requests were approved. He explained, like any government agency, there was a process for requesting travel. When an investigator outlined the reason for the travel in writing, why it was important, the objective of the trip, it would be approved.[187]

There is some evidence Todd was responsible for approving travel. On August 14, 2007 John DeDona forwards "Militana's request for travel authorization" to the IG and Deputy IG.[188] The IG replied to DeDona, "I am not sure why you waited for Bill's departure to submit this since he has been dealing with it, but it will have to await his return."[189]

Militana agrees he put travel requests in for every matter that needed investigating.

> Q Sort of the big daddy allegation against [the IG], as asserted by the committee, is that the first bullet point in the letter is that, although the State Department has expended over $3.6 billion on

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[184] *Id.* at 72 (emphasis supplied).
[185] *Id.* at 77.
[186] *Id.* at 76.
[187] Todd Deposition at 34-35.
[188] E-mail from John DeDona to William Todd and Howard Krongard (Aug. 14, 2007) (3817).
[189] E-mail from Howard Krongard to John DeDona (Aug. 16, 2007) (3817).

> contracts in Iraq and Afghanistan, you, meaning [the IG], refused to send any investigators, plural, to those countries to pursue investigations into wasteful spending or procurement fraud and have concluded no fraud investigations relating to contracts. **And over the last couple of days we've tried to unpack the entire universe of potential . . . investigations. And you and I have sort of agreed that for matters that you thought it made sense to put in a travel request, it may have been a good barometer for the types of investigations that you should have been pursuing in Iraq, is that a fair statement?**
>
> A Yes.[190]

Militana's supervisor, Brian Rubendall was confused about the total number of travel requests. Rubendall thought it may have been as many as six.

> Q Do you know how many of those requests you put in?
>
> A I can't tell you. I wasn't his supervisor for a lot of these periods, so I don't know for sure the exact number.
>
> Q You talked to him, though. Do you have a ballpark? Are we looking at 28, 32?
>
> A No, it wasn't that many. Half a dozen, maybe. I'm not really sure. I'm not sure.
>
> Q Six maybe?
>
> A Maybe. I am not positive.[191]

Perhaps part of the Committee's confusion is John DeDona's faulty recollection. DeDona, the key whistleblower supplying information for the September 18 letter had trouble recalling the actual number of travel requests.

> Q Do you know approximately how many different requests for travel to Iraq or Afghanistan have been made by the investigations group?
>
> A It's hard to say. Easily a dozen, maybe two dozen. As I say, it winds up with your initial one and then it just continues with progressive ones where you try to further justify your case or rationale for travel. So I don't know **if it's per case, maybe half a**

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[190] Militana Interview at 216-217 (emphasis supplied).
[191] Rubendall Interview at 100-101.

> **dozen** or a dozen. If it's each one, it could be as high as two dozen or more.[192]

3. Militana's "Kick the Tires" Plan

Ronald Militana, the only investigator willing to travel to Iraq or Afghanistan, was tasked by the IG and the Deputy IG to become more active in the region. Todd testified Militana had some issues in focusing his work. Militana at one point requested permission to travel to Iraq for 45 days to survey the scene. For obvious reasons, this "kick the tires" plan was not seen to fruition. Todd testified:

> Q So you have 10 agents . . . but out of these 10 agents you couldn't spare one or two to focus on Iraq issues?
>
> A We tried to. As a matter of fact, I and the e mails will show that I wanted to make Militana that guy. And I had asked for an inventory of the procurement task force and the project spit fire group so we could prioritize what he got involved in. And we asked three times for an inventory of what he did or what was out there so we could say you're going to work on A, B and C. **He gave us instead a document that said, I want to go to Iraq, walk around for 45 days and then I'll tell you what I'm going to do. And I said, I can't sell it to [the IG].**[193]
>
> * * *
>
> In response we get from DeDona, we want him to go to Iraq for 45 days, kick the tires and then we will decide what he's going to do. I said, no. **For me, I have to sell this to the boss, I have to sell it to the taxpayer, I have to tell the Hill and OMB how I am using my money. I can't I can't have somebody just walk around and kick the tires for 45 days and decide what he or she is going to do.**[194]

Militana called his plan a "concept paper." He told the Committee:

> Then there was a concept paper for establishing an investigative presence in Iraq or somewhere in the Middle East.[195]
>
> * * *

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[192] DeDona Interview at 91 (emphasis supplied).
[193] Todd Deposition at 131-132 (emphasis supplied).
[194] *Id.* at 133 (emphasis supplied).
[195] Militana Interview at 143.

Q Were there any other times that you thought maybe it made sense to travel, but you decided not to put in an official request for those reasons?

A Well, there was another I was asked to write a concept paper, basically justifying why the State Department should place an agent in Iraq or in the Middle East area full time, so I did that.[196]

4. INV Resources Not Robust

The investigations division has been hampered by a low resource level. McNamara told Committee staff:

> **I think we have we are at an all time low as far as resources and manpower.** And my particular concern with all of this is that the State Department has a very vital and important worldwide mission. We have to support the OIG has to support that mission. And we can't support that mission if we are not properly staffed or resourced. And we are we have, I think now we have seven investigators that are sitting in Rosslyn, Virginia, when the area of responsibility for us is around the world. **We are just we are just not able to provide the services that I feel the Department deserves.**[197]
>
> * * *
>
> Investigations, since I have been there, we would be allocated X number of dollars to do travel. In proportion to the number of investigations that we have, that was not an appropriate funding.[198]

Mark Duda agreed:

> Q Do you feel that the mission of your office was compromised by the travel, the inability to travel?
>
> A Yes.
>
> Q Approximately we spoke a little bit about the amount and the importance of the work that the Department is doing in Iraq and Afghanistan, it's what your universe is, if that work was available to you if you were to remain domestically I mean, how restricted were you, really?

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[196] *Id.* at 77.
[197] McNamara Interview at 153 (emphasis supplied).
[198] *Id.* at 156.

> A To review how the money was actually spent, how the billions of dollars was actually spent, you're substantially restricted by not going overseas.[199]

5. INV Personnel Was Not Well Suited for Complex Acquisition-Related Investigative Activity

The witnesses told the Committee the Investigations division (INV) lacked experience with complex acquisition-related matters. Historically, the investigations division has been involved with domestic matters involving employee fraud, time and attendance cases.[200] Likewise, the background of the agents – one, a former prison guard, and another – Militana – a former uniformed Border Patrol agent – does not position them well for the Iraq-related matters raised by the Chairman.

Through the course of the numerous interviews and depositions, it became evident the Investigations staff avoided complex acquisition-related oversight. Consequently, the organization lacked both the capability and requisite skill sets to handle a sophisticated investigation. Deputy IG William Todd observed:

> Q And so when a complex case comes to perhaps the jurisdiction of the IG's office, what is the best way to process that type of complex case?
>
> A **Well, I think unfortunately we either have to get an assist from somebody who has the capabilities or we have to refer it.** You know, it's this is kind of a chicken and an egg issue, but if you look back historically, **most of the types of cases our organization did prior to [this IG] was what I call administrative T&A type cases. . . time and attendance type cases**. Look at our SAR, look at the semi annuals, you will see that the stats will show you that we did do a lot of cases but they were somebody didn't turn in a leave slip or they were minor type cases. Then if you look at since then there have probably been fewer cases, okay, but the cases have gotten out of the mode of administrative cases. Also if you look at the number of cases that we've referred, okay, today versus yesterday. In the old days we get a lot we get hundreds of allegations over the year.[201]

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[199] Duda Deposition at 77.

[200] *See, e.g.*, Press Release, U.S. Dep't of Justice, Former State Department Employee Sentenced for Fraudulently Obtaining More Than $50,000 in Public Assistance Benefits (Oct. 17, 2007) ("In announcing today's sentence, U.S. Attorney Taylor, Inspector General Donohue, and Inspector General Krongard praised the hard work of the investigative agents involved in this matter, especially Special Agent Lea Nelson of the Office of the Inspector General for the U.S. Department of State, and Special Agent Ronnyne Bannister of the U.S. Department of Housing and Urban Development Office of Inspector General.")

[201] Todd Deposition at 241-243 (emphasis supplied).

Todd spoke of some of the personnel from the investigations division as being not able to take direction from OIG leadership.

> We have within our investigative group, as with any organization, we have some good people, some average people, and some bad people. **We have a number of people who want to do what they want, when they want, and how they want, and where they want.** And if you look at their production statistics, they go from job to job to job to job, and they never finish anything, and. . . they are always on the next target.[202]

DeDona told Committee staff of his division's focus:

> Specifically, we looked at procurement fraud, workers' compensation fraud, passport visa fraud. Tried not to overlap with diplomatic security but there was some overlap with the investigative missions.[203]

Likewise, Rubendall conceded INV's focus:

> In OIG, we spend a lot of time worrying about people committing overtime fraud.[204]

Todd said "[o]ur guys never went into really complex cases. They stayed away from them . . . .[205]

Todd further explained that OIG investigators were not ideally suited for many of the Iraq-related matters. The investigators frequently tried to insert themselves in matters clearly outside of their skill set. Todd spoke of a serious matter involving a mortar attack in Iraq. Ambassador Crocker decisively called for an immediate investigation. Ralph McNamara and the OIG investigators wanted to join the mix. He explained:

> Q On the issue of when issues were referred over to INV from Audits, did the May 2007 mortar attack lead to a recommendation from Audits that some aspect of the construction issues be referred over to INV?
>
> A I don't recall. I remember a lot of traffic on it where one of the guys, this guy, Mike Larson, who is now at the Bureau of Acquisition Management, and John Trembler, the head of it, were receiving a lot of e mails on it, and somebody was asking them to look into it. And they obviously couldn't do it. I know that INV

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[202] *Id.* at 28 (emphasis supplied).
[203] *Id.* at 6.
[204] Rubendall Interview at 97.
[205] Todd Deposition at 66.

> did. I don't know how INV came up that they wanted to do it, but they did. They did say, "We would like to look at this." And [the IG] basically said, A, this is DS's responsibility. This is an attack on a U.S. embassy abroad. And if you look at their statutory authority, it is what they do. **B, the Ambassador, Ryan Crocker, has asked that the whole place be sealed and that there be an investigation done immediately by people that are competent and qualified. That includes DS, some engineers, architects, as well as, I believe, the FBI. And C, there are a boatload of Federal agents in country that are there, that are read in, that are knowledgeable, have this skill set from a physical security point of view of what is required. So why would you think that you could know anything about how many square inches of or the tensile strength of concrete or how many rebar bars per foot makes concrete blast proof or not? And Ralph couldn't answer any of them. So [the IG] said we're going to let the investigation go on and let DS and the FBI do it.**[206]

Following up, Committee staff asked whether the investigators had the relevant skills for the matter at hand. Obviously, they did not.

> Q Before we took our last break, there was some discussion that Ambassador Crocker had sealed the Embassy off and they brought in FBI, DS. You described generally the folks that were brought in as competent and qualified. You know, are the Ralph McNamaras and Ron Militanas the types of folks that Ambassador Crocker would want on the ground when the Embassy is sealed to analyze the situation?
>
> A I certainly would not think that they would be, given what I know about the case. I mean, if in terms of whether a criminal wrongdoing had occurred or whether the tensile strength of the concrete is what it should be, I don't think they would have the skill set to do that.[207]

Unnecessary Travel to Florida and Other Sunny Locations

While Militana desired to travel to Iraq, there is some evidence that the other investigators desired travel to Florida and other pleasant destinations.

Todd testified:

> Q You said 85 percent, 85 to 90 percent was approved when justified. Is that what you said?

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[206] *Id.* at 221-222 (emphasis supplied).
[207] *Id.* at 230-231.

> A What I said was that of all the travel to all the places that they wanted to go, when say there were 10 places that they wanted to go just for and they made, say, 10 requests, if they didn't tell us why they wanted to go there, or what they were going to do there, or why it was important they were there, and what the goal or the objective was, we would not approve it. But when they justified it, put it on a form, sent in the form, 85 to 90 percent was approved. And moreover, if you look at the history of it, and I would suggest you ask for a run of all their travel, our guys have **our INV guys had a history of running to places like Miami and southern California in the winter and the Caribbean, and they would say, we are going for a week or two to help an AUSA.** And then we would say, well, what are you going to do with the AUSA for a week or two? Well, we don't know. And I would say, it is a week or two in Miami in the winter, when I only got 10 guys to do 260 foreign locations, 2 agencies, 2 weeks or 1 week in Miami to sit around waiting for an AUSA to tell you . . . to carry his bags? I thought that is nuts. But when they put it in a form, justify it, if it made sense, we would do it.[208]
>
> * * *
>
> And the travel [issue] is a very sensitive issue because our guys. . . like to get on the road and they deserve to do the work that they need to do. **But when you have, A, little money and, B, if you look at the requests that they have made and you look at where they have gone by their choosing, most of the places are like. . . southern Florida or southern California or the Caribbean or Nicaragua or I mean, they are not if you look at multiple trips, we're talking two or three, they are places like Miami and San Diego.** And so they get agitated when we question it.[209]

Todd's testimony is amplified by the documents. On March 6, 2007 Todd told DeDona in e-mail:

> I think a good example is where we have tried to institute fundamental standards (which I believe they may not/have not accepted). But in either case it is your job to lead them and explain the situation to them (and hold them accountable if need be). A continuing contentious theme, that we discuss at least once a week, is INV travel. **As you know the IG is concerned that many of your cases seem to involve travel to Calf, Fla, NY etc. – they are small dollar visa, passport cases**. If he still has these

[208] *Id.* at 34-35 (emphasis supplied).
[209] *Id.* at 247 (emphasis supplied).

> concerns it's your responsibility to effectively address them. . . . . I informed you that my recollection is that close to 100% of international travel has been approved except for Iraq/Afghanistan which, because of security issues, has a higher threshold).[210]

DeDona responded to Todd's e-mail, "Appreciate your insights . . . . I have asked . . . for time on your calendar [tomorrow] in the afternoon."[211]

Special Agent Peter Lubeck acknowledged he joined OIG to travel.

> And I needed a job, so I had actually three simultaneous offers, I guess; ended up going to State, to the travel. I liked travel . . . .[212]
>
> * * *
>
> Q . . . . You mentioned you came to the State Department. I believe you testified that you like to travel.
>
> A Oh, yeah.
>
> Q And that was part of the attraction of this job?
>
> A Correct. And they advertised it, and that's how they announced it.
>
> * * *
>
> They actually had an ad that was written by the SAC about how. . . **<u>you get the world travel, and you'll be able to go from black tux to blue jeans.</u>** It really built the image up of worldwide travel.[213]

Lubeck became frustrated with, what he thought was, OIG's unwillingness to send him to Florida.

> Well, actually I had a sentencing that was probably in February, March of this year. I spent a year and a half working a big bribery and kickback case down in Miami, Florida, and the sentencing was February, March, whatever time, April. . . . . So I was not allowed to attend the sentencing . . . . I said, This is embarrassing. . . .
> Q Had the prosecutors asked for you to be there?

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[210] E-mail from William Todd to John DeDona (Mar. 6, 2007) (3805-06) (emphasis supplied).
[211] E-mail from John DeDona to William Todd (Mar. 6, 2007) (3805).
[212] Lubeck Interview at 51.
[213] *Id.* at 69 (emphasis supplied).

> A Oh, yeah. It was embarrassing. I told them I was coming to work these cases and then get a call back saying you can't go.[214]

Lubeck thought it was important for him to attend the sentencing.

> Q You said it was embarrassing. Forgive me. This is not my world. I don't know how these things normally work. Would it have been just standard practice that you would have gone down to something like this?
>
> A No. I've never not attended a sentencing. I've never, never not attended a sentencing. I've always attended all my sentences. It is just ridiculous. . . . . I had another case in California.[215]

The witness failed to explain why an investigator would be required to attend a sentencing. Law enforcement officers do not, as a matter of course, provide testimony at a sentencing hearing. In any event, Lubeck's failure to make it to South Florida in the winter had no effect on the investigation.

> Q **Was there any impact on the case that you know of?**
>
> A **No, no impact.**[216]

6. The IG Lost Confidence in INV Generally and DeDona and McNamara Specifically

Significant testimony was taken by the Committee staff concerning specific issues the IG had with John DeDona and Ralph McNamara – the two named whistleblowers in the September 18 letter. The record demonstrates specifically why the IG lost confidence in the capabilities of these men.

According to Ralph McNamara, the IG lost confidence in the investigations division. McNamara told Committee staff:

> Q Do you think or did he ever express his views as to whether he had confidence in the management of the Investigative Division?
>
> A I think it was pretty clear in the e mails he wrote, especially about the two examples, that he probably didn't have a level of confidence and because of what I read into the e mails.[217]

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[214] *Id.* at 30-31.
[215] *Id.* at 34.
[216] *Id.* at 66 (emphasis supplied).
[217] McNamara Interview at 67.

Todd explained:

> Q And so you said [the IG's] efforts primarily on Iraq were primarily aimed at trying to get other agencies to do the investigations?
>
> A His primary efforts were trying to get the resources to do the job. His primary efforts, when he failed, was to manage those resources as best as he could. **And after two or three issues with our investigators where he felt that they had not done things properly. . . where they had hidden the football, or not informed him about certain things, or misrepresented things to him, he had a lack of confidence in them. And candidly, some he, I think, believes that they are not competent. And so to protect the interests of the investigation for those items, he felt it better to refer.**[218]

Todd further explained:

> [The IG] does not have confidence in the competence . . . of a couple of our guys. He has all the confidence in the world in others, but there are people and I can show you some more examples here where **these guys have knowingly lied to him, where they've played hide the football, or they've not told him about open investigations when they've had them, and they've been running with the FBI or an AUSA.**[219]

Counsel Erich Hart testified:

> Q Are there specific examples of comments he's made that made you think that he didn't trust investigations?
>
> A Well, he felt that there were some times where he had asked INV for information, for data. . . . . And [the IG] was asking John for information about cases before he left. **And [the IG] felt that John had either misled him or not given him the proper answers or whatever. And some of these cases had stretched back quite a ways. [The IG] did not have a lot of faith in INV.**[220]

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[218] Todd Deposition at 262 (emphasis supplied).
[219] *Id.* at 89 (emphasis supplied).
[220] Hart Telephonic Deposition at 86 (emphasis supplied).

DeDona concedes the IG lost confidence in him. They frequently argued.

> Actually, I've heard it . . . from others on the staff that **it was our inability to do our job was based solely on our disagreements and the fact that I would continue to argue for the investigative process**[221]

DeDona acknowledged a source of the IG's frustration was the volume of oversight entities pursuing overlapping matters.

> Q Do you recall any reasons that [the IG] gave for not authorizing travel to investigate the corruption allegations?
>
> A I guess the easiest way to answer was the same reasons: **conflicting interests, overlapping issues, things that needed to be deconflicted, other agencies doing work, we don't want to step on anybody's toes.** That was it.[222]

DeDona concedes he grew frustrated with the IG's unwillingness to allow the investigations division to get involved in Iraq oversight. DeDona testifies that the IG's stated policy was to allow other entities – better suited for the Iraq oversight work – to take the lead. The IG wanted his investigators to follow the organization's policy of monitoring the Iraq matters.

> Q Okay. Did you guys work with SIGIR often, do you recall, on these kind of issues?
> Gov't Reform
>
> A **Not initially when I got here because of the because of the policy of monitoring investigations.** SIGIR subsequently had a change in management in their Investigative Division. So when the new people came in, I went over and introduced myself **and said we wanted to assist as best we could but right now we are operating under a monitoring directive from the IG.**[223]

The Deputy IG had performance issues with McNamara and DeDona, but wanted to help them work out their troubles. Todd testified:

> I also can tell you that from a performance point of view I had issues with both . . . . I also. . . I told both that they were out of their minds to do what they did in terms of leaving. I sent Ralph McNamara the last day, and I don't know if he's told you, an e mail that basically says you're making a terrible mistake. I want to visit

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[221] DeDona Interview at 59 (emphasis supplied).
[222] *Id.* at 67 (emphasis supplied).
[223] *Id.* at 111 (emphasis supplied).

> this issue, this may hurt you in terms of grade and pay, you should not do this. And it was on the record, his last day.[224]

Hart explained why the IG got angry with DeDona:

> Q Have you ever had any reason to doubt either of their integrity?
>
> A No. **I will say, though, in fairness to [the IG], there were times when [the IG] asked for information and. . . John would give [the IG] the information and it would turn out that the information was not accurate.** And that would anger [the IG]. And John generally would have an explanation for it. But I don't think John would ever intentionally lie, no. That's about as straight as I can be. I'm trying to be as fair as possible here.[225]

Todd also stated McNamara failed to follow the IG's direction when the IG specifically instructed McNamara to stop working on a matter that had been assigned to the Audits division:

> It was because of something Ralph McNamara did. **He basically went through after he was told not to have anything to do that he's not doing First Kuwaiti stuff, he's to do what he was doing, and he wasn't doing well. And to do it . . . his normal job was he went to the Office of Audits and basically culled through their files, and he sent an e mail or a memo that basically said that he would decide what cases got referred on First Kuwaiti to INV.** And so, the Office of Audits put this out in an e mail to everybody. And. . . flares went off, because. . . because INV was told. . . that they're to stand down, that they're to do their job that they had been told and let Audits do theirs. And Ralph McNamara does not make those decisions. Those decisions are made by the IG. And Ralph disobeyed that order and got caught disobeying it, and someone stupidly put it in an e mail that went up the food chain.[226]

Three witnesses – Hart, Todd, and McNamara himself – provided testimony showing the investigations personnel were negligent when it came to answering the IG's hotline. Eric Hart told the Committee staff:

> You know, to give you an example, one of the things that blew up in poor John's face right before John left is that **there was a person who was alleging serious issues, abusive management,**

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[224] Todd Deposition at 239-240.
[225] Hart Telephonic Deposition at 139 (emphasis supplied).
[226] Todd Deposition at 224-225 (emphasis supplied).

> **fraud, waste abuse and everything else under the sun at a post in South America. And this person made a hotline complaint, the complaint basically wasn't answered and the hotline's a totally another issue, but the hotline wasn't answered.** When it was answered, she was told that it was going to be referred to the management that basically she was complaining about.[227]

Todd testified:

> And at first our INV guys didn't know anything about it, then they knew something about it and then that whole situation brought on **[the IG's] view of finding that somewhere over the last year our investigators decided not to answer our hotline, and that basically they were letting it go into its answering machine, and that they would then over time they would answer calls, they would answer the calls.** This issue, according to DeDona and company, was a function of resources, a function of higher priority work and. . . but the reality is we hired a GS 13, 1811, I won't name her name, but an individual to run this, to do this exact thing. **And so at the end of John's tenure, he had no knowledge of how the actual hotline was being run. He thought things were being run on a timely basis because they were run under Ralph McNamara and Ralph had indicated that there were some problems, but they weren't significant. Well, John got hammered by [the IG].**[228]

Todd suggested DeDona and McNamara even had issues among themselves. As to the negligence in responding to hotline matters, Todd said McNamara set DeDona up to fail:

> Q When you said that Mr. DeDona was set up by his guys to fail, is there anything specific you can elaborate on?
>
> A Yeah. And . . . there are a number of very key things that and very sensitive cases where they either didn't make [the IG] aware of them or they lied to [the IG], and me too. I will give you a couple of examples. **The Director General of Foreign Service ended up getting several complaints from an individual who felt there was major fraud overseas and somebody in DS was trying to harm him and potentially kill him.** And this individual had made a number of requests for the OIG to look into it and the OIG never looked into it. And so the guy finally felt he had to go to the Department. So he went to the Department, he went to the Director General and cc'd anybody, the who's who of the

[227] Hart Telephonic Deposition at 139 (emphasis supplied).
[228] Todd Deposition at 242 (emphasis supplied).

Department, saying, I've gone to the OIG and so I'm not getting any response. And so I need your help because, A, there's fraud and, B, I'm in danger of my life. And so [the IG] asked John and Ralph have you ever heard of person X, do you have a case? Will you check the case management system and see if you have this case? And no, we don't have it, no, we don't have it. There were several requests from [the IG] to see if they actually had it and multiple requests and [the IG] when [the IG] starts drilling down he goes into what I call e mail death spiral, and he will issue e mail after e mail saying I am going to tell someone I'm going to pass along this information, do you have anything on this? No, I don't, no, I don't, no, I don't, no, I don't, no, I don't. And he'd say, be sure, be sure, be sure, be sure. And so anyhow after four or five of these volleys and I don't know the exact number, but [the IG] got from the DG the e mails. And so [the IG] . . . goes back [to DeDona], have you ever had any contact, no, I never have, none of my staff have. And so [the IG] went back and got the fact that there had been contact. . . . . I mean the guy I knew he had something, I knew he had the goods on him. And so he then, after all of this he said, oh, by the way, I want you to see a document that Ralph McNamara gave to Bill a couple days ago or and it was basically the documents that he had forwarded to John, I guess, and Ralph had denied that he had any knowledge of it. **So Ralph had basically set John up initially and then to cover his derriere he had forwarded it on to John . . . .** [229]

I'll tell you another one. **There was an individual . . . who was a really significant [member of an ethnic group] . . . . And this individual was receiving hate mail from a department employee.** . . . . And this individual . . . asked the Department to look into it. And the individual who was the victim was told that our organization had something going, but wasn't really interested in it. . . . . And so this individual . . . was going to testi[fy] . . . [and] . . . say you are have a bunch of whackos at the State Department and I would like for you to see what they are sending me. So [the IG] goes to John and says, do we have anything on hate mail, do we have anything on [harassment related to the specific ethnic group], and he gave them the name, he gave him the victim's name . . . . John said, no, I don't have it. . . . . and so then Ralph McNamara took over. Ralph says, no, we don't have it, no, we don't have it. So [the IG] was hearing this from let's say the highest levels of the 7th floor that this is a real concern, we don't want hate mail going to [the specific ethnic group], okay? And so [the IG] says to me, go find out if there's anything. So I go over to Rosslyn from Washington and I inquire from a couple of the

[229] *Id.* at 233-238 (emphasis supplied).

> agents and sure enough we had an investigation. And sure enough we're about to indict the guy. And sure enough we had reported through the food chain that we didn't have anything. But the good news was we were about to do something against this individual . . . . And so I go back and tell [the IG]. And [the IG] basically inquires and at that point [McNamara and DeDona] fess up. But there are two or three, there are several. **There's another one from an admin counselor from a large Western hemisphere country where there was allegations of corruption and other things, made several hotline complaints, they were never answered**. And so where I'm going with this, is John was unaware of a lot of these at first. And so when John would go up the food chain John would go up the food chain, he'd be unaware of it and he'd get in trouble. And the relationship evolved from there.[230]

McNamara confirms Todd's account. Furthermore, McNamara's testimony raises a question concerning his ability to use hotline-related information. He testified:

> In, I guess, the May June time frame, maybe July, [the IG] was asking me for information, and we had a series of exchanges, unfortunately, on three different or maybe two or three different occasions on two or three different hotlines. One, in particular, was that he wanted information right away, and I went to our case management system. I saw what was there, and I gave it to him immediately.
>
> * * *
>
> **As it turns out, that was not it was not it was correct information**, but it wasn't completely well, I'll just explain what it was. The information was on an individual, and he was going to go to trial soon, okay? That was what I provided. He wanted to know some other particulars about what was the status, and I put back, he's scheduled to go to trial, and I don't have the date, which I took directly off the computer screen.
>
> * * *
>
> And so I go back in, and . . . it didn't say, so I went back to the case agent, and the case agent mentioned that he was not indicted yet, so I sent him back an e mail saying, "Sir, he has not been indicted. He turned down a plea agreement. They plan on indicting him shortly." Then he came back, and he just tormented me for providing him false information.
>
> * * *
>
> There was another case where he asked about whether or not a certain individual had contacted the hotline, and we searched a name, and we searched for 3 days because he was pretty sure that individual had contacted the hotline, and there was no such name.

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[230] *Id.* at 233-238 (emphasis supplied).

* * *

> So John writes back an e mail to [the IG], copies me and says, "We just don't have it." **So [the IG] says, "Well, did you not talk to" and then he names another individual which we didn't name initially, and I searched for that name. Yeah, we have that person's name, but it doesn't mention the other person's name**. . . .[231]

Ultimately the IG was required to relieve DeDona and McNamara of their responsibilities. With regard to DeDona, Erich Hart testified:

> And [the IG] called me back into his office . . . [and explained] in essence [he] didn't feel that John had properly served him . . . . He was very frustrated. And then I can't recall exactly everything he asked me. But in essence he wanted to get rid of John.[232]

As to being asked to leave, McNamara told Committee staff:

> Q What were the circumstances of your departure from OIG?
>
> A The circumstances?
>
> Q Why did you leave?
>
> A There were several reasons. The first reason was because of the lack of investigative ability to investigate fraud, waste, and abuse. I saw that initially, and I discussed it with the Assistant Inspector General John DeDona, and the inability for us to do our function. The other part of it was that later on in the last I think the second week in August of 2007, I was called into a meeting with the deputy . . . and [the IG]. And in that meeting, I was told that and this is after Mr. DeDona had already departed. And he said that I was the last old I[N]V, which is the Office of Investigations management, and he wanted me to step down.
>
> Q Who is "he"?
>
> A [The IG] wanted me to step down.[233]

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[231] McNamara Interview at 55-58 (emphasis supplied).
[232] Hart Telephonic Deposition at 87.
[233] McNamara Interview at 12-13.

7. Other Oversight Entities in Iraq

There is no shortage of oversight entities in Iraq. Within the State Department, the Bureau of Overseas Operations and Diplomatic Security are engaged in oversight activity. Other organizations include the Special Inspector General for Iraq Reconstruction (SIGIR), the Inspector General for Multi-National Force – Iraq, the Department of Defense Inspector General (DOD IG) and its Defense Criminal Investigative Service (DCIS), the Federal Bureau of Investigation (FBI), the Government Accountability Office (GAO), and the Agency for International Development, to name a few.

OIG, like most offices of inspectors general, cannot fulfill its mission without partnering with other organizations. Since 2005, OIG has conducted joint projects with SIGIR, DOD IG, as well as the IGs for the Departments of Homeland Security, Commerce, Energy, Treasury, and the U.S. Agency for International Development.[234]

In his letter to Rep. Delahunt, the IG explained:

> OIG has had extremely limited resources to expend on oversight in Iraq, has never had a single permanent person on the ground, and has not had the authority to hire 3161 term employees or personal service contractors who are used by others to fill staffing requirements in Iraq. At the same time, however, other significant "players on the field" include: **SIGIR**, with approximately $135 million in aggregate appropriations solely for oversight in Iraq and as many as 50 or more people on the ground; **USAID's Office of Inspector General** with its own Regional Inspector General Office in Baghdad; **DoD OIG** with offices in Baghdad and elsewhere in the region; **GAO** with a continuing flow of TDY personnel in Iraq; and various military, contracting, and other OIG and oversight entities with a presence in Iraq.

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[234] *See, e.g.*, Export Licensing of Chemical & Biological Commodities, conducted with IGs for Dep'ts of Commerce, Defense, Energy, Homeland Security (June 2005) (AUD/PR-05-29); Interagency Assessment of Iraq Police Training, conducted with DOD IG (July 2005) (ISP/IQO-05-72); Survey of the Status of Funding for Iraq Programs Allocated to the Dep't of State's Bureau of International Narcotics and Law Enforcement Affairs as of Dec.31, 2005, conducted with SIGIR (July 2006) (AUD/IQO-06-30); Coordination of Dep't of Defense, Counternarcotics, & Counterterrorism Issues at Emb. Bogota, Colombia, conducted with DOD IG (ISP-J-06-16A); Survey of Anticorruption Programs, conducted with SIGIR (Aug. 2006) (ISP/IQO-06-50); Review of Export Controls, conducted with IGs for Commerce, Defense, Energy, Homeland Security (Jan. 2007) (AUD/IP-07-01); Compliance Followup Review on Export Controls, conducted with IGs for the Dep'ts of Commerce, Defense, Energy, Homeland Security (AUD/IP-07-44); Review of DynCorp International, LLC, Contract Number S-LMAQM-04-C-0030, Task Order 0338, for the Iraqi Police Training Program Support, conducted with SIGIR (Jan. 2007) (AUD/IQO-07-20); The Department of State's Role in the Promotion of U.S. Business Interests Abroad, conducted with IGs for the Dep'ts of Commerce, Treasury, Agriculture, USAID, Millennium Challenge Corp. (ISP/I-07-22); Interagency Assessment of Afghanistan Police Training and Readiness, conducted with DOD IG (Nov. 2006) (ISP/IQO-07-07); Interagency Assessment of the Counternarcotics Program in Afghanistan, conducted with DOD IG (July 2007) (ISP/IQO-07-34).

> To have such limited resources, in such an important arena, where other significant entities already provide oversight, has presented an enormous management challenge in trying to decide what resources can wisely be invested in Iraq and provide meaningful results. Even faced with this strategic and operational conundrum, OIG has been more than a "non-factor". OIG has conducted Iraq projects that included in fiscal years 2005-2007 more than 20 audits and 10 program and management assessments and supervision of 4 Defense Contract Audit Agency Audits. Part of this has been made possible by my own strong advocacy of interagency Inspector General undertakings as a way of leveraging OIG's limited resources and also enhancing cooperation among IG offices.[235]

McNamara conceded the IG has the ability to "request assistance from other organizations."

> I understand that, but like I say, if he lacks confidence in the players, he has the option to, like you say, take action or to request assistance from another Office of Inspector General or of another investigative group to come in and bump the game plan over, and I mean, he has, I think, at his disposal a number of resources to assist him if there's a problem with what I believe is confidence in the senior folks.[236]

DeDona told Committee staff the IG wanted his agents to monitor the Iraq and Afghanistan matters:

> **all [the IG] wanted us to do was monitor other agencies' works in Iraq and Afghanistan**.[237]

DeDona further explains how SIGIR's involvement allowed for OIG to take a lesser role.

> Because I was starting to try to direct them towards those areas because of the money that was being spent there and kind of got the old. . . **[the IG] just wants us to monitor other investigative agencies' work and that is problematic** because in our case, there were some things going on at SIGIR, Special IG for Iraq Reconstruction, the FBI, and as they say. . . you are either in or you are out, you are out.[238]

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[235] Letter from Krongard to Delahuntat 23-24.
[236] McNamara Interview at 72-73.
[237] DeDona Interview at 14 (emphasis supplied).
[238] *Id.* at 15 (emphasis supplied).

Interestingly, Deputy IG William Todd testified DeDona and McNamara themselves were in favor of referring matters to other agencies.

> In the old days we would refer less I mean, the old days we wouldn't refer as many as we do today. **Today we refer most of them, okay? And that's not done by [the IG] and Bill, that's done by John DeDona and Ralph.**[239]

Todd helped the Committee understand how SIGIR has primary responsibility for much of the oversight work in Afghanistan and Iraq.

> Q In the course of the year or so you haven't been able to identify have an agent handle any significant cases in Iraq. You're saying you've been trying do this all along?
>
> A No, what I'm saying is that for those cases where we have a **legal authority to look at and the legal authority wasn't set by us, it was set by the U.S. Congress, SIGIR has pretty much 95 percent of the world, okay, in the security and assistance and foreign assistance world. DOD has their world, we have a very tiny pie.** The majority of things that are out there are not us. We ask them find out what is us, give us an inventory and we will basically assign them. We asked for this two or three times.[240]

DeDona explained that some matters are referred to other State Department bureaus.

> It is not always that they just open something up. **It could be that it is referred to another bureau within the State Department** for management decisions or initial look see. **They could refer it to another agency** if it is deemed that we don't have jurisdiction. It is not always right from the allegation to a case. There are a couple of other options that they have at their disposal.[241]

The IG had some concern about the overlapping involvement of the numerous oversight entities. DeDona told the Committee staff of the IG's concerns about "conflicting interests, overlapping issues, things that needed to be deconflicted, other agencies doing work, we don't want to step on anybody's toes."[242] Todd addressed the numerous oversight groups at work in Iraq.

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[239] Todd Deposition at 242 (emphasis supplied).
[240] *Id.* at 133 (emphasis supplied).
[241] DeDona Interview at 17 (emphasis supplied).
[242] *Id.* at 67.

> Q We've talked about a number of the other entities that have resources in the region, such as SIGIR, such as the Multinational Force Iraq, IG's office, AID. I think at one point it was mentioned DCIS, FBI agents were on the ground. Have we missed any organization that has ever been brought into the loop by your office to assist with an investigative matter?
>
> A Well, other than
>
> Q DS, I don't know if I named that?
>
> A I was going to say, other than DS, the only other biggie is DOD IG. We have done a lot of joint things with DOD IG. We have done some joint things with SIGIR. SIGIR is the 900 pound gorilla in Iraq.[243]

Todd explained how almost all of OIG investigative work concerning Iraq and Afghanistan was joint work with other entities.

> Yeah, but those guys had people overseas. We do a lot of joint investigations. Right now, if you look at our portfolio of non Iraq and Afghanistan stuff, 99 percent of it is joint.[244]

Despite the IG's directive to allow other better-equipped agencies to handle the Iraq and Afghanistan investigative matters, DeDona felt his organization was duty-bound to also participate.

> In generalities, he and I discussed the same concept, but again, if these are my focus was if these were allegations provided by State Department personnel or contractors working for State Department impacted it impacted the embassy, the Department of State as a whole or its employees, **I felt it was our duty to participate**. And I would challenge anybody in this room to go out and talk to any investigative agency and ask them about monitoring another Federal agency monitoring work that actually impacts their agency. They are just not going to as I said earlier, you are in or you are out.[245]

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[243] Todd Deposition at 252.
[244] *Id.* at 189.
[245] DeDona Interview at 52 (emphasis supplied).

Special Agent Ronald Militana told Committee staff was aware of the numerous oversight resources on the ground in Iraq.

> And there's a Joint Operation Center that houses the different agencies that conduct fraud investigations in Iraq; that being State Department, **USAID, DCIS, FBI, Army CID**.[246]

Militana's supervisor, Brian Rubendall did not disagree.

> Q Now, over in the Iraq and Afghanistan region, in addition to the Diplomatic Security folks, are you aware of the other IG entities that are on the ground there?
>
> A Yes. I know SIGIR, Special IG for Iraqi Reconstruction, I know they have been there forever, since they were created. And I am pretty certain, from what I have heard of course I haven't actually been there that DCIS has a presence there. . . . . And there may have been others, too.[247]

Former Deputy Assistant Inspector General for Audits Patti Boyd agreed as well:

> A How many audit agencies are there?
>
> Q Yeah.
>
> A DOD's there. AID is there. We coordinated as a matter of fact, we were looking at coordinating some work with AID. I know AID is there, DOD, SIGIR, Justice IG is there. We went over there, and we had some meetings with DOD about possibly utilizing some of their space. . . to set up an office over there, and we talked with them about . . . so I know at least four other audit agencies.
>
> Q GAO is over there.
>
> A GAO, DCAA.[248]

Todd helped the Committee staff understand that under the IG Act, it is entirely appropriate for the State IG to establish referral relationships with other oversight entities.

> Q Is there anything in the IG Act that makes it inappropriate or wrong for [the IG] or the leadership of the office to turn to FBI,

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[246] Militana Interview at 65 (emphasis supplied).
[247] Rubendall Interview at 79.
[248] Boyd Interview at 67-38.

> turn to DS, turn to DOD IG with a set of facts and say, we need your additional resources?
>
> A As a matter of fact the PCIE encourages it, the Presidential Council on Integrity and Efficiency encourages it. It also the IGs government-wide have been not growing or in many cases contracting, and so this is one of their there are themes that **we have to leverage each other's resources because we don't have the ability** to go after the big. . . Katrinas of the world or foreign assistance or security assistance funding that's gone into in the post conflict world.[249]

SIGIR

As mentioned above, Todd explained SIGIR's dominant role in the oversight arena in Iraq.

> . . . [I]f you look at the dollars, if you look at like Iraq. . . and if you look at what we have authority over in Iraq or Afghanistan and I don't know how familiar you are with the Foreign Assistance Accounts and the ERF 1 versus ERF 2, **but when Congress set up SIGIR, they gave SIGIR more or less authority over everything** except for the D&CP side of what the State Department does. And the D&CP side is the Diplomatic and Consular Programs side. So basically, it is the embassy end.[250]

He elaborated:

> SIGIR basically does what they want, when they want, how they want. The impede into our stuff all the time.[251]

DeDona admitted he was unwilling to follow the IG's directive to monitor the Iraq matters.

> At the time and throughout my tenure, even though **I knew that the guidance was just to monitor, I felt it was our job, our duty to go over and investigate these allegations ourselves, not SIGIR, not the FBI.** I mean, we could do it jointly with them, but if we received the allegations initially, we had a duty to go over there and do those.[252]

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[249] Todd Deposition at 253-254 (emphasis supplied).
[250] *Id.* at 17-18 (emphasis supplied).
[251] *Id.* at 99.
[252] DeDona Interview at 29 (emphasis supplied).

Assistant Inspector General for Audits who explained OIG's joint work with SIGIR and DOD.

> We have done a number of contract audits, pre award audits. As far as on the ground, we have assisted SIGIR on at least a couple of projects, couple of audit projects. On the inspection side, we have had joint inspections with DOD and I believe some other agencies, looked at rule of law, anti corruption and some other issues.[253]
>
> * * *
>
> We . . . did a joint audit with SIGIR on the task order for the add on palace in the Green Zone. There was discussion on which auditor was going to assist the SIGIR staff that recently completed an audit on Afghan Afghanistan property in the possession of selected contractors. There was discussion there of the makeup of that team.[254]

Todd testified the IG had some troubles restraining the investigative staff. Even when matters were being handled by other entities, like SIGIR, the investigators wanted to "jump on the bandwagon" too.

> The Berger Group, there was a hot line complaint, I believe, and there was an investigation of them by AID, and SIGIR and our guys wanted to jump on the bandwagon. And all I remember was that how do you spell it by the way, we have several Berger that's similar, is this B E R G E R?[255]

Todd relayed the frustration in having OIG's investigators trying to open parallel proceedings.

> I mean, from an authorities point of view, like in the case of the Blackwater thing, they opened an investigation or an audit or whatever they called it and it was on our programs, it was on diplomatic security. **It was on the exact three cases that Militana and company wanted to run to ground with Candelmo in the Eastern District of North Carolina. And that was the conflicting** that's what's conflicting me, that's the sort of thing that was conflicting, **because we had SIGIR doing the exact three contracts that Candelmo was doing, but SIGIR did**

[253] Duda Deposition at 54.
[254] *Id.* at 80.
[255] Todd Deposition at 97

> **it all the time**. So it wouldn't surprise me they are doing it in this[256]

Diplomatic Security

The State Department's Bureau of Diplomatic Security (DS) has worldwide responsibility for the agency's law enforcement and security operations.[257] DS also performs investigative functions. According to GAO, DS has 32,000 special agents, and other professionals. In 2004, DS reported it opened 5,275 new criminal investigations.[258]

The IG observed:

> DS . . . has roughly 1,450 special agents, is in perhaps 300 locations in the U.S. and around the world, and has resources, as CG Walker said, "many, many, many more times" that of the entire OIG (probably over a billion dollars), with what he calls a "global force of approximately 32,000."[259]

As to the issues that have arisen between OIG and DS, the IG said:

> Even putting aside questions of jurisdiction, duplication of effort, expertise, cost, benefit, etc., it is simply inconceivable that 10 INV agents could oversee thousands of DS investigations that take place each year . . . or that INV could do anything else if it tried to oversee DS. I should note that OIG does inspect DS and has reported on one major DS division in each of the past five years.[260]

One of the major conflicts the IG had with his investigators surrounded when a matter ought to be handled by the DS. William Todd testified:

> I mean, the first thing, we have something called Diplomatic Security. Diplomatic Security, [the IG] and I talked about, DS has 100 times the Federal agents as the IG does, 100 times. They are in 160 major locations and another 100 minor locations around the world. They have 24, 25, 26 offices abroad, or domestically and abroad. And [the IG] was concerned that he couldn't he could not fulfill his mandate with the resources he had, and so he had to rely on other law enforcement entities.[261]

According to Todd DS has the capabilities to handle fraud cases around the world.

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[256] *Id.* at 99 .
[257] GAO Report at 25.
[258] *Id.* at 25.
[259] Krongard Letter to Delahunt at17.
[260] *Id.*
[261] Todd Deposition at 14.

> Q Do you know whether Diplomatic Security has jurisdiction over fraud issues, contract fraud, public corruption, and can work with the Justice Department on those types of cases?
>
> A I don't know conclusively. I do know that they have worked numbers of fraud cases around the world.[262]

Again, according to Todd, DS is considerably larger than the IG's investigative division.

> I think [the IG] has tried to balance the workload in terms of what we can do with 10 guys versus what DS can do with 100 times 10 guys. Actually, it is 120 times 10 guys.[263]
>
> * * *
>
> The organization does have a problem with DS, okay? Does have a problem with DS. DS has multiples I think DS's budget is over a billion dollars, it is actually well over a billion dollars. Ours is 30 million or thereabouts. You know, they have 100 plus, 110, 120 times the number of agents we have.[264]

Rubendall also spoke to the DS overlap:

> For example, DS is a great example of this. We have overlapping jurisdictions in visa and passport fraud, and I would be lying if I didn't say there wasn't at least one instance that I'm aware of in the distant past where we received allegations, they received allegation, we didn't tell each other and we kind of bumped into each other in the investigation. That has happened. We took steps to remedy that, in terms of mutual notification and whatnot.[265]

Lubeck spoke to the friction among the groups:

> Q Yes. Is there a friction between the two groups, the IG investigators and DS?
>
> A Historically management has always butted heads on who has jurisdiction, who has the responsibility and whatnot. Clearly they are the bigger kid in the sandbox, because they have more money and are worldwide. On an agent level it is hit or miss. We've had some problems, good relationships like anyone else.

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[262] *Id.* at 177.
[263] *Id.* at 32-33.
[264] *Id.* at 240.
[265] Rubendall Interview at 91.

> A little sidebar. If you saw yesterday's news, New York City Police were criticizing ICE for acting like hotdogs. Not everyone gets along, not everyone plays well in the sandbox. Historically there has been friction at the management level, rivalries.[266]

The State Department Inspector General is not the only person to contemplate the varied roles for the oversight entities in Iraq. There exists an Iraq IG Council, led by SIGIR. Mark Duda explained:

> Regarding Iraq, there's an Iraqi IG council that SIGIR heads up. That is a quarterly group that meets quarterly. It's made up of all the IGs, all the OIGs that have Iraq related work, plus GAO and all the DOD organizations and so forth. So that's a good way for members of the committee to communicate what each of us are doing so we don't step on each other's feet, coordinate scope, make sure not only that we don't that we are consistent in approach and that we don't duplicate auditing a certain issue, but we don't neglect to we don't leave a hole in some program or a significant portion that goes unaudited.[267]

Duda told the Committee staff, the process was beneficial.

> Q Does that meet in Iraq, or does it meet here?
>
> A They will have the SIGIR group in Iraq and any other USAID has individuals in Iraq. GAO does; DOD does. Usually, it's a teleconference. So they will teleconference from Iraq at like 10:00 a.m. here and it will be 6:00 p.m. there, and all the agencies will have a big teleconference.
>
> Q Do you think that's a satisfactory process?
>
> A Yes. I think it's beneficial. It has a lot of value.[268]

Despite Presence of Numerous Other Oversight Entities, OIG Investigators Saw Themselves as Indispensable

Despite the numerous oversight entities in Iraq, the investigators believed they were uniquely positioned to investigate Iraq-related matters.

Rubendall rejected the IG's authority and discretion to refer Iraq-related matters to other oversight entities.

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[266] Lubeck Interview at 28.
[267] Duda Deposition at 55.
[268] *Id.* at 55.

> Q And do you think that the folks in the investigations function appreciate th[e] unhappy fact that there may be great investigations that need to be pursued in the interest of America, in the interest of Department of State, in the interest of the integrity of your organization, but, at the end of the day, [the IG] may disagree and, because of that disagreement, it's his call?
>
> A If you're a cop, you see a crime being committed, you can't not . . . it's your obligation, your ethical responsibility to handle that crime.[269]

The Committee staff asked Rubendall what type of justification the IG owed them, if he determined a matter was better handled by a different oversight entity.

> I can't even imagine what justification could suffice.[270]

McNamara testified:

> And then when I found out that there may be some product substitution in the new Embassy and some folks' lives may be at stake, I just couldn't control my ability to be silent any longer.
>
> * * *
>
> And also I would like to say that this is not about me or my motivation. It is about [the IG] and what he didn't do, what he didn't do for the Department folks, what he didn't do for the Secretary, what he didn't do for Congress, what he didn't do for the taxpayer, what he didn't do for the President, who put him in that place. I think he let everyone down by not being more aggressive and actively looking at the Department spending and procurement fraud and stuff like that. So it is not about me, it is about the facts of what happened here.[271]

These statements reflect a complete disregard for (or ignorance of) the work of other investigative agencies in these very matters.

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[269] Rubendall Interview at 95-96 (emphasis supplied).
[270] *Id.* at 96.
[271] McNamara Interview at 154.

E. New Embassy Compound Matter

You prevented your investigators from cooperating with a Justice Department investigation into waste, fraud, and abuse relating to the new U.S. Embassy in Iraq and followed highly irregular procedures in exonerating the prime contractor, First Kuwaiti Trading Company, of charges of labor trafficking.

The record does not support this allegation. The Majority's claims that the Inspector General's level of cooperation with the Department of Justice's investigation into alleged waste, fraud, and abuse at the New Embassy Compound (NEC) was less than satisfactory are misplaced. The charge the Inspector General "followed highly irregular procedures" in examining labor trafficking claims is misplaced. The criticism of the Inspector General's memorandum concerning the labor trafficking allegations is unfair.

Whistleblower Ralph McNamara conceded the allegations relating to the NEC were being examined by 10-12 different oversight entities.

> Bill [Todd] was sitting there, and he said I can count 10 or 12 different agencies looking at the Embassy. . . . . That was the only difference in the overlapping, I don't want to step on other people's toes, etc.[272]

The charge the IG used irregular procedures in preparing an investigative report exonerating First Kuwaiti is a straw man. The IG did not conduct an investigation, audit, or inspection. He merely surveyed the scene, determined the allegations needed to be examined more closely, and documented his findings in a **memorandum**. Former Deputy Assistant Inspector General for Audits Patti Boyd did not disagree.

Q So it is what it is?

A It is what it is.

Q And he doesn't call it an investigation?

A No.

Q And he doesn't call it a report?

A No.

[272] DeDona Interview at 108-109.

Q It's a memorandum. He calls it a memorandum?

A. Yes, he calls it a memorandum.[273]

1. Allegations Concerning the New Embassy

There have been a number of allegations relating to the construction of the New Embassy Compound (NEC). Some of the allegations, as the Committee staff has come to learn, involve False Claims Act and Qui Tam matters.

John DeDona told Committee staff about some of the allegations relating to the NEC.

> I guess the earliest ones were some of the **site preparation work.** Electrical, underground tunnels, removal of ordinance. So on and so forth. Those are some of the earlier allegations. Then it moved on to what we would call **deficient work or product substitution type work** which is also deficient type work. In the embassy, there is a distinction between what they call the base camp. We received **allegations in human trafficking**, received allegations directly from the Bureau over at State Department regarding, I think, a gentleman named Mark Taylor in human trafficking.[274]
>
> * * *
>
> There was a company responsible for site prep . . . . We had allegations that they were billing for work not performed. We had allegations that they were doing substandard work on the work that they did perform, and we had allegations that they actually didn't do some of the work . . . .[275]

Numerous entities were examining these allegations. DeDona explained:

> Q You also mentioned allegations regarding construction problems at the embassy. Could you tell us how those first came to the attention of the OIG?
>
> A The bulk came in through the hotline and subsequently through our liaison efforts with the special Inspector General for Iraq reconstruction. We, myself, a gentleman named Jim B[yrne], who has since left **SIGIR** and who is at the Office of Special Counsel, and **two FBI agents** got together and different agencies

[273] Boyd Interview at 135-136.
[274] DeDona Interview at 24 (emphasis supplied).
[275] *Id.* at 24.

> were receiving different allegations about Iraq and Afghanistan. And they had an earlier task force called Spitfire which really wasn't functioning. So we developed another one with those three agencies, primarily. And then **defense criminal investigation service, Army CID, USAID**, there is a host of agencies that are now involved in it. And our initial step was to set up a joint operations center where all of the intel would come in.[276]

As it turned out, according to testimony provided by DeDona, there were 10-12 different entities pursuing the embassy-related issues.

> Bill [Todd] was sitting there, and he said I can count 10 or 12 different agencies looking at the Embassy. . . . . That was the only difference in the overlapping, I don't want to step on other people's toes, etc.[277]

Militana was especially concerned about the embassy construction problems. Despite the fact 10-12 agencies were examining the issues, Militana thought it was up to him – in Washington – to prevent people from moving into the embassy. He told Committee staff:

> Basically, I am the case agent. **So I am developing this information, and I am the one that sent the e mail saying, please stop the accreditation process and don't let the people move in there. . . until it is safe. That was the main thing, is make sure it is safe before you put our Foreign Service officers in there.** And basically because my name was on it . . . .[278]

Militana showed no regard for the "10-12" other agencies engaged in NEC-related oversight.

Rubendall told Committee staff Deputy IG William Todd allowed the investigators to open an investigation into the fire suppression system allegations. Rubendall believed Todd only allowed them to open the investigation because the IG was out of the country.

> The fire inspectors kept saying that this system is not working; it's not being installed properly; it's not working; and they submitted numerous inspection reports, which I understand you guys have all the documents on that, but apparently, the first set was submitted sometime in late 2006, like maybe in October. I've seen these documents. I've glanced at them. I haven't read them. Ron has done the in depth work. As the supervisor, I don't do the in depth

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[276] *Id.* at 36 (emphasis supplied).
[277] *Id.* at 108-109.
[278] Militana Interview at 180 (emphasis supplied).

> work on this stuff. I've seen the documents. I've sat in on a couple of interviews with the fire inspectors. These are credible people. I mean, they are . . . they are what you would expect them to be, kind of . . . kind of. . . blue collar type guys who are very no nonsense. This is what they do for a living, and they know this area inside and out, and, you know and they were very forceful in saying that the embassy is absolutely unsafe, and so we acted on that basis. Now, interestingly enough, we were allowed to open that investigation by Bill Todd during that time when [the IG] was out of the country. Now, I don't know if Mr. Todd informed [the IG] that we were opening that investigation when we did or when, in fact, he did finally notify him, but I thought the timing was particularly interesting in terms of us actually being allowed to open that investigation.[279]

Interestingly, Rubendall concedes the allegations concerning the fire suppression system came directly from inside of the State Department.

> Q So you're still investigating whether the thought or knowledge or intent is there, but you received allegations that could bear on corruption?
>
> A Could bear on corruption. And the other aspect of the allegations was the Department of State people were so bound and determined to have that Embassy finished, as they said, on time and on budget, that they basically ignored the fire inspectors when they were trying to tell them these problems.
>
> Q And did these allegations come in from the Department of Justice?
>
> A **I don't believe they did. I think they came directly from the fire folks. But I defer to Ron on that.**
>
> Q **So, from the Agency?**
>
> A **From the Agency, yeah.** From the actual fire inspectors that actually inspected the system.[280]

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[279] Rubendall Interview at 55.
[280] *Id.* at 115-116 (emphasis supplied).

2. The IG's Memorandum re Labor Trafficking Issues

The September 28 letter to the Inspector General contains some factually inaccurate statements. Admittedly, relying "on officials who contacted my staff," Chairman Waxman wrote.

> There is one aspect of the Baghdad embassy that you did investigate: allegations of illegal labor trafficking and substandard working conditions by the contractor, First Kuwaiti. But the unusual procedures you apparently used to examine the allegation and exonerate First Kuwaiti raise questions about your findings.
>
> * * *
>
> According to officials who contacted my staff, your investigation was highly irregular. You personally conducted the investigation and drafted the report, without seeking or permitting any input from your investigative staff. Contrary to established investigative procedures, you allowed the subject of the investigation, First Kuwaiti, to select the employees you interviewed about the trafficking allegations. By your own description, yow inquiry could not properly be described as an investigation or audit, but "consisted essentially of agreed upon procedures or limited procedures."

Indeed the IG considered these allegations. The IG arranged for the allegations to be examined by the Inspector General for Multi-National Force – Iraq (MNF-I IG), or jointly by OIG and MNF-IG.[281] Mr. Waxman states the IG conducted an investigation. The IG did not. The IG wrote a memorandum. It was not a report of investigation, not an audit, not an inspection. It was a memorandum. Calling it something other than a memorandum is inaccurate.

Alleging it was an investigation raises a straw man that the IG's "investigation" exonerated First Kuwaiti.

Deputy IG William Todd explained:

> Q Is this the first was this the first time that you and the Inspector General conducted an investigation by yourselves?
>
> A It wasn't an investigation.
>
> Q Well, what was it?

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[281] *Allegations of Waste, Fraud and Abuse and the New U.S. Embassy in Iraq: Hearing Before the Oversight Comm.*, 110th Cong., July 26, 2007 (statement of Howard Krongard, State Dep't IG) at 2-3.

> A **It was the furthest thing from an investigation and we disclosed what it was. It was a limited scope assessment that didn't comply with any standards, it gave negative assurance, it was not an attestation.** It just said, we have these allegations, we're going to look into it. And when we did, we, for the five people that we talked with, or whatever number, they didn't play out, the allegations didn't apply to them and we gave no positive assurance that this didn't mean the rest of the zillions of people there or any different.[282]
>
> * * *
>
> I had no need to try to talk him out of it because as it was explained to me, it was just talking to five people, **it was a negative assurance, non attestation.** I'm a CPA, those are big words for us in terms of what the report is supposed to mean. **So and by the way, it wasn't a report, it was a memo.** So I was okay with it. And that's why I signed the report. And also, if you read the report, it is extraordinarily precise in what it says and what it doesn't say. If you learn something about [the IG], [the IG] is the most precise guy you will ever meet in your life.[283]

These allegations were not lightly examined. Todd testified:

> Q So what was the point of doing it then if you couldn't investigate what was going on? If that's all it was, what was the point of this?
>
> A **That's why he went and had MNFI look into it.**
>
> Q So
>
> A **The IGs normally don't conduct investigations, and so he had MNFI which has far more resources than we do had their IG look at it.**[284]

One of the primary whistleblowers – Ralph McNamara – does not disagree. He told Committee staff:

> A He never categorized it to me at all. I just read a report of findings, I think it was called. I am not sure.

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[282] Todd Deposition at 113-114 (emphasis supplied).
[283] *Id.* at 115 (emphasis supplied).
[284] *Id.* at 114 (emphasis supplied).

Q Okay.

A So report of findings is what I

Q Okay. So he didn't say that . . . but the document didn't purport to be an investigation or an audit?

A I don't recall right now, but I don't think it said report of investigation on it. By looking at it, it certainly wasn't a report of investigation.[285]

DeDona told the Committee:

> **That was regarding his all I knew he was writing an investigative report**. I had no idea what the content and the substance was going to be until it was published. **When he said he did an investigation**, I just assumed it was on everything that had been not only received by investigations, but perhaps inspections and audits as well. And then when it came out on the Web site, it just seemed to focus on the trafficking.[286]

DeDona was most emphatically mistaken. When pressed, he conceded as much.

Q How is that document categorized? What did he call it? I have seen it, and I am not I don't believe the document said it is an investigation.

A It is not a report of investigation.

Q Right.

A It is a memorandum.[287]

* * *

Q What I am getting at is you criticized his report as deficient from the standpoint of the investigative standards. But it wasn't marketed or put out as an investigation. It never said it was an investigation. The document itself wasn't denominated "investigative report"?

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[285] *Id.* at 114.
[286] DeDona Interview at 42 (emphasis supplied).
[287] DeDona Interview at 113.

A No. And I think what I was really responding to was a question of. . . did it meet the investigative standards, and I said no, by investigative standards it is flawed.

Q Yeah. I think we all agree that that is the case. But I don't think it is an investigative report.

A No.

Q Nor was it denominated as such?

A No.[288]

At any rate, what is not disputed is several oversight entities were looking at the human trafficking concerns. Militana told Committee staff:

. . . . I know **SIGIR**, SIGIR was looking at it. I read the reports from **MNFI** that accompanied [the IG's] report. It is my understanding I think **FBI** and I think the Philippine government. I think a lot of people were looking at it, are looking at it, have been looking at it.[289]

Patti Boyd also conceded the IG did not conduct an investigation. The IG wrote a memo.

Q But he didn't I guess the point and I don't want to get into an argument with you he didn't maintain that he followed the Blue Book standards or the Yellow Book standards. The document doesn't say that.

A No, he didn't. You're right.

Q So it is what it is?

A It is what it is.

Q And he doesn't call it an investigation?

A No.

Q And he doesn't call it a report?

A No.

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[288] *Id.* at 113-114.
[289] Militana Interview at 73 (emphasis supplied).

Q It's a memorandum. He calls it a memorandum?

A. Yes, he calls it a memorandum.[290]

3. False Claims Act/Qui Tam Actions Concerning the Embassy

The Majority has alleged the IG did not support the Department of Justice's efforts to investigate the embassy allegations. While the distinction between criminal and civil actions being handled by the Department of Justice is not clear, it has been suggested that the IG prevented the investigative staff from assisting the Assistant United States Attorneys.

The False Claims Act is a civil antifraud statute, providing that any person who knowingly submits or causes the submission of false claims for government funds or property is liable for damages and penalties.[291] Under the Act, private persons may sue on behalf of the federal government, these cases are known as *Qui Tam* actions.[292] The phrase is a latin abbreviation meaning a person who sues for the king as well as for himself.[293] A person who files a civil qui tam case for a violation of the False Claims Act is called a relator.[294] Relators are also known as whistleblowers.[295] Under the Act, a relator files a law suit under seal.[296] The case is not publicly disclosed.[297] The Department of Justice represents the government and is a named party in every qui tam case.[298] If a qui tam case is successful, the whistleblower is entitled to a share of the recoveries.[299] The financial recoveries for whistleblowers can be substantial. According to 2005 GAO materials, the median recovery for qui tam whistleblowers was $123,885.[300] According to GAO, between fiscal years 1987 and 2005, 113 whistleblowers recovered in excess of $1 million.[301]

The testimony clearly shows the IG did not impede the Justice Department's efforts to recover taxpayer dollars through civil proceedings. Rather, the IG simply wanted to be informed of what his organization was responsible for providing to the Justice Department. The witnesses explained how the IG became frustrated with John DeDona's unwillingness to brief him. Ultimately, DeDona was insubordinate.

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[290] Boyd Interview at 135-136.
[291] GAO, Information on False Claims Act Litigation, Briefing for Congressional Requesters, Dec. 15, 2005, at 6 [GAO Presentation]; False Claims Act, 31 U.S.C. § 3729-33.
[292] *Id.*
[293] *Id.*
[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.*
[299] *Id.*
[300] GAO Presentation at page 13.
[301] *Id.* at 32.

Rubendall told Committee staff:

> "Well," he said, "I don't think that's necessary. Those AUSAs, they're always asking for way more than they need." He said, "When I was an attorney" I guess he said an attorney for the accounting firm, or however he put it he said, "They would always want our accountants there for the whole time, and it absolutely wasn't necessary, and I just don't think that's a good idea. I just don't" . . . "I don't think we'll be doing that."[302]

Todd explained DeDona was free-lancing with the Department of Justice without fully informing the IG.

> And how I heard about it is John left me a voice mail on my work phone where he said something to the effect of, I think I may have stepped in it. You know, basically [the IG's] all spun up about somebody telling him that he has refused to provide data [to DOJ], which isn't an all inclusive or correct statement. **I mean, [the IG] was not preventing DeDona, and DeDona knew it.** [The IG] wanted to as I said, to coordinate things, manage things, prioritize things, and understand it. And also, candidly, [the IG's] issues weren't with Henebery. Quite the contrary, [the IG's] issues were with DeDona and Ralph McNamara for playing hide the football.[303]

According to Todd, the source of the IG's consternation was made plain. DeDona and McNamara breached the IG's confidence and trust.

> Q So was it your understanding that the request came first to either Mr. DeDona or someone else in INV, and then he told you about it, as opposed to coming in through your office or [the IG's] office?
>
> A I believe it was John knew that he had an issue, that they had been helping Henebery and hadn't briefed [the IG], and [the IG] was on a [the IG] was and is and will be very concerned about INV playing hide the football with him. . . basically not making him aware of assists that INV had been doing. And John found out that there was a scheduled meeting, and that there had been some discussions, and I believe that INV had, unbeknownst to and I think it was DeDona who did it had given Henebery all

[302] Rubendall Interview at 28-29.
[303] Todd Deposition at 138 (emphasis supplied).

> of our complaints, all of our investigative material, anything he had access to regarding First Kuwaiti.[304]
>
> * * *
>
> Q So the reason that [the IG] didn't want to provide assistance to the Justice Department was because he was unhappy that his staff had not talked to him about it?
>
> A He was uninformed of the facts. I mean, his staff had basically not made him aware of any of this, and so he got caught off guard. And candidly, [the IG] is used [the IG] is an extraordinarily competitive guy, and he viewed this as a breach of trust and confidence. And when he found this out, he didn't react too well.[305]

Todd explained:

> Q Was there a decision by [the IG] not to assist the Justice Department on this matter?
>
> A There was what I refer to as a "get the facts" phase, where John I don't think John fully knew what his agents had done. And Ralph and, I think, others were telling him only half of what was being done.[306]

The investigators' failure to keep the IG informed rose to the level of insubordination according to Todd.

> A . . . . Even though Militana may have started this in March or April or whatever you said, it didn't show up as part of the major work that he was doing. And so when all of a sudden DeDona approached us on whatever the date was you gave me
>
> Q July 10th?
>
> A July 10, it became another issue where DeDona and company were playing hide the football from the boss, when they were specifically ordered not to do so. **And so, again, it gets back to whether DeDona and his people are being insubordinate, or whether we try to allow a minor amount of insubordination and we allow the work to go forward.** All [the IG] said is, we

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[304] *Id.* at 136.
[305] *Id.* at 144.
[306] *Id.* at 137.

> just want to become informed. I need to know what these guys are saying.[307]

Counsel Erich Hart tells a similar story:

> John was mixed. In the beginning I knew John at the Department of the Interior, so we were friends there and we both moved over right around the same time frame. I believe I moved in May of '05 and he moved in June. And, frankly, with John, I would say we communicated more as time went on because John and I want to say this carefully, but **John took the viewpoint that when it came to investigations and things like that, he pretty much dealt directly with the Department of Justice. He did not deal with counsel in those types of situations, not normally.**[308]
>
> * * *
>
> I think John is a good agent. I think there were times when [the IG] wanted information from John and John didn't get him the information he wanted or sometimes misspoke. So there were times when [the IG's] frustration may have been warranted. But again I grew up in a culture where, not only military, but also the civil service, where you address I want to stress again I think John is a great agent. **I have nothing but respect for John DeDona. But in those instances where [the IG] felt he was not being well served by John, there are professional ways to do things.**[309]

The record is not complete as to whether the IG was skeptical of the civil fraud matters under consideration by the Justice Department. Considering the number of oversight entities active in Iraq examining the embassy-related construction issues, it is not immediately apparent why the OIG investigators would be needed to support the Justice Department. The Majority has failed to substantiate anything improper.

F. Counterfeit Computers Matter

> *You prevented your investigators from seizing evidence that they believed would have implicated a large State Department contractor in procurement fraud in Afghanistan.*

The record does not support this allegation. The Majority's claims relating to the DynCorp matter are off-base.

In describing the whistleblower's mere assertion, the Chairman wrote:

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[307] *Id.* at 271 (emphasis supplied).
[308] Hart Telephonic Deposition at 25 (emphasis supplied).
[309] *Id.* at 91 (emphasis supplied).

> According to a preliminary activity report obtained by my staff, investigators in your office opened an investigation in September 2006 into allegations that counterfeit computers had been provided by the contractor to a police training facility in Afghanistan. The computers were alleged to contain counterfeit hardware components as well as pirated software, which in addition to being a fraudulent procurement may have constituted a serious breach in security.
>
> Your investigators identified an Assistant U.S. Attorney who was willing to consider criminal proceedings if your investigators could obtain one of the counterfeit computers with a carefully preserved chain of custody. According to John DeDona, your investigators were poised to make the trip to Afghanistan to seize evidence and conduct interviews when you refused to approve the travel. As a result, one internal e-mail summarized the fate of the investigation: "Basically, this case will be closed because the AUSA will not take criminal case without [a law enforcement officer] collecting evidence."
>
> The investigation was officially closed on January 31, 2007. According to Ralph McNamara, the then-Deputy Assistant Inspector General for Investigations, "INV had to close its investigation without determining how the counterfeit computers were purchased, what the potential dollar loss was to the government, or whether the computers represented a security threat."

The testimony of William Todd plainly states what occurred with this matter. The investigators – DeDona and his staff – wanted to travel to retrieve the computers, but had no understanding of the complexities involved with moving about in Afghanistan. Indeed sending DeDona or a Special Agent to Afghanistan without the necessary logistical arrangements, could be an exceedingly dangerous foray. Ultimately, when the investigators could not present a workable plan to the IG, it was mutually agreed the law enforcement professionals of the State Department's Bureau of Diplomatic Security would perform the necessary evidence collection.

Todd explained:

> So [the IG] is, like, how are you going to get these? And this is where John fell off and the conversation turned unfortunate. **John said we're going to go to Kabul and we're going to rent a vehicle and we're going to basically ask the RSO to go around and pick them up.** [The IG] said, you can't just rent a vehicle; and [the IG] said, but what size vehicle are you going to rent? And

> it got and [the IG] is the most facile and intellectually nimble guy you'll ever meet. And he said, so we're talking 1,200 boxes, 6 inches by 20 inches. So are you going to rent a Yugo? Are you going to rent a 30 foot truck? And it devolved; I mean, the conversation devolved.[310]
>
> **So finally John said, I'm going to rent like a U Haul. And [the IG] said, there are no U Hauls in Afghanistan. And then John said, we are going to arrive in Kabul and drive to Afghanistan. [The IG] said, no, no, Kabul is the capital of Afghanistan, it is the same country.** And at that point [the IG] basically said, get the hell out of my office. I mean, the meeting ended. And it just round one was over.[311]

Todd then explained how DS was to obtain the computers:

> Go back in. [The IG] said, well, how are you going to get them? And logistically John had talked to DS and asked for DS's help. At that point [the IG] said, why don't we have DS do this; . . . they're capable, they are there. Again, there are 10 or 11 or 12 of you guys, and in Afghanistan there are probably 50 or 60 or 70 DS agents. So there are six times the number of agents in Afghanistan that could do this work as opposed to your entire staff, A; and B, **traveling in Afghanistan at that point in time was very difficult. You know, the Taliban and others had blown up some stuff.**[312]

Todd testified the Inspector General was concerned for the safety of DeDona and his staff – concerned they would die trying to collect these computers.

> **He said, John, I'm concerned about you and your staff basically dying**, A; and B, there had been a charter flight the U.S. was using. It was leased by DynCorp for the eradication effort which basically splattered and killed a bunch of people. **So [the IG] said, why can't DS do it? And John said, well, they can.** And so [the IG] said, well, I'd like you to inquire. And [the IG] said he'll inquire and so that is that.[313]

* * *

[310] Todd Deposition at 74-75 (emphasis supplied).
[311] *Id.* (emphasis supplied).
[312] *Id.* at 76 (emphasis supplied).
[313] *Id.* (emphasis supplied).

> Q But you would agree had [the IG] approved the INV agent to go, we wouldn't have been dealing with this issue; is that correct, as a matter of the sequence of events?
>
> A **No, I wouldn't agree to that. If they were going to do what they said they were going to do, Ron Militana probably would have died. I mean, to rent a car in Afghanistan and to drive around into Jalalabad and Bamiyan and Elmond, and I don't think Ron Militana would be with us today.**[314]

Militana told Committee staff:

> Q Why weren't you able to get the rest of the computers?
>
> A Well, there was an effort to we had asked anybody, anybody who was there, DS, FBI. I mean, any law enforcement, to the extent possible. . . whatever law enforcement entities were there, CID, to pick them up. And it was, logistically, it was very difficult because the computers weren't just in one place, they were throughout the country. And so it would have required quite a bit of travel throughout Afghanistan to difficult posts. And winter was coming, and some of the outposts were in climates that were difficult to get to. And for all these reasons, nobody wanted to do it because it wasn't their case. So there was no commitment by any other agency. In fact, in the e mail traffic I saw, it was like, you guys have a good plan, this is your case, you do it. That was basically the gist of it. So it was never done.[315]

Indirectly, Militana concedes there were issues prosecuting the matter:

> Who would have been prosecuted? Well, there were certain people that were on the list for potential subjects. And in fact I was advised . . . there was some discussion with the prosecuting attorney of different remedies that could be used to force compliance with the vendor, because there was some pushback. Here, domestically here in this area I was dealing with their legal office.[316]

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[314] *Id.* at 96 (emphasis supplied).
[315] Militana Interview at 191-192.
[316] *Id.* at 211-212.

G. Weapons Smuggling Matter

You impeded efforts by your investigators to cooperate with a Justice Department probe into allegations that a large private security contractor was smuggling weapons into Iraq.

The record does not support this allegation. The claims relating to the Inspector General "impeding efforts" to cooperate with the Justice Department's Blackwater weapons smuggling probe are misplaced.

Following a July 31 meeting with the Justice Department, Assistant U.S. Attorney and Chief of the Eastern District of North Carolina's Criminal Division Robert Higdon, wrote to the IG:

> Thank you for taking the time to meet with Deputy Criminal Chief Jim Candelmo and me earlier this week when we were in Washington. We appreciate the frank exchange of views and information. We will remain cognizant of the issues and will work closely with you and your staff to move this matter forward in the most expeditious way possible. **Your decision to allow your case agent to continue to work on this matter will make that much easier**.[317]

Todd testified the allegation that the IG impeded the Blackwater weapons smuggling review was "interesting":

> One of the things that I found interesting in that letter was the idea that there was an impediment on the Blackwater weapons smuggling review. **And the irony was that SIGIR was doing an audit over the same three contracts that [Candelmo] wanted to do an investigation on. And SIGIR, believe it or not, even though it is our money, had already started to do the audit. And so SIGIR, when it found out by basically the Embassy saying this is not your legal authority to do it, it is State IG, SIGIR came to [the IG] and said, what do I do?** And [the IG] basically said, well, we can take it over, we can do it jointly. And then [Candelmo] comes into the picture saying or Militana comes into the picture saying we have this Blackwater thing and here are the contracts. **I thought the irony there was that we were truly trying to deconflict this stuff, but we had basically several of the same organizations looking at the exact same stuff. And the irony to this was Militana knew that SIGIR was looking at this, and he's the guy that picked the contracts that would be**

[317] Letter from Robert Higdon, Assistant U.S. Attorney, Chief, Criminal Division, U.S. Dep't of Justice, Eastern District of North Carolina to Howard Krongard, Inspector General, Office of Inspector General, U.S. Dep't of State (week of July 31, 2007) (emphasis supplied).

> **basically looked at in the same way.** And . . . it didn't make any sense, but people are tripping over one another on certain things. On other things people have stayed away from, which is to me, you look at the big programs, you look at the big assistance programs, you look at like a counternarcotics program in Afghanistan. . . people have stayed away from it. You look at the train and equip stuff that SOLIC does, it is billions and billions of dollars. Not one dime of it has been looked at. And so long story short is DOD IG has been helpful, SIGIR has been helpful, and a number of others.[318]

Due to the numerous entities looking at the issues, the IG was curious as to what resources the Justice Department needed from his organization. Consequently, the IG asked the Justice Department to brief him before proceeding. On July 19, 2007, the IG wrote to DeDona, "please make sure [DOJ] knows this is not a big deal and they do not have to bring a bunch of people or top brass. I simply want to know the details of the investigation, such as scope, objective, plan, responsibilities, etc."[319]

At any rate, as the North Carolina-based Justice Department officials planned their trip to brief the IG, the case was delayed. This delay, it is important to note, was not caused by the IG. DeDona conceded as much.

> Q Right. So is it fair to say that at least that 2 week delay was at least substantially due to Department of Justice's needs to get their folks together?
>
> A Yeah. I mean, it is what it is. He wanted to brief it up, and he had to wait for his folks to get back to talk to them personally.
>
> Q Sure. I am not saying it is unreasonable. I am just trying to pin down where the 2 weeks went.
>
> A I believe at least a week was waiting for his people to come back to personally
>
> Q By "his people"?
>
> A The Chief and the U.S. Attorney.[320]

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[318] Todd Deposition at 252-253 (emphasis supplied).
[319] E-mail from Howard Krongard to John DeDona (July 19, 2007) (2666).
[320] DeDona Interview at 116-117.

Militana also confirmed the Justice Department caused the delay, not the IG.

> Q Do you know what caused that delay? . . . .
>
> A Yeah. I notified the Department of Justice attorneys. And I passed on the information about the request for the meeting. And then it just had to be coordinated. I think he was there was an e mail exchange. You know, they were he got his
>
> Q By "they" you mean Justice?
>
> A Yeah. I'm recalling as I'm talking.
>
> Q Okay. Take your time.
>
> A The prosecuting attorney got his supervisor involved with it so there was . . . there was some delay on the part of DOJ. And then it just had to be coordinated with the Secretary. I mean, that was kind of the way the exchange went.[321]

Militana provided testimony showing he was unusually interested in personally working the Blackwater matter. Once the FBI is involved, it seems plausible that Militana could return to his OIG duties. He disagreed.

> Q And part of this investigation is, the heart of this letter is that [the IG] isn't allowing an investigation to occur. And it is one thing if he is actively preventing any investigation from occurring. That is one thing. Another thing is if he is saying, hey, look, we are not the best folks to do it; let's have the FBI do it, and the investigation is occurring; at the end of the day, the American people are happy. Their interests are being looked after. Would you agree with that?
>
> A No. I think that if
>
> Q So you have to be the guy? It has to be you?
>
> A I think that the State Department is responsible for investigating crimes perpetrated against the State Department. The FBI can do it, of course, but there has to be some involvement by the State Department.[322]

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[321] Militana Interview at 205-206.
[322] *Id.* at 165.

Blackwater and Terry Heide

As the story has developed, the investigators – DeDona, McNamara and Militana – were displeased that the IG asked Director of Congressional and Public Affairs Terry Heide to serve as a point of contact between OIG and the State Department. The IG asked Heide to sit in on the July 31 meeting. The investigators were displeased by this. Going forward, as the Justice Department needed documents, Militana was tasked with making the document request to the State Department through Terry Heide. While the testimony shows Heide was not performing an investigative function, she was merely a conduit – the investigators misunderstood her role. They were unhappy.

McNamara inaccurately believed the IG had Heide supervising Militana. He told Committee staff:

> So that meeting did take place, and it was my understanding that, after that meeting, instead of Mr. DeDona being the point of contact for the investigation, Ms. Terry Heide was assigned to be the point of contact for the investigation, and Agent Militana was to report to her on investigative activity.[323]

The investigators communicated their displeasure to the Justice Department officials. A ruse was hatched to rid the meeting of Heide. It did not work.

Rubendall told Committee staff:

> So we discussed back and forth about. . . what to do about that, and what they decided to do, what Mr. Candelmo and his boss had decided to do, was "Well, we'll ask [the IG] to ask [Heide] to leave the meeting because we might discuss grand jury material." Now, that we weren't going to discuss grand jury material, but that was the ruse that they were going to use to get her out of the meeting, so figuring that would be the most plausible ruse to use.[324]

As the meeting occurred, Rubendall testified the Justice Department officials employed their ruse. The IG would not have it. Rubendall explained:

> "We're going to talk about 6(c) [sic] material, so it would be better if she leaves the room." [the IG] objected to that and got very hostile. I thought the meeting was going to end, I really did, right there because he got very defensive. He didn't get angry, but very defensive and very, like, "Oh, she's" I think he referred to her as

[323] McNamara Interview at 107.
[324] Rubendall Interview at 142.

> God, what is it? his "alter ego" or something like that, where basically he made it clear he wanted her in that meeting.[325]

DeDona provided his version of the meeting. Incidentally, in testimony to the Committee, DeDona explained the ruse as Rubendall did. Whether DeDona was unaware of the ruse, or not, is not known.

> Q What happened during that meeting?
>
> A They briefed [the IG] on what they were looking for, the piece that they had at Commerce, the pieces that they were looking for from State Department. They got into a little 6(e), which is when they asked Ms. Heide to leave.
>
> Q 6(e) meaning grand jury material?
>
> A Yes. So she left. It was odd that she was there to begin with, but we had briefed them that she was going to be there as a noninvestigative entity.[326]

DeDona explained what he thought Heide's role was. He was wrong.

> Q So Ms. Heide was at the meeting and then she was then put in charge of collecting the records from the State Department?
>
> A Right. **Ron had to run everything through her, not me, not Ralph, not Brian, not Pam.**
>
> Q **So he reported directly to her on this investigation?**
>
> A Uh huh.
>
> Q Yes?
>
> A **Yes.**
>
> Q And did who was supposed to interface with the Department, Ron Militana or Terry Heide?
>
> A Terry Heide.[327]

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[325] *Id.* at 142.
[326] DeDona Interview at 99.
[327] *Id.* at 101 (emphasis supplied).

Militana conceded Heide was merely a point of contact:

> Q She wasn't the supplemental investigator, was she?
>
> A Her role was to obtain documents, so she's not an investigator, no.
>
> Q So it was your job to figure out what documents you needed?
>
> A Yes.[328]

Militana would have preferred it if Heide was not involved.

> Q So if Ms. Heide's role was to be just a point of contact, not necessarily to be an investigator, did you have any problems with her serving as a conduit between DS, for example?
>
> A Did I have a problem with it? I would have preferred to get the information myself.[329]

Militana's testimony, however, makes it clear. He thought Heide was hindrance. He testified:

> Q Do you have any reason to think that her involvement has made the Department less likely to cooperate with you?
>
> A Possibly. I think that the Department may be less willing to cooperate because it is not because of the question as to whether or not it is an IG, an investigation. As the Inspector General as agents of the Inspector General, we have we are supposed to have unlimited access to any and all documentation. . . .[330]

When pressed, Militana had trouble identifying precisely what problems Heide caused.[331] It may have been he did not appreciate the ordinary difficulties associated with getting sensitive documents.[332]

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[328] Militana Interview at 134.
[329] *Id.* at 138.
[330] *Id.* at 172.
[331] *Id.* at 209-210.
[332] *Id.*

H. The Karl Rove Charge

You interfered with an on-going investigation into the conduct of Kenneth Tomlinson, the head of Voice of America and a close associate of Karl Rove, by passing information about the inquiry to Mr. Tomlinson.

The claims relating to the Inspector General showing favoritism towards a Karl Rove confidant are overblown. It seems few Waxman letters are Karl Rove-free.[333] As it turns out, Karl Rove has nothing whatsoever to do with this.

It is without dispute the IG had his secretary fax a congressional letter (public document) along with confidential whistleblower allegations (not a public document) to Tomlinson. The investigators were appalled. At the time, Tomlinson was under investigation by OIG. As the investigators tell it, the IG may have compromised the investigation by alerting Tomlinson to the contents of the whistleblower concerns.

Peter Lubeck was the case agent. He told Committee staff:

> A Here is what happened. There was a congressional inquiry referring to allegations of misconduct by it's the committee that oversees the Broadcasting Board of Governors. The congressional inquiry went into the front office. It was addressed to Howard Krongard. And apparently when Mr. Krongard was having a conversation with Mr. Tomlinson's chief of staff, this congressional inquiry was mentioned. He said, "Well, why don't you fax it to me?" So Mr. Krongard faxed the entire congressional inquiry to the chief of staff of Kenneth Tomlinson, and the chief of staff gave it to Mr. Tomlinson.
>
> Q Is this something that you witnessed? Did you see Mr. Krongard put the document on the fax machine?
>
> A I have a copy of the fax transmittal. What happened was and there's a witness to this; she actually saw it coming on the fax. The legal counsel for the Broadcasting Board of Governors, Carol Booker, saw the fax come in. So that's how I was alerted to it. And when I brought this to the attention of all parties in our office, the arrangement was that they would get the fax back without a copy being made or whatever. It would come back to the IG's office, which it did, with a copy of the transmittal memo and whatnot. And unfortunately a copy was made against their words,

[333] Go to the Democrats' Committee web site at http://oversight.house.gov/, enter "Rove" in the Search box. There were 379 results spanning 10 pages (as of Nov. 2, 2007).

> the agreement that no copies would be made. And it was given to Kenneth Tomlinson, who ended up giving it to his attorney.[334]

Lubeck was asked if the IG had any contact with Karl Rove. He said:

> Q Was [the IG] included in any of that correspondence between Karl Rove and Mr. Tomlinson, to your recollection?
>
> A I don't think so. Correspondence between they wanted correspondence between Karl Rove and Ken Tomlinson CPB, Corporation for Public Broadcasting's IG wanted those communications because the allegation was he was politicizing public TV and Karl Rove's being. . . who he is and he didn't want to see the communication. And so that's one investigative shop to another. Because we were cooperating. They were giving me records and whatever, so we gave them the e mails. They were on a government computer. We have no reasonable expectation of privacy, public record, so that's how
>
> Q In the course of that investigation, did you find any communications between [the IG] and Mr. Rove?
>
> A No.
>
> Q No?
>
> A No, to my I don't think so.
>
> Q No indications by Tomlinson that [the IG] and Mr. Rove were involved somehow in that?
>
> A No, I don't believe so. No, not to my recollection.
>
> Q Okay.[335]

The case agent provided no evidence the IG's faxing of the information to Tomlinson had any effect on the investigation. Concluding this to be the case is merely conjecture and speculation.

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[334] Lubeck Interview at 84-86.
[335] *Id.* at 144-145.

I. Censorship of Inspection Reports

You censored portions of inspection reports on embassies so that critical information on security vulnerabilities was dropped from classified annexes and not disclosed to Congress.

The Majority's claims relating to the censorship of inspection reports are without support.

Substantial testimony was taken from Assistant Inspector General for Inspections Robert Peterson. He did not have any idea where this claim came from. He testified:

> Q The same with the removal of information related to Embassy security, do you remember any specific discussion on that topic?
>
> A I don't. And that's one thing that surprised me in the letter. I can't recall at all what report that might have been. If he had a specific report number, I could try to recollect the hot wash and the discussions related to that. But especially in a classified report, I just don't see much I don't recall much being pulled out of those.[336]
>
> * * *
>
> Q You don't recall an inspection report where he suggested that language about problems with embassy security should come out of the report?
>
> A No.[337]
>
> * * *
>
> Q Can you think of any instance where [the IG] has recommended a change or suggested a change to an inspection report that you've rejected or that your team has rejected?
>
> A No. Nothing comes to mind.[338]
>
> * * *
>
> Q Are there instances of [the IG's] requested changes that you think have weakened the quality of the inspection report?

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[336] Peterson Deposition at 71.
[337] *Id.* at 42.
[338] *Id.* at 49

A No, not at all.

* * *

Q Can you think of any instances when [the IG] has requested that the inspection findings be removed from the report?

A No.[339]

* * *

Q One of the allegations one of the bulleted allegations is on page two. I think it is the only one that directly relates to your group.

A Uh huh.

Q It says [the IG] censored portions of inspection reports on embassies so that critical information on security vulnerabilities was dropped from classified annexes and not disclosed to Congress. Is that a fair statement?

A I cannot recall anything that he has censored in a security classified report. I polled some of my staff on this, and none of us can recall anything. I would be interested if there were examples that somebody had. That might cause me to rethink. But I just can't recall any.[340]

* * *

Q And the first paragraph, last sentence on the next page, page 11, I think this also relates back to the bulleted item, so but it said you deleted descriptions of problems from the classified section. I think the only difference is the word "deleted" as opposed to "censored". Do you remember any discussion about with the IG and your staff regarding do you even know what specific report this was?

A I have no idea. That's why I say I am really, really befuddled by this one. If anybody knows of one, I would be glad to rethink the discussions that might have taken place on that report. But, like I say, I polled some of my people, and no one can recall it.[341]

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[339] *Id.* at 49-50.
[340] *Id.* at 113.
[341] *Id.* at 114-115.

No witness had any information on this claim. For example, Counsel Hart testified:

> Q One of the allegations received by the committee is that [the IG] has altered inspection reports to remove security, I guess findings of security violations or other problems with securities at U.S. embassies. Are you familiar with that allegation?
>
> A Not at all. I have no knowledge of any of that.
>
> Q You've never you're not aware of any circumstance in which [the IG] has asked that an inspection report be edited to remove sensitive information regarding security at an Embassy?
>
> A Not that I can recall.[342]

J. Financial Statement Audit

You rejected audits of the State Department's financial statements that documented accounting concerns and refused to publish them until points critical of the Department had been removed.

The record does not support this allegation. The claims relating to the financial statement audit are without merit. The whistleblowers or other sources appear to have misunderstood the accounting rules relating to the agency's financial statement presentation.

The IG had a difference of opinion with his senior staff about the manner in which the Department's audited financial statements were presented. The IG thought the financial statements would be more useful if they were more accurate. To this end, he wanted to allow the auditors increased time to improve the accuracy of the financial statements.

The senior staff, however, disagreed. They thought is was important to document the qualifications, and move on. The senior staff's view, according to the testimony, was the longer and harder it was to obtain the information, the less valuable it was. At any rate, the entire process is transparent. Whether OIG proceeded as the IG desired (which they did) or whether the senior staff prevailed (they did not), everything is documented according to the accounting rules.

The decision to turn the facts concerning the Department's financial statement audit into the subject of Congressional scrutiny is unwarranted. The IG's view was

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[342] Hart Telephonic Deposition at 130.

ultimately, according to the testimony, blessed by two of the senior most experts –in the nation – in government accounting systems: GAO's Jeffrey Steinhoff, Managing Director, Financial Management and Assurance and OMB's Daniel Werfel (Office of Federal Financial Management).

On November 29, 2007, the IG wrote to Werfel at OMB explaining his position on keeping the audit open and asking for Werfel's position on the specifics of the State Department audit.[343] The IG asked Werfel to let him "know if I have accurately understood your view."[344] Werfel replied, "Howard: You have accurately stated OMB's position."[345]

On November 30, 2007, the IG prepared a "Memorandum for Workpapers" memorializing his discussion with GAO's Steinhoff.[346] According to the IG's discussion with Steinhoff:

> Jeff stated the following:
>
> 1. **If he were DOS and thought he could reasonably complete its work around December 15, he would "certainly do so"**. (sic)
>
> 2. **In the first instance, this is a management decision for DOS to make.** The work performed should be reasonable in regard to the benefit achieved. Open to question would be work that would cost millions of dollars and spread over several months. The benefit of having audited financial statements is substantial. In this situation, it sounds to him that DOS is doing the right thing.
>
> 3. **Neither [Steinhoff] nor GAO would criticize DOS or OIG for going forward**, particularly where the incremental cost for the audit work, over and above what would have to be expended to get ending balances anyway, was small.
>
> 4. **[Steinhoff] volunteered that he was impressed with the transparency of the DOS financial statements and subsequent audit report in 2005. He thought they set out clearly what happened.** He would want the 2006 financial statements and subsequent audit report to do likewise.[347]

Former Deputy Assistant Inspector General for Audits Patti Boyd provided crucial testimony that reveals this allegation for what it is, unwarranted.

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[343] E-mail from Howard Krongard to Daniel Werfel, OMB Deputy Controller (Nov. 29, 2006).
[344] *Id.*
[345] E-mail from Daniel Werfel, OMB to Howard Krongard (Nov. 30, 2006).
[346] Howard Krongard, Memorandum for Workpapers, Nov. 30, 2006.
[347] *Id.* (emphasis supplied.)

Q The financial statement, if I went to the Web site to look for that financial statement, would it be clear to me after looking through it that State Department did not have a clean statement by November 15th or whatever the date was, and that extra time was given before the statement was finished or declared okay?

A Uh huh.

Q Wouldn't I be able to tell that?

A Do you know what? It actually might be actually in the qualified opinion itself.

Q Right.

A In the new opinion, the clean opinion, I think it may state that.

Q Right, yes. So a reader would know that the State Department didn't get their stuff there in a timely manner and that it took an extra effort to get this opinion?

A Uh huh.

Q So if somebody were concerned about the state, if you will, of I hate to use the word state of the State but the state of the State Department's financial systems, one would get a pretty good idea that things may not be perfect?

A Yes, a person could conclude that, absolutely.

Q I mean, I think it would be difficult to conclude otherwise if you read the whole thing, because you recognize it took them longer?

A Uh huh.

Q You said yes?

A Yes.[348]

The Committee took testimony from Deputy Inspector General William Todd, Assistant Inspector General for Audits Mark Duda, the accountant in Duda's group

[348] Boyd Interview at 136-138.

responsible Gayle Voshell, and former Deputy Assistant Inspector General for Audits Patti Boyd.

Todd explained the matter as follows:

> You have financial information in systems, okay. And then you have the audit of financial information in systems. While the financial audit is going on, you have another company correcting the financial information that is contained in the system. So if you did a snapshot in time, froze everything, like our e mails, and said, I want to see Bill Todd's e mails as of yesterday, you would get supposedly everything that was there yesterday. And you would assume that is the same way with the financial statements, but it is not really, because even after the end of the year, they are still working on making it right. **And so my view was, if you spend enough time and money, you can make any terrible system clean. And I said. . . the AICPA and others believe the reason why it is important you do financial statements is to give users of the information something to make decisions that are useful, verifiable, timely, reliable. There are certain buzz words. And I said to [the IG], we can't give them forever.** Moreover, I agreed with the guideline that we should allow the vendor, being the auditor, to continue to do what I referred to as opening and closing balances. Because, in theory, the closing balance should be the opening. And you could probably allow the guy that is helping clean up the financial system to help make sure those are right. But other than that, all work stops. [The IG] said I was wrong. [The IG] told Duda he was wrong, and [the IG] told Erich Hart he is wrong. And [the IG] felt very strongly at the time about this. We had a meeting. After he told me I was irrelevant and these two guys were wrong, he shows us two or three documents, one that he got from OMB from Linda Combs. And Linda Combs was like the number three at OMB she is on the management side. And she said it is definitely doable. He got an opinion from GAO from David Walker, said it is doable. And he got something from the AICPA that said it was doable. **So and actually, [the IG] views this as one of his successes. He has bragged about this, that. . . that we have helped the department put in place financial systems that are accessible and readable and digestible and accurate, and that that is a benefit. And he has legal opinions or opinions from all of the authoritative bodies that said he was right.**[349]

[349] Todd Deposition at 286-287 (emphasis supplied).

Duda testified:

> The CFO Act requires that we have an annual financial statement audit that we submit to OMB and Treasury and the Department on November 15 of each year. The last 2 years we have had we have received, other than unqualified opinions, other than clean opinions as of 11/15, and our office has allowed the independent auditor to continue doing audit work into December and then issue another opinion replacing the opinion.[350]
>
> * * *
>
> Under law we are required to submit an audit; an audit and our financial statements with an audit report. We do that. Last year was a disclaimer. And he had such a scope limitation that he couldn't render an opinion on State's financial statements. The prior year was a "qualified," which meant under GAAP or a limitation, that he couldn't give a clean opinion, which would be an unqualified opinion. He gave a qualified opinion, okay. Last year it was a disclaimer. We met the due date at 11/15, so that was all reported to Treasury and so forth. The OIG allowed the auditor to continue working, to continue doing his audit work, collecting information, auditing the ending balances; and then in the middle of December, our auditor issued another opinion, which the CIG signed off on to replace this disclaimer, so that officially the State Department had a clean opinion last year.[351]
>
> * * *
>
> A . . . . This was a major disagreement that myself, Bill Todd and Erich Hart, with the IG, the three of us, we were on the same page and advised the IG that we should not do this.
>
> Q Why was this a bad idea?
>
> A This was a bad idea because you have a due date for the financial statements as of a certain point in time. That's what the law requires. By allowing the auditor to continue work and then issue another opinion, you are in essence I mean, if you throw enough money and time at a financial statement audit, you will get an unqualified opinion. There's deadlines for a reason.[352]
>
> * * *

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[350] Duda Deposition at 122.
[351] *Id.* at 122-123.
[352] *Id.* at 123.

A Well, it's a big indication of financial management in the Department. It can mean a difference between a red, yellow, or green on the PMA.

Q PMA, for the record?

A President's Management Agenda. There's a lot of value and pressure on the results of the financial statement audit. It's basically the assurance to the taxpayer, the users of that information, that the State Department is financially sound, has the controls in place; that if it says it has a certain dollar amount of buildings, that they are actually there. It has a certain amount of liability, that it's not twice that amount, you know.
So this was a professional disagreement that the three of us had with the IG. The first year that was a big cause about. . . the nontrust issue with me and the IG.[353]

* * *

Q Who is the independent auditor?

A Leonard G. Birnbaum and Associates.

Q How long have they been doing this work for the Department?

A Ten years.

Q Is it normal to have a relationship that long with the independent auditor?

A In my experience, no. It's a long it's been a long relationship. . . . . So he put out a solicitation and got all the way to the end, and then we found out that our current auditor said he would do it for another year.[354]

* * *

The bottom line was that he felt that the additional time would be beneficial the additional month, given the cost, the additional costs, would be beneficial to the Department to get a more accurate. . . audit opinion, and that it made sense. He disagreed that the timeliness and relevance, reliability, of the data and the

[353] *Id.* at 124 (emphasis supplied).
[354] *Id.* at 126-127.

appearance of independence he disagreed that that was a significant that was significant enough to prevent him from deciding to do this.[355]

* * *

Yes, there was a huge problem getting him the information. The Department was late on providing the actual financial statements to him, all the supporting documents, the document requests that the auditor asked for. They were very late in providing all that information, which is why the auditor couldn't give an opinion on the statements and had to disclaim; which, I believe if you could disclaim, you automatically get a red for financial on the PMA.[356]

* * *

I think the IG takes issue with the OMB requirement to do the financial statement audit in 45 days from the year end.

Q How late was the Department with the financial information?

A Well, it came in dribs and drabs after the due date, and then the auditor completed their work.

Q So had they not managed to hand over anything before the deadline, or just very little?

A Very little. And the stuff they did hand over had problems and follow up and requests and so forth.
The bottom line is that the Department, for various reasons resources, and. . . whatever could not provide timely information to the auditor.[357]

* * *

Q But, in your opinion, does that cast some doubt on the clean

A In my opinion, yes. I had advised the IG to get additional guidance from the AICPA, OMB, and to solicit additional and GAO, there's three to solicit additional advice as far as is this proper and so forth. The IG and I got into a long string of e mails

[355] *Id.* at 129.
[356] *Id.* at 129-130 (emphasis supplied).
[357] *Id.* at 130.

> that lasted. . . close to a week, putting forward our different arguments and so forth.
> **Then at the end, he said that he had talked to an official from the AICPA, OMB and GAO, and they concurred with them doing it.**[358]
>
> * * *
>
> He talked with Jeff Steinhoff at GAO. He talked to Daniel Werfell (sic) at OMB, and he talked with an individual at the AICPA. But he talked about it. I documented such and such, and they agreed to whatever, and he signed it.[359]

Voshell testified:

> A I did not agree with the suggestion. I didn't agree with it in '05 either.
>
> Q Why not?
>
> A I believe that the law is in place for a reason. I think that the department should meet the deadlines. And if not, then they should accept the opinion that's issued. I think that the requirements audit requirements are based on relevance and timeliness of data, and I think that if it's past . . . an established due date, then the relevance and timeliness of the data comes into question.[360]
>
> * * *
>
> After that point, I had raised some concerns with my supervisor, Mark Duda, who also had concerns. I know that he contacted the Inspector General with his concerns. And also he contacted the legal counsel Erich Hart. We had suggested that we should send a request to the AICPA to get information from the AICPA, and we also recommended contacting OMB and GAO to make sure that this was okay. Even though we had done it the year before, the circumstances were much more significant in '6 than they were in '05 because in '05, it was just one account, where in '06 it was many different accounts. **Ultimately, the IG contacted OMB and GAO and found out that both groups were supportive of continuing work. They thought it was a reasonable approach.** And our external auditors again contacted AICPA and provided

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[358] *Id.* at 131 (emphasis supplied).
[359] *Id.* at 132.
[360] Voshell Deposition at 25.

AICPA findings to us, and the AICPA was okay with continuing work as well.[361]

* * *

I still personally did not think it was reasonable. **However, because GAO and OMB and AICPA were okay with it, those are all the bodies I think I have to listen to. So I I was okay with it, although I didn't personally agree with it.**[362]

* * *

It's just for users who may use the financial statements, which I mean, you could argue not many people actually use government agency's financial statements, that the information may be. . . not valid and then later it. . . gets verified. But I mean, on the other hand, you could also say that it's better to have. . . good information out there for the public to use. So maybe it's better to continue for a month and get a clean opinion and good numbers that are put out there. So there are sort of pros and cons to both sides.[363]

* * *

Q Okay. In both instances, on the November 15 I guess it is deadline the auditor did not have a what we call a clean opinion?

A Correct.

Q And in both instances, additional work went on until a clean opinion was established. **Now, if I were to go to the Web sites or access those reports, would I not be aware of the totality of the circumstances? In other words, wouldn't I know that there wasn't a clean opinion on the 15th, that additional work was necessary to get there and an explanation of that work would be available, would it not, if I were to look at that statement?**

A **Yes. That's all disclosed.**

Q **Right. So it's transparent?**

---

[361] *Id.* at 26 (emphasis supplied).
[362] *Id.* at 27 (emphasis supplied).
[363] *Id.* at 29-30.

A **Yes, it's transparent.**[364]

* * *

Q **Again, back to the statement. Are you aware of any rules or laws or anything or processes that were violated by the process that State followed?**

A **No.**[365]

* * *

Well, AICPA standards as I mentioned before, stress relevance and timeliness as a responsibility for both auditing and accounting standards. I felt that the CFO Act allowed OMB to establish due dates for relevant and timely financial statements, which they had established as November 15. So, in my personal opinion, if you were not able to meet the mandated deadlines for relevant timely financial statements, then the information was no longer relevant and timely. And I thought it was more appropriate to cut off work and continue and work to on a begin the next year's financial statement audit basically.[366]

* * *

Q **Do you know how many agencies, an average I guess, in a year, get clean timely financial statements?**

A **I don't know the number off the top of my head, but I know it's more than 50 percent.**

Q Okay. Large ones like DOD and

A Well, DOD isn't able to have any opinion, no. They won't for years.[367]

Boyd told Committee staff:

Q As I understand it and we had a couple of other folks testify and you mentioned it, too that [the IG] consulted OMB [Daniel Werfel] and GAO [Jeffrey Steinhoff] . . . . and

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[364] *Id.* at 39 (emphasis supplied).
[365] *Id.* at 40 (emphasis supplied).
[366] *Id.* at 41.
[367] *Id.* at 41-42 (emphasis supplied).

A AICPA.

Q AICPA. And he did . . . So I mean somebody could check that.

A Right.

Q So I guess my point is, I could understand the disagreement that folks have about this methodology. But I think again, somewhat similar to this, it would be clear to anybody who wanted to find out what happened you have go to the statement and you would know what happened.
A Right.[368]

* * *

Q Are you aware of what the authorities are? The CFO Act I guess would be one of the authorities. Are you aware of any other authorities that control how these financial statements what the rules and the dos and don'ts are?

A Well, there's plenty of OMB guidance. There's been several amendments to the CFO Act. There's OMB bulletins that guide. . . several things that you do. . . and what reports you have to do. So it's a combination of the CFO Act and its amendments and OMB bulletins and guidance.

Q And I guess we understand [the IG] had some conversations with folks in GAO and a number of different folks and determined in his view that as long as it was documented in the footnotes and whatnot that this was an acceptable way to proceed?

A Uh huh.

Q Correct?

A Correct. He relayed that to us, yes, that he had spoken to these people and that they said gave him indication whatever situation he presented to them and the facts he presented, they gave him the that what he was doing was appropriate, yes. That was that is again, I didn't have a conversation with [the IG] about that, but, yes, that is what got relayed to me officially.[369]

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[368] Boyd Interview at 138.
[369] *Id.* at 141-142.

K. Refusal to Produce Documents

On November 1, 2007, the Counsel's Office notified Committee staff that the Inspector General had refused to produce certain documents requested by the Committee because they purportedly related to ongoing investigations.

On November 9 in a memorandum to Committee Members and staff, the Majority alleged the Inspector General had refused to produce documents to the Committee relating to ongoing investigations. The memorandum stated:

> After attempting unsuccessfully to negotiate a compromise that would satisfy the Committee's needs while addressing the Inspector General's concerns, the Committee issued a subpoena on November 7, 2007, for documents relating to the [open investigations.]

This is demonstrably false. The IG has recused himself from the document production. Accordingly, the IG has not refused to produce anything. To the contrary, the IG has written the Chairman advising of his intention to cooperate with the Committee's investigation.[370] The Counsel's office at OIG has communicated to the Committee in no uncertain terms: "because the documents implicate DOJ equities, including on-going investigations and OIG is obliged to consult with DOJ before releasing documents of this nature. **DOJ has advised us not to release information related to the on-going investigations in order to protect the integrity of these investigations.**"[371]

VI. Harm Inflicted on OIG by the Committee

A. The Majority's Heavy-handed Interactions With OIG Personnel

The Majority has employed unnecessarily intimidating tactics with OIG career personnel. On September 28, Mr. Waxman told the IG **"I direct you to instruct your staff, including your congressional affairs liaison and attorneys, to suspend all communications (other than those necessary to collect responsive documents) with employees the Committee is planning to interview."**[372] As the Committee has interviewed or deposed 10 current OIG officials, including the Deputy Inspector General, the Acting Counsel, and three Assistant Inspectors General, Mr. Waxman's directive essentially mandates a complete cessation of all communications by OIG's senior officials.

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[370] Letter from Howard Krongard to Chairman Waxman, Oct. 2, 2007 at 2.
[371] E-mail from Karen Holcomb Ouzts to [Comm. Staff] (Nov. 7, 2007 11:57 AM) (emphasis supplied).
[372] Waxman Letter, Sept. 28, 2007 at 2 (emphasis supplied).

The Committee has also consistently bypassed OIG's Office of Legislative Affairs when communicating with witnesses. OIG, like all federal agencies, coordinates their communications and interactions with the Congress through its Office of Legislative and Public Affairs. In the course of the Committee's business, oversight or otherwise, it should be coordinating communications with agency personnel through either the agency's legislative affairs staff or its counsel's office. The Majority bypassed these functions when they contacted OIG witnesses directly.[373]

The Majority has also sent follow-up questions directly to at least one witness. At 8:07 PM on November 8 Majority staff e-mailed detailed questions to the OIG budget officer.[374] The budget officer replied the next day – a Friday. At 5:26 PM on Friday, November 9, the Committee e-mailed an additional question to the budget officer.[375] The budget officer was later advised by the Majority to take the weekend off.[376]

B. The Majority's Public Assault on OIG Serves No Purpose Other than to Damage the Office's Ability to Perform Its Statutorily Mandated Mission

Numerous witnesses commented about their concern for the future of OIG. The sentiment of witnesses currently with OIG is clear. They are disappointed that these claims had to be aired in public fashion.

Assistant IG for Inspections Bob Peterson testified:

> Q And why were you disappointed?
>
> A That it had to come out in public. And in effect, a lot of us feel it can't help but hurt the reputation of the office, our mission, and credibility of our own mission and organization.[377]
>
> * * *
>
> Q And you think the letter has had a negative impact on the operations of the Department?

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[373] *See, e.g.*, E-mail from Erich Hart, Acting Counsel OIG, to Terry Heide, OIG Director of Legislative and Public Affairs, (Sept. 4, 2007) (2570) ("On Thursday, a [staffer] of HOGR left me a voicemail and I called back."].

[374] E-mail from [Comm. Staff] to Elizabeth Koniuszkow (Nov. 9, 2007 5:26 PM).

[375] E-mail from [Comm. Staff] to Elizabeth Koniuszkow (Nov. 8, 2007 8:07 PM).

[376] After the Minority staff inquired as to whether the Majority was assigning the witness homework for the holiday weekend (Veterans Day), the Majority wrote back to advise "[i]n case it wasn't clear, we are not asking for this information before next week. Just because we work "grueling hours" doesn't mean we expect you to! Enjoy the weekend." E-mail from [Comm. Staff] to Elizabeth Koniuszkow (Nov. 9, 2007 5:58 PM).

[377] Peterson Deposition at 53.

A Uh huh, I do.[378]

Hart testified:

It's just unfortunate when I see things in the paper.[379]

* * *

Q . . . . Let's go back a bit to the investigation. What's the morale like in the office since the letter was sent over?

A It's been poor, very poor.[380]

Hart, the Counsel, explained the Committee's investigation has essentially shut down the office:

Just like any office, though, when you get hit with a request, basically a discovery request like that, it has a major impact on your ability to do your job.[381]

* * *

I want to fully cooperate with you and, in fact, hope these issues are quickly resolved because it will be very difficult for OIG to effectively perform its statutory oversight duties so long as these issues remain open.[382]

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[378] *Id.* at 110.
[379] Hart Telephonic Deposition at 55.
[380] *Id.* at 54.
[381] *Id.*
[382] *Id.* at 8 (emphasis supplied).

VII. Conclusion

The Committee's letter to the State Department Inspector General on September 18 was ill-considered. Allegations presented by seven whistleblowers from the investigative function within OIG were not properly vetted. It appears as if the Committee applied little or no critical analysis on the claims raised by the whistleblowers. Congressional oversight committees have an obligation to follow the facts where they may go. The facts, however, are not simply what whistleblowers say they are.

This so-called investigation diminishes the Committee's credibility because the Majority simply republishes sensationalized claims. This Committee must exercise heightened scrutiny before it publishes letters such as the one it sent on September 18 to the State Department Inspector General. The public deserves more than government by accusation.

Mr. SHAYS. That more balanced view has to include the fact the State Department IG has been institutionally weak and conflicted for many years due to limited funding, the demands of a mandatory global embassy inspection program, and a prolonged turf struggle with State diplomatic security services over fraud enforcement.

Add to that dysfunctional mix Krongard's mercurial, some might even say abrasive, management style, and the stage was set for complaints by disgruntled investigators to be amplified and exploited as political fodder.

When you get right down to it, Mr. Krongard's personal style seems to be the only issue here today. But earlier this year the Government Accountability Office recommended a broad reassessment of State IG staffing, greater use of audits over inspections, and other steps to protect the IG's essential independence. Those should be the questions pursued by this committee, questions about capacity and performance, not water cooler gossip and personality conflicts.

No inspector general should have his or her basic integrity and critical independence undermined by political second-guessing here in this Congress or in the executive branch. I hope we can move beyond these shallow, drive-by assaults on political targets and focus this committee's considerable resources and reputation on addressing the deeper challenges to effective and efficient Government.

[The prepared statement of Hon. Christopher Shays follows:]

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

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Statement of Rep. Christopher Shays
Committee on Oversight and Government Reform
Assessing the State Department Inspector General
November 14, 2007

Here we go again: Oversight by accusation and personal attack.

Today, the Committee is not "Assessing the State Department Inspector General" as advertised. We will not be conducting an evidence-based appraisal of Inspector General (IG) Howard Krongard or the office he runs. Instead, we are asked to focus on a litany of salacious allegations in the futile hope loud repetition will do what exhaustive investigation so far has not – confer legitimacy on unproven conclusions. It's another sad example of the Majority's high profile/low proof approach to oversight that yields far more rancor than reform.

This so-called "investigation" also confirms an unfortunate penchant by the Committee to leap to politically convenient conclusions before looking carefully at witnesses who happen to be saying what the Majority wants to hear. One "whistleblower" at a previous hearing turned out to have a past so checkered his motives and veracity were highly suspect. But easily discoverable evidence undermining his credibility was overlooked in the Committee's unseemly haste to advance its anti-administration narrative.

Here again, information from several whistleblowers forms the basis of the Chairman's charges that the State IG "interfered with" ongoing investigations out of political loyalty to the State Department and the White House, "censored" damaging inspection and audit reports, and "prevented" investigations into allegations of wrongdoing in Iraq and Afghanistan. But in responding to questions on the record after those allegations had been made public, not one of the so-called "whistleblowers" had any direct evidence to support claims of political manipulation. Nor did they provide information to substantiate the alleged dereliction of duty by the IG. They disagreed with the IG's judgments, but that alone does not make those judgments wrong or corrupt. One whistleblower said his conclusion about Mr. Krongard's political leanings was nothing more than "a hunch."

It's telling none of those whistleblowers will testify today. Their silence speaks volumes about the lack of substance behind this investigation. But their responses to specific questions about the Chairman's charges are contained in a Republican Staff Report being released today. That report attempts to bring some balance to this discussion of how the State Department Office of Inspector General operates under Mr. Krongard and it adds important information to this hearing record.**

That more balanced view has to include the fact the State Department IG has been institutionally weak and conflicted for many years, due to limited funding, the demands of a mandatory global embassy inspection program, and a prolonged turf struggle with State's Diplomatic Security Service over fraud enforcement. Add to that dysfunctional mix Mr. Krongard's mercurial, some might even say abrasive, management style, and the stage was set for complaints by disgruntled, low-level investigators to be amplified and exploited as political theater.

But Mr. Krongard's personal style shouldn't be the issue here today. Earlier this year, the Government Accountability Office recommended a broad reassessment of State IG staffing, greater use of audits over inspections and other steps to protect the IG's essential independence. Those should be the questions pursued by this Committee: questions about capacity and performance, not water-cooler gossip and personality conflicts. No Inspector General should have his or her basic integrity and critical independence undermined by political second-guessing here or in the executive branch. I hope we can move beyond these shallow, drive-by assaults on political targets and focus this Committee's considerable resources and reputation on addressing the deeper challenges to effective and efficient government.

** The report is available at: **http://republicans.oversight.house.gov/reports**

Chairman WAXMAN. Thank you, Mr. Shays.

Without objection, all Members will be permitted to enter opening statements into the record.

We are going to hear from Mr. Krongard. I want to ask unanimous consent that the questioning be started off with 10 minutes controlled by the chairman and 10 minutes controlled by Mr. Shays.

Mr. Krongard, we want to welcome you to our hearing today. It is the practice of this committee that all witnesses that testify do so under oath, so I would like to ask you if you would rise and please raise your hands.

[Witness sworn.]

Chairman WAXMAN. The record will indicate that the witness answered in the affirmative.

You have given us a prepared statement, and that will be made part of the record in full. We would like to ask you, if you would, to give us your oral presentation. We will have a clock that will indicate when 5 minutes are up. There will be a yellow light indicating the last minute and then a red when 5 minutes is up, but I will not enforce the 5-minute rule. We do want to hear from you. We would like to ask you to be mindful of the time constraints so all Members will have an opportunity for questions.

Mr. SHAYS. Mr. Chairman.

Chairman WAXMAN. Yes, Mr. Shays.

Mr. SHAYS. Given that he is the only witness and you have a litany of charges, I do hope you will be very generous in allowing him to make his comments.

Chairman WAXMAN. I think that makes sense, and we will certainly do that.

Mr. SHAYS. Thank you.

Chairman WAXMAN. Mr. Krongard.

STATEMENT OF HOWARD J. KRONGARD, INSPECTOR GENERAL, U.S. DEPARTMENT OF STATE

Mr. KRONGARD. I had planned to stay pretty close to the 5-minutes, so I will not go much over it, but thank you, Chairman Waxman, Congressman Shays, members of the committee.

I come before you today voluntarily and anxious to respond to inaccurate allegations regarding my performance as Inspector General of the Department of State.

By way of background, prior to May 2005, I had never been involved in Government service. I was a lawyer for 40 years in the private sector, with 23 years experience as counsel for Big Eight and Big Six international accounting firms, where I analyzed and defended many audits. Based on my experience, I was asked, in 2004, without seeking it or even being aware of it, to take on the job of Inspector General at the State Department. That position had been vacant for some time.

At 65 years of age, I came to office with no aspiration for any further position and with no agenda other than to do the best job I could of carrying out the specific mission prescribed for me by senior management at the State Department at that time, namely, to restore the capabilities of an IG office that had fallen into disrepair and was known to have dissension and rivalries, and to

make it more efficient, more professional, and more relevant to a dynamic post-9/11 world environment.

In view of the allegations that I have politicized the office, have acted from partisan political ties, and believe my foremost mission is to support the Bush administration, I should point out that I have never had any political ties whatsoever. I have never been involved in any political party activities; I have never worked in a political campaign; I have never been a major contributor to any one party; and I do not recall even making a political contribution since the year 2000. When I was considered for and offered the IG job, I had never met or spoken to the President or any other person in the White House. And even today, after 2½ years in office, with the exception of a person I had known from working for a volunteer organization long before coming to Washington, I still have never met or spoken with the President or any other person in the White House.

Mr. Chairman, at the time I was awaiting the confirmation process and had the natural apprehension as to whether I should take on a job I knew very little about, I read your persuasive report on the politicization of the inspectors general and I thought I was very much the kind of person you were looking for.

In the course of carrying out my mission to restore the capabilities of OIG and to make it more efficient, professional, and relevant, I sometimes clashed with a minority of people in OIG who were resistant to change, who had grown comfortable with a leaderless organization, or who may not have had the high level of skills or commitment needed in today's changing environment. These clashes were unfortunate, but I need to emphasize that I never allowed them to affect my judgment as to which jobs were to be undertaken or where resources should be allocated.

A recurring theme in the allegations leveled at me is that I have impeded investigations that agents in OIG wanted to conduct. I want to say in the strongest terms that I have never impeded any investigation. Without getting into the specifics of any particular investigation, suffice it to say there are many times when experience and capabilities, benefits to be achieved, likelihood of success, availability of other investigative bodies to do the same work, available resources, both financial and human, and possibly conflicting parallel proceedings have to be weighed in determining whether a particular investigation proposed by someone in INV or OIG can or should be undertaken and, if so, when. I have tried to make these determinations as best I can, with the objective of making OIG as effective, efficient, and relevant to the current world as I can. Expecting to be informed of investigations undertaken by OIG, asking for useful work plans to support them, and taking care to avoid conflicts and coordinate efforts with other work being done by others, both inside and outside OIG, does not constitute obstruction.

With respect to the allegations of trafficking in persons at the new embassy compound, I did what I thought was best in those circumstances. I went to the Multi-National Force-Iraq Inspector General, the recognized leader in the field of inspecting camps in Iraq, and I urged them to add the new embassy compound construction worker camp to the many worker and guard camps they were already inspecting. The work MNF-I IG did was significantly more

extensive than my own, but it corroborated my preliminary observations. I believed then, and I believe now, that MNF-I IG was objective, experienced, and the most efficient and effective way for OIG to test the credibility of the many allegations to determine what, if any, further work was appropriate. MNF-I IG has taken great offense at the mischaracterization of their work, and I share their feelings.

In closing, let me share with you what I wrote to every member of OIG on May 2, 2007, the second anniversary of my swearing in: "As I begin my third year, I urge each of you to reflect on what we have accomplished under very difficult circumstances, to take pride in your work and view each product you participate in as going out with your name on it, and to give me your support as we go forward.

I also ask you, frankly, to make an effort to reduce some of the static that interferes with the harmony we would like to achieve. We have enough challenges to focus on without spending energy in rivalries between functional offices, the front office and staff, and Foreign Service and Civil Service, or in rumoring, back-biting, and complaining. Obviously, some of that is unavoidable human nature, especially in Government and in any limited resource environment.

Nevertheless, let's do our best to keep this to a minimum, to recognize things will never be perfect, to understand that all decisions cannot please all people, and, most of all, to keep our eye on the ball that keeps us all here: to make OIG, the State Department, BBG, and the Federal Government better places, more efficient organizations, and more effective in accomplishing their objectives."

Thank you, sir, and I would be pleased now to respond to any questions the committee may have.

[The prepared statement of Mr. Krongard follows:]

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

TESTIMONY OF HOWARD J. KRONGARD

INSPECTOR GENERAL

U. S. DEPARTMENT OF STATE AND BROADCASTING

BOARD OF GOVERNORS

November 14, 2007

Chairman Waxman, Ranking Member Davis, and other Members of the Committee.

I come before you today, voluntarily and anxious to respond to inaccurate allegations regarding my performance as Inspector General ("IG") of the Department of State.

By way of background, prior to May 2005 I had never been involved in government service. I was a lawyer for forty years in the private sector, with twenty-three years experience as Counsel for Big Eight and Big Six international accounting firms where I analyzed and defended many audits. Based on my experience, I was asked in 2004 – without seeking it or even being aware of it -- to take on the job of Inspector General at the State Department. That position had been vacant for some time. At 65 years of age, I came to office with no aspiration for any further position and with no agenda other than to do the best job I could of carrying out the specific mission prescribed for me by senior management at the State Department at that time: namely, to restore the capabilities of an IG office that had fallen into disrepair, and was known to have dissension and rivalries, and to make it more efficient, more professional and more relevant to a dynamic post-9/11 world environment.

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success, availability of other investigative bodies to do the same work, available resources (both financial and human), and possibly conflicting parallel proceedings have to be weighed in determining whether a particular investigation proposed by someone in INV or OIG can or should be undertaken and, if so, when. I have tried to make these determinations as best I can, with the objective of making OIG as effective, efficient, and relevant to the current world as I can. Expecting to be informed of investigations undertaken by OIG, asking for useful work plans to support them, and taking care to avoid conflicts and coordinate efforts with other work being done by others both inside and outside OIG does not constitute obstruction.

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In closing, let me share with you what I wrote to every member of OIG on May 2, 2007, the second anniversary of my swearing in:

> "Internally, OIG has made great progress and has momentum on our side, but there is still much to be done. We must continue to strive to produce more timely, more relevant, more readable reports, and regrettably, at the same or even lower cost in terms of personnel time and expense. I was enormously encouraged by the recent New Employee Orientation program. We have terrific new people coming into OIG and bringing energy and new ideas. All of us need to get caught up in their enthusiasm.

> As I begin my third year, I urge each of you to reflect on what we have accomplished, under very difficult circumstances, to take pride in your work and view each product you participate in as going out with your name on it; and to give me your support as we go forward. I also ask you, frankly, to make an effort to reduce some of the static that interferes with the harmony we would like to achieve. We have enough challenges to focus on without spending energy in rivalries between functional offices, SA-3 and SA-39, and Foreign Service and Civil Service, or in rumoring, backbiting, and complaining. Obviously, some of that is unavoidable human nature, especially in government and in any limited-resource environment. Nevertheless, let's do our best to keep this to a minimum, to recognize things will never be perfect, to understand that all decisions cannot please all people, and most of all, to keep our eye on the ball that keeps us all here: to make OIG, the State Department, BBG, and the Federal government better places, more efficient organizations and more effective in accomplishing their objectives."

Thank you, and I would be pleased to respond to any questions the Committee may have.

Chairman WAXMAN. Thank you.

Mr. KRONGARD. Sir, I would make a comment, if I could, because one thing just came up that really does bother me, and that was an allegation concerning my brother. I can tell you very frankly I am not aware of any financial interest or position he has with respect to Blackwater. It couldn't possibly have affected anything I have done because I don't believe it. And when these ugly rumors started recently, I specifically asked him. I do not believe it is true that he is a member of the advisory board that you stated, and that is something I think I need to say.

Chairman WAXMAN. OK. Thanks.

Well, Mr. Krongard, I gave an opening statement and in it I summarized a number of significant issues that I wanted to discuss this morning. But I want to start by asking you about new information we have received regarding a series of conflicts you have had with the Department of Justice.

On January 18, 2007, the Justice Department requested assistance from your office investigating allegations of construction problems at the new Baghdad embassy. According to John DeDona, the head of your investigations division, the Justice Department was seeking assistance in obtaining contract files, contract records, payment invoices, and inspection reports. But on January 23rd, you directed your investigators to stand down on this and not assist.

The committee asked the Justice Department about this and they told us they called you personally to ask for assistance in locating contract documents and locating and interviewing witnesses. The Justice Department informed the committee that you gave them different reasons for your refusal. First they said you claimed there were other pending matters involving First Kuwaiti. What other matters involving First Kuwaiti were you referring to?

Mr. KRONGARD. Sir, at that time, both myself and MNF-I IG had conducted our onsite work and were in the course of preparing reports, and I told the representative of the Justice Department of that work and I did tell him that I obviously couldn't control the timing of his work, but I said that if that could wait until those two pieces of work were completed and the reports issued, it would preserve the independence of those without possibly suggesting that either MNF-I IG or myself was in any way affected by——

Chairman WAXMAN. Those reports were about labor trafficking.

Mr. KRONGARD. And that is what——

Chairman WAXMAN. What the Justice Department asked you about was information about contracting, possible criminal actions with regard to the contracting itself.

Mr. KRONGARD. Sir, I differ with that. The scope of work that the person from the Justice Department called me about—and I believe some of this is under seal, so I am a little bit—it is hard for me to express other than the scope was far broader than what you have just said and did include the trafficking issues.

Chairman WAXMAN. You are talking about your investigation is under seal or the Justice Department?

Mr. KRONGARD. No, his, the Justice Department's.

Chairman WAXMAN. OK, but you told the Justice Department you couldn't give them the contracting information and cooperate with their investigation on contracting abuses that might involve

criminal activities because you were doing your own investigation. Your own investigation was on labor trafficking and, therefore, you didn't want to give them the information on the other issue until you completed your investigation. Is that your position?

Mr. KRONGARD. No, sir, it is not. There were actually three things that the Justice Department was talking about. They were talking about conducting interviews, having representatives from my staff conduct interviews for or with them; they were talking about obtaining documents from the State Department; and they were talking about these issues regarding the conduct of the workers at the new embassy compound, which, by the way, was the essence of what started their work. Their work expanded from that.

With respect to——

Chairman WAXMAN. Let me read to you something that came out in our report that I want you to react to. One internal e-mail sent in January 2007 reported that the Justice Department was seeking help from the Inspector General in investigating billing for work done improperly or incompletely, theft of materials and labor, and alleged corruption of a State Department official overseeing contract performance. Now, that should have been a high priority. They are looking at criminal actions, they want your help, and you are telling them, no, I can't help you, I have other things going on.

According to the committee's investigation, you had already refused to allow your investigators to open a case. There were no audits underway and we could identify no other investigation at the time this Justice Department request was made. The Justice Department also informed the committee that you said this was not the sort of thing the Office of Inspector General did, and it would be a conflict for the OIG to be investigating those complaints and conducting a law enforcement investigation.

Is it your position that there is some provision of law that prohibits your office from assisting the Justice Department?

Mr. KRONGARD. Sir, you have made a lot of statements. I wonder if I could—I was trying to write down ones. Can I comment as I have them?

Chairman WAXMAN. Well, my question to you that I want you to answer is do you believe there is some prohibition in law from your cooperating with the Justice Department and helping them when they are asking for your assistance?

Mr. KRONGARD. Absolutely not. In fact, I try and cooperate with the Justice Department as much as I can, and I applaud their efforts. What happened here, as soon as we were able to find out what it was they were doing and segment what we could and couldn't assist them with because of resource and other qualifications, I did do exactly what you have just asked, and I gave them the Deputy Assistant Inspector General for Audits, together with another person, that were given to them to work with them to accomplish the very objectives they wanted to accomplish.

Chairman WAXMAN. Well, your own investigators had a different view. This is how one of your investigators responded to the news that you had refused the Justice Department request: "Wow. As we all know, this is not the normal and proper procedure. When looking at the IG Act, DOJ and PCIE guidelines, and the OIG community as a whole, we are supposed to work under the direction of the

USAODOJ. I am stunned. I hope you documented the orders that were provided to you. Wow."

In fact, the committee has identified at least three other occasions in which the Justice Department came back to you and asked for assistance on this investigation. In May, the Justice Department sought your assistance obtaining invoices and inspection records on whether blast-proof walls in the embassy had been constructed properly. In June, the next month, the Justice Department sought your assistance obtaining documents pertaining to another First Kuwaiti contract. And in July the Justice Department requested assistance in getting a copy of two cables mentioned in a front-page article in The Washington Post regarding construction problems at the embassy. In all of these cases you refused their requests.

You have also apparently resisted the Justice Department's efforts to investigate whether Blackwater was engaged in arms smuggling in Iraq. On July 10th, John DeDona sent an e-mail notifying you that his office would be working with the Justice Department on this. John DeDona works at your Office of Inspector General. The next day you ordered Mr. DeDona and his team to stop immediately. You then directed Mr. DeDona to arrange a personal briefing for you from the Justice Department and you told him he could not proceed in any manner until the briefing takes place. After you received that briefing, you agreed to allow one of your investigators to assist, but you then assigned your congressional and public relations director to oversee his actions, although she had no law enforcement background. You described her as your alter ego and directed her to provide you with operational awareness.

You halted an investigation, demanded a personal briefing from the Justice Department, assigned your congressional affairs director to keep tabs on the investigation. Do you agree that these steps were highly unorthodox?

Mr. KRONGARD. No, sir, I do not. You have made a lot that is very hard for me to respond. Let me take the last one first, which is I believe you used the name Blackwater. In early July, Stuart Bowen, the Special Inspector General for Iraq Reconstruction, asked for the assistance of my office in conducting an audit of two Blackwater contracts. We agreed to do that and we were already beginning. The initial cooperation that we were rendering was the collection of data, the collection of information——

Chairman WAXMAN. Do you feel that helping Mr. Bowen meant that you shouldn't be helping the Justice Department?

Mr. KRONGARD. Sir, let me finish, if I can. I think, yes, I do, until it is cleared up.

I came in, actually, I believe it was the following morning, after Mr. Bowen and I had completed all of our arrangements for the cooperation, and at 7:30 a.m., I found an e-mail from Mr. DeDona telling me for the first time of an investigation that was long down the road in which our investigators were assisting U.S. attorneys in a criminal investigation of two Blackwater contracts.

And when I looked at the papers, they were the exact same two. They have a string of numbers, about nine letters and numbers long. They were the exact two contracts that we were already assisting a civil audit, and I was immediately concerned that for us

simultaneously to be assisting a criminal investigation into the exact same two contracts that we were already assisting a civil audit into raised questions of parallel proceedings which needed to be de-conflicted before one infected or contaminated the other.

Chairman WAXMAN. Well, let me interrupt you by saying that what you are talking about was an audit of contracts. This was a totally different matter, a criminal investigation into arms smuggling. And the Justice Department says they still haven't received the documents they were seeking 4 months ago through your office. This is how the Justice Department summarized your actions: "At this juncture, we cannot determine all of the ramifications of the IG's conduct, but some of his actions have certainly impacted the investigation. For reasons that remain unclear, the line IG agents, who have broad power to obtain documents and other evidence relevant to any investigation they are conducting, have been forced to funnel requests within their own agency through a congressional and public relations official, and this is not the usual practice."

So it seems to me you are making a lot of judgments as to who ought to get information and help from your office, and it seems to me you have given a very low priority to the Justice Department involving criminal actions that they are investigating and deciding whether to pursue.

Mr. KRONGARD. Sir, I have a different view of what happened. First of all, the contracts were exactly the same two contracts; those were the contracts that the criminal investigation was going forward with. No. 2, I did not institute a delay. I said immediately. That e-mail that has been floating around for a long time cuts off the part that says until I can get a briefing from the AUSA, and I made myself available immediately by telephone. I did not expect them to come up to visit me. I didn't expect anything other than an immediate phone call so I could tell them of these conflicts that I was facing, because I needed to have them know.

Now, as far as what they have said or what someone has said they said, I don't know. I can only go by what they said to me. And, sir, after that meeting, I received a letter from the chief of the criminal division of that U.S. Attorney's Office in which he said: "Thank you for taking the time to meet with deputy criminal chief so-and-so and me earlier this week when we were in Washington. We appreciate the frank exchange of views and information. We will remain cognizant of the issues you raised and will work closely with you and your staff to move this matter forward in the most expeditious way possible. Your decision to allow your case agent to continue to work on this matter will make that much easier. Again, thank you for your time and interest in this matter. With kindest regards, I am."

Sir, I think that I helped de-conflict the issue. I made available to them the best young investigator I had, and this idea that I put a congressional and public affairs person in charge is simply untrue. What happened was the data collection assistance that was being rendered for SIGIR was being done by the person who normally does the data collection. That happens to be the person who is the congressional and public affairs person.

Since the same contractual materials was being sought by the U.S. attorney in the other matter, I said to her and to him she can

just make double copies of what she is making for SIGIR and give it to you. So she was not doing any investigative—I had the special agent who was assigned to them doing that—and her role was simply collecting and gathering data.

Now, as to whether that has been produced, I really don't know. I put into the process a program to obtain those materials. I suspect, as usual, that there are concerns from Diplomatic Security, which is the resident agent for these papers, and what gets shown and what gets produced, but I really don't know whether it has been produced or not. I know that this person has been working hard to satisfy the concerns and needs for information of both the SIGIR and the U.S. Attorney's Office, and those were my instructions.

Chairman WAXMAN. Thank you, Mr. Krongard.

I am going to turn over the time now to Mr. Shays, but I do want to point out what you have said to us contradicts what almost everybody else has said.

Mr. Shays.

Mr. SHAYS. Thank you.

Mr. Krongard, the chairman has given you time to answer questions, but when he throws five charges at you at once, you would have to be a genius to remember all of them, and I just hope that people in this hearing room don't make the assumption because you didn't deal with five charges at once and respond to them, that they don't have answers.

We tried to figure out what are the accusations of this committee, so we are going to have questions about partisan Republican motivations, too close to the State Department allegations, financial statement audit, the embassy compound, the Karl Rove charge, censors of inspector reports, weapons smuggling matter, counterfeit computers, financial audit, refusal to produce documents, the travel charge, abrasive management style; and in the end I think it is going to come down to your management style.

But let me just go through—even though you had it in your statement, I want to go through and at least deal with one of these issues and get it off the table, and then we will get on to the next, and I want to deal with the allegations of a partisan Republican motivation.

First, to what extent do you believe your mission at IG is to support the Bush administration?

Mr. KRONGARD. Absolutely not, sir.

Mr. SHAYS. To what extent have you been involved in politics or contributed any money to a political campaign during your adult life?

Mr. KRONGARD. I have not been involved in any political activities. I have given contributions, which, according to the records that have been made public—and I think they are accurate—I have not made any contribution ever to the current President or since 2000. Prior to that——

Mr. SHAYS. My understanding is the last contribution you gave was to Bill Bradley.

Mr. KRONGARD. I may have made a contribution in the course of attending a function put on by the Republican Senatorial Cam-

paign, I believe something like that. I think I attended one of their functions.

Mr. SHAYS. Before 2000?

Mr. KRONGARD. It was before 2000.

Mr. SHAYS. Have you ever met or spoken to President George Bush or any of his senior staff?

Mr. KRONGARD. No, sir.

Mr. SHAYS. You have never met him?

Mr. KRONGARD. No, sir.

Mr. SHAYS. And you have never spoken to any of his senior staff?

Mr. KRONGARD. I don't know where senior cuts off, but there is a person who recently joined who I had known long ago when we were both on the board of a nonprofit public awareness entity, and I knew him then. I have not seen him, but he is——

Mr. SHAYS. Do you have any relationship or connection with other people in the Bush administration?

Mr. KRONGARD. No, sir, none.

Mr. SHAYS. Have you ever been to a White House function at any time during this Bush administration?

Mr. KRONGARD. Sir, I don't think I have ever been in the White House except as a tourist.

Mr. SHAYS. Do you have any relationships or connections with or financial interests in State Department contractors which might be the subject of an OIG work?

Mr. KRONGARD. No, sir, I do not.

Mr. SHAYS. When making decisions about the work of the OIG, have you ever taken political considerations into account?

Mr. KRONGARD. No, sir, I have not.

Mr. SHAYS. When making decisions about the work of the OIG, have you ever been influenced by a desire to protect the Bush administration?

Mr. KRONGARD. No, sir.

Mr. SHAYS. When making decisions about the work of the OIG, have you ever been influenced by a desire to protect a particular company?

Mr. KRONGARD. No, sir.

Mr. SHAYS. Do you have any idea why someone would allege that you have any political motivation or that you are corrupt, or both?

Mr. KRONGARD. Yes, sir, I do have reasons to believe why people would do that.

Mr. SHAYS. And in a short sentence or two, explain what you think they are.

Mr. KRONGARD. Well, sir, it is no secret that I came into—I took on a mission to come in and try and repair something that had been in a bad way. I knew from the beginning that was going to put me into conflict with some people who were resistant to change, were resistant to what I was trying to accomplish, and I did make some enemies. And the people that have been interviewed by this committee are not the entire OIG and they are not the universe, and while the large percentage of their sample may be very much against me, there are people in the OIG who supported what I did.

Mr. SHAYS. OK, let me say that was the basis for the chairman's 14-page letter, and the reason why we are releasing this document

is those individuals came before our committee and we questioned them. So we say the partisan political affair allegations, did you have any awareness of those before they were outlined in this letter? I mean, well, I can't say no, I can't really answer that.

Further questions: do you believe the Inspector General's mission is to support the Bush administration? I could not say that, no. We asked no direct evidence, not that I know of. I have no knowledge one way or the other.

This is what these individuals were all saying to these questions, these allegations they made. Then, when we put them under oath—and the reason they are not here is they would be put under oath. So you have had to deal with, frankly, you have had to deal with gossip, not people willing, under oath, to make these charges.

I would like to yield the balance of my time to Mr. Issa.

Mr. ISSA. I thank the gentleman.

I am going to pick up a little bit there. Now, you were general counsel to Deloitte, right?

Mr. KRONGARD. Yes, sir.

Mr. ISSA. And it is pretty tough to be the pinnacle of an organization like that, filled with career auditors and accountants and lawyers, isn't it?

Mr. KRONGARD. It is a challenge.

Mr. ISSA. These are smart people who sometimes do a good job, but, if they don't, they are certainly very good at explaining themselves when they don't do a good job, isn't that true?

Mr. KRONGARD. Truthfully, yes.

Mr. ISSA. OK. So you have kind of undersold yourself a little bit ago. You talked about 40 years of not having the right experience, but it seems to me like the selection of you for this job and your acceptance made you uniquely qualified to oversee career auditors who either do a good job or do a good job of telling people they do a good job.

Mr. KRONGARD. Yes, sir.

Mr. ISSA. When you arrived, essentially, was the latter more true, that there were a lot of people who were very good at explaining how good they were, but the results at the State Department over literally decades had been abysmal when it came to accountability? Wasn't that true?

Mr. KRONGARD. I think that is fair.

Mr. ISSA. OK. During your tenure, one of the things that the chairman has repeatedly come back to, in July, was the not yet occurred, but the possibility of cost overruns on the Iraq embassy, even though it is on time and on budget and, in fact, there are blue dots everywhere where they are fixing the things that the contractor didn't do. Wouldn't you say that when it came to auditing by anybody, that auditing a large project in a combat zone was a unique task that, at best, sending people over there would have had a limited ability to really get to the bottom of it? I mean, you made a decision not to essentially let auditors endlessly go over there to look at a building but, rather, made them focus on shortcomings and limited their trips to Iraq, isn't that true?

Mr. KRONGARD. To be very candid, sir, it was in some ways the reverse. I wanted auditors to go. I instituted three jobs which required auditors to go. I am talking about auditors now, not inves-

tigators or inspectors. And in each case the jobs had to be cut short or canceled because the auditors refused to go to Iraq.

Mr. ISSA. Because——

Mr. KRONGARD. I did not have auditors willing to go to Iraq.

Mr. ISSA. Because, in fact, it is a combat zone.

Mr. KRONGARD. Yes, sir.

Mr. ISSA. You know, I am going to make a quick statement, and one that is not intended to help you or hurt you, but Iraq is a unique situation. We haven't had an ambassador in charge of a war zone in modern history. We normally leave a general in charge of a war zone and bring the Ambassadors in when the conflict is over. If we did what we had done in every other situation, this embassy would be built under the Corps of Engineers and the State Department wouldn't have oversight. Isn't that sort of a historic fair statement?

Mr. KRONGARD. It predates me, but it confirms my understanding, yes.

Mr. ISSA. Would it surprise you to know that a few hundred feet from here a building of a lesser size is going to costs more money? The Capitol Visitors Center has been 7 years plus in the making; was already underway when September 11th hit; is not finished today; will not be done for a year; will be at least 3½ years; no combat zone, with the possible exception of the change in administration here; but, in fact, that it is a half billion dollars and, to be candid, they won't tell us why it takes a year after completion before there is any chance of occupancy.

Would you say that the Capitol Visitors Center and the embassy in Iraq have some similarities, or is it in fact that the embassy in Iraq, in spite of everything—being in a combat zone, being impossible to get auditors and investigators and so on to want to go to—that, in fact, it appears at this point to be like any large construction project and simply is going through the making the vendor do their job after the fact? And we are not talking about the human trafficking, I am just talking about the project itself.

Mr. KRONGARD. As far as I know, I don't know anything different. I don't know much since I was last there in September, but as of September that seemed like a fair comparison.

Mr. ISSA. OK, the only reason is this is our third hearing where that center is the center of attention, and it is sort of amazing that something which, as far as we know, is still on time and on budget is investigated, while the Capitol Visitors Center seems to be beneath investigation, as it is beneath the Capitol.

My time is disappearing quickly, but you have had a tough job. You have had a style that has been accused of being abrasive, but you appear to have made some change. I want to give you an opportunity, though, to talk about the two seats that are not there today, the two Justice Department people who would make unofficial, unsworn statements and then not be here to answer questions. I don't want you to disparage them, but I want you to talk about what you believe the correct role is of your investigations versus their investigations; where you assist and where you continue doing your own investigations, because that seems to be the legitimate subject here, of when do you simply stand down and hand everything to them, and when do you continue your investigations.

Mr. KRONGARD. Sir, if I can just correct. The Justice Department information, as I know, came through last night. I heard about it for the first time last night. So when you are talking about the two empty seats, I am not sure if you are talking about the investigators from my staff who were the principal motivators or whistleblowers, whatever it is, or the Justice Department people. I am not aware that the Justice Department is disparaging me.

Mr. ISSA. Mr. Chairman, could we have those records made part of the record so that we could actually have all of us see the actual accusations that you alluded to in your statement? I think it is certainly of public interest.

Chairman WAXMAN. I want to inform the gentleman that the Justice Department provided the Republican staff with the same information that was provided to us, so you have the same information.

Mr. ISSA. Mr. Chairman, then can I, without objection, submit it for the record?

Chairman WAXMAN. We will take it under submission. There are some issues the Justice Department raised with both of our staffs.

Mr. ISSA. So you are objecting to it going into the record, even though it has been alluded to here, Mr. Chairman?

Chairman WAXMAN. Well, I will—I don't want to object, but I don't want to agree to it, so I will temporarily object and we will consider to review the matter.

Mr. ISSA. Thank you. I will let the gentleman continue.

Mr. KRONGARD. I will try and answer the Justice Department in generalities, because there are some specific investigative concerns that I believe the Justice Department has. And this will go back, in part, to what the chairman was saying before. I never refused the Justice Department assistance at any time. I asked for them to tell me what it was they needed and I wanted to tell them the parallel proceedings that I was involved in. I wanted to make sure that I had the resources. Remember, the Justice Department is used to dealing with agencies around Government that have large numbers of investigators. At any one point in time I have something like 7, 8, 10, 12 total investigators.

I was shocked, when I came into this office, to learn that of the 29 members or 28 members of the PCIE, which include agencies like TVA and Railroad Retirement Board and things that you don't think of as being law enforcement agencies, the State Department OIG ranked 23rd in the number of investigators. I came in to an organization that historically was audit and inspection focused by law. The Foreign Service Act of 1980, which mandates the OIG to inspect on a 5-year cycle all embassies and missions around the world, 275 of them. So investigations takes approximately 10 percent of our personnel and 10 percent of our resources.

So in dealing with the Department of Justice, I had to make sure that they understood that we had limited experience, limited resources, and if a person was already working on one Justice Department matter when we were doing, on these very same things, three and four—the new embassy compound had at least three different Justice Department divisions doing investigations. So when I spoke to them, I was trying to de-conflict, coordinate, and make sure that the resources were available.

Now, granted——

Chairman WAXMAN. Mr. Krongard, Mr. Shays has a quick question of you, then we are going to move on.

Mr. KRONGARD. Sure.

Mr. SHAYS. I just want to clarify one point. So the issue about cooperation with Justice, Justice was actually asking that some of your personnel be directed under their management to almost, in a sense, detail them with the Justice Department for a period of time?

Mr. KRONGARD. Not almost. In the one that we are talking about regarding the major contractor, that person was, in effect, assigned to them. And as I understand one of their complaints last night, they are very upset that person who, again, is one of my best people and the only person that had been willing to go to Iraq, has taken on another assignment.

Mr. SHAYS. So you were basically objecting to losing one of your seven people and wondering, I would think, why they couldn't detail their own people, instead of your people, when you only have seven.

Mr. KRONGARD. Well, the latter. I was wondering why they couldn't detail their own. But it wasn't that I was concerned about detailing them; I was happy to help, and the letter I read to you says that I did that. The problem was when another investigation has come up and that gentleman has gone to Iraq, I understand that they are now unhappy that he has left their investigation to do a different investigation.

Mr. SHAYS. It is called opportunity cost.

Mr. KRONGARD. Sorry?

Mr. SHAYS. It is called opportunity cost. If you have used a person one way, you can't use them somewhere else.

Thank you, Mr. Chairman.

Chairman WAXMAN. Well, that, of course, is a leading question you were just asked, but it seems to me if you have people working on the issue that Justice Department is seeking information about, you should share the information with the Justice Department, rather than say they have to go through your congressional liaison person before they have any contact with the people who are doing the work for the OIG.

I am going to move on to others.

Mr. ISSA. Mr. Chairman.

Chairman WAXMAN. I am going to move on to others. The time has expired. But I do also want to make one other comment. We have had complaints from the Republicans that we don't have the people to testify before our committee here to testify again. All of the witnesses that testified under oath in the depositions were subject to cross examination by the Republican lawyers, as well as our staff, and we are going to be releasing the transcripts of those depositions. So it isn't that we didn't have those witnesses here to testify again.

Mr. SHAYS. Mr. Chairman, why wouldn't you have them come before the committee so the public could hear their responses and we could ask them questions? They are the ones who made the allegations.

Chairman WAXMAN. The people that made the allegations were subject to cross examination; they testified under oath. If they——

Mr. SHAYS. Not before this committee.

Chairman WAXMAN. If the gentleman would permit. They testified before this committee's deposition under oath. If they lied under oath, they are subject to criminal penalties, and that should just be understood.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Krongard, it is good to see you. I note two very interesting things: that you speak very much about de-conflicting, so you have a sensitivity to conflicts, obviously; and, second, I note that before the chairman asked you questions, but after your statement, you gave us some additional information about your brother, Buzzy Krongard, and what you said is, to your knowledge, he had no financial interest and he did not sit on the board of Blackwater, is that correct?

Mr. KRONGARD. Yes, sir.

Mr. CUMMINGS. Well, let's look at that real quickly. One of the biggest scandals to hit the State Department in recent memory has been the lack of accountability for Blackwater USA. Last month, the Secretary of State testified before this committee that for more than 4 years there has been a hole in the law that allows Blackwater to escape criminal liability for killing innocent Iraqi civilians. Just today, papers reported that Federal agents investigating the September 16th episode, in which Blackwater security personnel shot and killed 17 Iraqi civilians, have found that at least 14 of the shootings were unjustified and violated deadly force rules in effect for security contractors in Iraq.

Your role as Inspector General is to investigate waste, fraud, and abuse in the State Department, but your office has not completed any investigation into Blackwater activities. Although there is a Justice Department investigation underway, you have taken several unorthodox steps that delayed or impeded that investigation, such as requiring a personal briefing from the Justice Department and requiring all investigative documents to go through your congressional affairs director.

I am trying to understand why you are so reticent about investigating Blackwater. I would like to show you a letter the committee obtained and ask you to comment on it. This letter was sent from Erik Prince, the CEO and Founder of Blackwater. He shared that letter on July 26, 2007. Mr. Prince sent this letter to Alvin "Buzzy" Krongard, your brother. The letter invites him to serve on Blackwater's Worldwide Advisory Board. This is what Mr. Prince says. He says—and this is Mr. Prince to your brother, the one that you said isn't involved with Blackwater. He says, "Being a member of the Blackwater Worldwide Advisory Board will provide you with a stellar opportunity to continue to support security, peace and freedom. Your experience and insight would be ideal to help our team determine where we are and where we are going."

Mr. Prince's letter goes on to explain that the main purpose of the board is to provide leadership advice about the path the company should follow.

Now, here is a second document. This is a September 5th e-mail that Erik Prince sent to your brother. It says, "Welcome and thank you for accepting the invitation to be a member of the board."

My question is this: Did you know that your brother, Buzzy Krongard, is on Blackwater's advisory board?

Mr. KRONGARD. Sir, I dispute that. As far as I know, that is not correct. This is—you asked me to comment on this letter. Sir, my brother served honorably as a captain in the U.S. Marine Corps. He served as the Executive Director of the CIA. He has been involved in a lot of activities involving security, so it is no surprise that someone like Erik Prince would invite him to continue to support security, peace, and freedom.

There is nothing in here that suggests that my brother accepted this July 26th invitation. What you have now shown me is an e-mail from Erik Prince to a large number of people that I assume were all people who received this. I don't see anything in here that suggests my brother accepted or attended, and, as far as I know, he did neither.

Mr. CUMMINGS. Well, let me go on, then, because I do think the letter indicates that he did accept. But, Mr. Krongard, this is one of the most high profile issues facing the State Department, and your testimony today is that you didn't know your own brother is on the Blackwater board. I find that very difficult to believe.

Let me ask you this. Mr. Krongard, do you know where your brother is this week? Do you know?

Mr. KRONGARD. No, sir, I don't.

Mr. CUMMINGS. According to this e-mail, Mr. Prince invited your brother to be at a board meeting to discuss strategic planning, and this meeting is taking place right now in Williamsburg, VA, this week, as we speak. Staff contacted the hotel to speak to your brother and the hotel confirmed that he was scheduled to be there. Did you know that?

Mr. KRONGARD. No, sir, I do not.

Mr. CUMMINGS. So, now, if your brother is a board member, which you said he is not, but if he is, would you consider—I know you are sensitive to conflicts. Would you agree that you should recuse yourself from anything dealing with Blackwater investigations?

Mr. KRONGARD. Yes, sir, and that was why—first of all, by the nature of my brother's work, you should understand that we have never discussed his work or my work. So I had no reason to even think that he had any involvement with Blackwater. But when these things surfaced, I called him and I asked him directly. He has told me he does not have any involvement, he does not have any financial interest. If you are telling me that he does, absolutely I would recuse myself.

Mr. CUMMINGS. You will recuse yourself?

Mr. KRONGARD. Absolutely.

Mr. CUMMINGS. Immediately.

Mr. KRONGARD. Absolutely.

Mr. CUMMINGS. Thank you.

Chairman WAXMAN. The gentleman's time has expired.

Mr. McHenry.

Mr. MCHENRY. I thank the gentleman for being here today. This is just another series of what I refer to as drive-by oversight. You were before this committee in July, I believe. Five months later you are brought back to rehash the very same questions you were asked in July. Thank you for your patience.

But, again, there are numerous accusations just in the chairman's opening statement leveled at you. What is interesting is, if these accusations, which were laid out in July, if any of this stuff the chairman believes or the majority believes is true, then this committee is called Oversight and Government Reform. In the previous Congress it was Government Reform. Just a matter of emphasis between the two parties. So this committee has been all about oversight in committee hearings like this, but there has been no recommendation from this committee in this Congress for any type of government reform to fix these accusations and these problems.

So let me go a little further here. There are accusations about Blackwater. Is there an inspector general that deals with Iraq?

Mr. KRONGARD. Yes, sir, SIGIR.

Mr. MCHENRY. A Special IG for Iraq.

Mr. KRONGARD. Yes, sir.

Mr. MCHENRY. Does the Special IG—and I know there are a number of issues related to this, but does the Special IG look into accusations about Blackwater?

Mr. KRONGARD. Yes. As I said before, he is conducting an audit with our assistance of some Blackwater contracts, the same ones that are the subject of the criminal investigation.

Mr. MCHENRY. Does that Special IG also deal with the embassy in Iraq?

Mr. KRONGARD. In some ways, yes; in some ways, no. It depends on what the issue would be.

Mr. MCHENRY. OK. All right. But we have had testimony from a number of different folks. There are between 10 and 12 entities that are dealing with the issues pertaining to the embassy, is that correct?

Mr. KRONGARD. Yes, sir.

Mr. MCHENRY. To ensure that the product is delivered, correct?

Mr. KRONGARD. Yes.

Mr. MCHENRY. All right. What is the contract that is being used right now for the building of the embassy, is it a fixed price contract?

Mr. KRONGARD. There are eight principal contracts. I think all of them were fixed price. And to get back, if I can use a second of your time to tell the chairman that was saying, back in January there were no audits, we actually did. I had requested an audit, that is still in process, of the manner in which those contracts were let and whether they complied with Federal contracting law and regulations, and that audit has been going on since, I believe, January.

Mr. MCHENRY. All right, thank you. In regards to the U.S. embassy, how much oversight and investigation is too much? You know, when you have 10 to 12 different entities doing the same thing, do you think that there is this tipping point? You know, one of your assistant inspector generals that Mr. Shays mentioned is

John DeDona. He was deposed and he said there were 10 to 12 different entities pursuing embassy-related issues.

Now, it would seem to me that there was some true need for government reform here when you have 10 to 12 different groups looking at similar, if not the same, thing. Is there some level of streamlining that we should look at?

Mr. KRONGARD. Sir, I hesitate to tell you how to—you are so much better at doing your job than I am.

Mr. MCHENRY. Fourteen percent of the American people agree.

Mr. KRONGARD. At the end, sir, there are two things I can suggest that have to do with Government reform in this area, but I don't want to take your time on that.

Mr. MCHENRY. No, absolutely. Go right ahead.

Mr. KRONGARD. Well, some of you may be aware that the Subcommittee on International Organizations, Human Rights, and Oversight of the Committee on Foreign Affairs had a hearing about a week or 10 days ago also concerning my office, and I did a lengthy response to them, and in the course of that I did make two—I won't call them suggestions, but I raised two issues that I do think need to be considered, and they were things that had bothered me from the day I took this office. The first was the Foreign Service Act of 1980, which mandates the inspections of embassies around the world and has historically created my office as an inspection-oriented office first, an audit-oriented office second, and almost as an afterthought, an investigatory body. In fact, the committee reports of the Foreign Service Act of 1980 are replete with statements about how unique this office was and how different it was from the normal IG office, which was audit and investigation. So that was one thing I suggested be considered.

The second thing I have been puzzled about and I suggested in my letter to Mr. Delahunt that be considered is why BBG does not have its own inspector general, because all of the time that people talk about the resources that I have as Inspector General of the State Department, I am also Inspector General of the Broadcasting Board of Governors with worldwide issues for them, and I don't get a single extra penny or person to do that. And Corporation for Public Broadcasting has an IG and other comparable bodies have an IG, so I just think maybe this committee would consider that as well.

Chairman WAXMAN. Thank you.

Mr. McHenry, your time has expired.

Ms. Watson.

Ms. WATSON. I want not thank you, Mr. Chairman, and I want Mr. Krongard to know I take my position on this committee very seriously. I was a member of the State Department, did head up an embassy, and we need to put a laser beam on the activities in our embassies around the globe. If your brother is currently at the hotel in Williamsburg, VA, sitting on the board, would you repeat that you would recuse yourself?

Mr. KRONGARD. Immediately.

Ms. WATSON. OK. Then maybe you want to do it today.

Mr. KRONGARD. Recuse myself from anything having to do with Blackwater, yes. I mean, I wouldn't step down.

Ms. WATSON. Blackwater. Yes, that is what I am referring to. He is sitting on the Blackwater. I understand he is in the hotel; he has checked in the hotel. You might want to followup on that.

Mr. KRONGARD. Well, if he is there for that meeting as a member of that committee. He may be there to tell them he is not joining. I don't know.

Ms. WATSON. OK, now, remember you are on the record.

Mr. KRONGARD. Yes, ma'am.

Ms. WATSON. OK. And you know what today's date is.

Mr. KRONGARD. Yes.

Ms. WATSON. OK. Will you recuse yourself from any inquiries, audits, or investigations your office conducts regarding Blackwater?

Mr. KRONGARD. Absolutely.

Ms. WATSON. OK, we have it on the record.

Now, your office has faced major setbacks in retention and recruitment during your tenure as Inspector General, and maybe it is because they were incompetent, and that is what this committee is all about. We try to sort out what is fact from what is fiction and gossip. We seek the truth, and the truth has no (R) or (D) or (I); the truth is the truth. So don't feel you are being badgered. We are asking you so you can tell us what your truth is as you know it.

Now, since you became IG in 2005, a significant number of your senior managers have resigned: the Assistant IG for Investigations, the Deputy Assistant IG for Investigations, the Deputy Assistant IG for Audits, the head of the Office for Information, Technology, and Counsel to the IG; and the head of the Audit Division told our investigators the rate of turnover in his division is 20 percent to 30 percent per year. Can you comment on that and can you get us closer to what the facts really are?

Mr. KRONGARD. Yes, and thank you for allowing me to speak the facts. The facts are that when I came into office, of the seven assistant inspector general level positions, five were vacant. This is nothing new. This office has been in disrepair. I think one of the good things I have done is to bring some good people in to the Office, and the people that I have brought in, for example, you talk about counsel.

I believe we are talking about the same person. That person was a wonderful person to come in. He was so well suited, it took me a couple of months to entice him to come. He came, he joined us, and he left in about 6 or 8 weeks for two reasons: one, we were not able to give him a permanent SES position. The State Department did not have or could not give me an SES position for someone who came from a comparable SES position. So we had to do a temporary kind of thing.

Second, when he realized that one of his major assignments was to oversee the investigations group, which is the group that is the subject matter of much of this, he decided that he did not want to serve in that capacity, especially in a temporary IG position. So my loss of my counsel was a great loss to me.

Losing the AIG for Investigations and the Deputy AIG for Investigations, again, is in part why we are here. They are two gentlemen that I lost confidence in. I think for good reason. I don't think it is necessary to go into this. But I finally, after 2 years, con-

fronted each of them with my loss of confidence. I asked each of them if they would stay at the same pay grade and do the kinds of things they had originally trained to do in special-agent-in-charge positions or some other position of their choice, but to give up their management positions as assistant and as deputy——

Ms. WATSON. All right, let me just interrupt you because my time is almost up.

Mr. KRONGARD. Sure.

Ms. WATSON. It is being said about your leadership and the Department which you head that your actions have created an abusive and hostile environment that led to low morale and the staff to exiting, and there are many statements that we have. I don't have time to read because we have to go to the floor and vote. But can you describe for us—and I think the Chair might allow us an intermission to go and vote——

Chairman WAXMAN. Get his response, then we are going to break.

Ms. WATSON. All right, thank you.

Mr. KRONGARD. And, again, thank you for——

Ms. WATSON. Can you describe for us what those comments really mean? What was so hostile about the environment?

Mr. KRONGARD. Let me say, in all honesty, that my experiences in my prior life to this, the 40 years in the private sector, my athletic experiences, all the things I have done in life really didn't prepare me well for what I found in OIG, and I have not handled it as well as I wish I could have handled it. I was used to, as one of the gentlemen said before, professionals. I never even worked for a corporation. I have only worked for four professional partnerships, two of the leading accounting firms in the world and two of the leading law firms in the world, where the trust among partners was very strong, and when you could count on what they would say. And if you needed to disagree with someone, everyone understood that you had the same mission, to make the product of the firm better. So there wasn't the personal affront when you tried to change what somebody was doing or correct it.

That didn't prepare me for what I found where people didn't have the same level of trust with each other; where there were great rivalries between offices within our organization, between the Foreign Service people and the Civil Service, and I found myself particularly unable to deal with situations where I didn't think I was being dealt with honestly and fairly, where I was being given answers that were implausible. And, in response, yes, I have been brusque; I have been shrill; I have been hard on people. I think abusive may be strong because I don't intend to abuse anybody——

Ms. WATSON. OK, let me get to—I have to go, but if I send you these statements, would you respond to them in writing? I will send you the statements. I would like to get the response in writing.

Thank you so much, Mr. Chairman.

Chairman WAXMAN. Thank you, Ms. Watson.

Mr. Krongard, we have four votes on the House floor. We are going to recess until 12:10. I think we will be ready at that point to reconvene the hearing. So we are going to stand in recess.

[Recess.]

Chairman WAXMAN. The meeting of the committee will come back to order.

I would like to now recognize Mr. Platts.

Mr. PLATTS. Thank you, Mr. Chairman. I would like to yield my time to Mr. Shays.

Mr. SHAYS. Thank you.

Mr. Waxman, I need to confirm with your own staff, and you may want to consult with them, but, first off, we would have a conceptual disagreement about witnesses that have come before the staff to respond to questions and whether that is adequate to constitute information to this committee. I think people who make charges should have to face the public and should have to face committee members. But you said that these individuals were sworn in, and I think that is an incorrect statement. The OIG whistleblower named in your September 18th letter and three others making allegations against the IG were not deposed. They were not under oath when questioned by committee staff; they were simply interviewed and the interview was transcribed. They were not sworn. That is my understanding, and I think you said they were sworn and that it should be adequate. If they were sworn in, I would like to have that confirmed, but I would like the record corrected if they were not sworn in.

Chairman WAXMAN. If the gentleman would yield to me, I am looking to see if my staff could further inform about this matter, whether the witnesses were sworn in.

[Pause.]

Chairman WAXMAN. As I understand it, we did a combination. Some were depositions and some were interviews.

Mr. SHAYS. Could——

Chairman WAXMAN. If I might finish. But even if it were an interview, someone testifying in an interview was subject to examination by the Republican staff, and if they lied in an interview it would be also a violation of criminal law in impeding and obstructing an investigation by Congress.

Mr. SHAYS. Would the staff review the OIG whistle-blowers named in the September 18th letter and the three others making allegations against the IG? We understand were not deposed and were not under oath. I would like to have them give us the names of each of these individuals, if they would, and tell us which ones were under oath and which weren't. My understanding is none of them were under oath.

Chairman WAXMAN. Well, I think you make a reasonable request, and we will provide for the record the people that were giving depositions and whether they were under oath in a deposition, or whether they were being interviewed, which, to me, also requires them to tell the truth or to be subject to criminal charges.

Mr. SHAYS. Well, Mr. Krongard is under oath, sworn in publicly, and he has to face the music publicly, and I think it is an outrage that these individuals, I do not believe, were under oath and I don't believe they have to face the public or the questions that we have.

So let me now ask you about a financial statement audit. Isn't it true that the State Department did not have a so-called clean financial statement at the time of the Office of Management and Budget's deadline for the Department's annual financial statement

last year? Would that fact be clear to anyone who assessed the statement?

Mr. KRONGARD. Yes, sir, there was.

Mr. SHAYS. Isn't it true that you disagreed with just about all of your audit staff by allowing the Department additional time to provide some necessary information in the hopes of achieving an unqualified opinion, and can you explain?

Mr. KRONGARD. Yes, sir. First of all, let me make it clear that the OIG does not conduct the audit of the Department's financial statements; there is an independent outside auditing firm that has been doing it for just about ever, I suppose, and the role of the OIG is limited to providing administrative and technical support. When——

Mr. SHAYS. So let me just—I understand that you asked for the advice of officials from the Office of Management and Budget and the Government Accountability Office as to the priority of allowing the Department to provide information after the OMB deadline. Can you explain their response?

Mr. KRONGARD. Their response agreed with the course of action that we took, and I would add——

Mr. SHAYS. That you suggested.

Mr. KRONGARD. Yes, sir. Could I just add that the American Institute of Certified Public Accountants was also consulted and agreed?

Mr. SHAYS. When the clean audit was finalized in mid-December of last year, did you remove any trace of the qualified unclean opinion and replace it with a clean opinion, or did you make clear that the qualified report initially submitted on November 15th had been subsequently revised?

Mr. KRONGARD. It was the latter, with the result that the State Department was hit twice with the bad news, the first report and the second report.

Mr. SHAYS. So the bottom line is you didn't protect the administration by waiting to get a clean report, you affirmed what was suspected.

Mr. KRONGARD. Yes, sir, that is correct.

Mr. SHAYS. Finally, would you agree that there is a benefit in providing full, fair, and accurate information to the general public regarding the finances of the Federal Government, rather than simply making available the information that exists on November 15th, a sometimes arbitrary, but nevertheless useful, end of the year deadline imposed on agencies for submitting financial information?

Mr. KRONGARD. That states my concern perfectly.

Mr. SHAYS. Thank you.

Mr. KRONGARD. Sir, could I make a statement?

Chairman WAXMAN. Well, if it is in answer to a question; otherwise, we are going to move on. Well, I don't want to be unfair to you, so go ahead and make your statement.

Mr. KRONGARD. Yes.

Chairman WAXMAN. Ordinarily, your statement time was for your statement.

Mr. KRONGARD. Well, this is in response to something I think you found important.

During the break, I did contact my brother. I reached him at home; he is not at the hotel. But I learned that he had been at the advisory board meeting yesterday. I had not been aware of that, and I want to state on the record right now that I hereby recuse myself from any matters having to do with Blackwater.

Chairman WAXMAN. I see. You indicated you had called your brother to ask him earlier whether he was on the board and he told you he wasn't.

Mr. KRONGARD. That was about 6 weeks ago, and I was not aware. And this board meeting happened yesterday, and I found out just during the break that he had in fact attended yesterday.

Chairman WAXMAN. OK, thanks.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman and ranking member.

I had some other questions about construction at the embassy, but I am going to let those go. Mr. Krongard, this change in your testimony that you are describing now, the discussions with your brother, is troubling and it raises a number of questions. I just want to be straight here. Earlier, you testified that you had spoken with your brother and he assured you that he was not on Blackwater's board. That was the testimony you made earlier. Now you have testified that he changed his mind, but he didn't bother to tell you, and I have some questions about the timing of all these conversations.

I have a document here, and I believe you have been shown it as well. This is an e-mail. I will let you get it first. It is an e-mail to Erik Prince, the CEO of Blackwater, from Gary Jackson, the Blackwater official who was setting up the advisory board for Blackwater. He is discussing who the likely candidates are for board members and he says, "Your list, I think, is Buzzy, General Grange." The significant thing about this—Buzzy is referring to your brother. The significant thing about this e-mail is it is dated June 10th. So this e-mail shows that Erik Prince had your brother, Buzzy, on his short list for this board of advisers for Blackwater at least 6 weeks before the formal invitation was sent on July 26th. Is that correct?

Mr. KRONGARD. I don't know. I can't speak for this e-mail.

Mr. LYNCH. Well, let me ask you this. When did you have your first conversation with your brother about whether he was affiliated with Blackwater?

Mr. KRONGARD. I only had one. And I should make clear, as I tried to say, I am not my brother's keeper and we do not discuss our business with each other.

Mr. LYNCH. No, no, no, but you are a witness here and you have testified in the past, and you have this body relying on your testimony.

Mr. KRONGARD. And my testimony, I stand by it.

Mr. LYNCH. So if you are not your brother's keeper, you need to say we don't know or something like that.

Mr. KRONGARD. I didn't say——

Mr. LYNCH. You can't say my brother is not on the Blackwater board.

Mr. KRONGARD. As far as I knew, that was a correct statement then. It turns out it was the best knowledge that I had based on the only one conversation I had, which was——

Mr. LYNCH. OK, when was that? When was the date of your conversation with your brother about him being on the Blackwater board?

Mr. KRONGARD. It was probably about 5 or 6 weeks ago. I can't tell you exactly when it was.

Mr. LYNCH. Five or 6 weeks ago.

Mr. KRONGARD. Early October, I guess. And that is a guess.

Mr. LYNCH. And during that conversation what did he say?

Mr. KRONGARD. The principal focus of the conversation was the rumor that was out at that point that he had——

Mr. LYNCH. No, no, what did your brother say? That would be relevant to your testimony here.

Mr. KRONGARD. That is what I am trying to say.

Mr. LYNCH. OK, please.

Mr. KRONGARD. The principal focus of that conversation was the rumor that he had a significant financial interest or a financial interest in Blackwater. So the principal focus of our conversation was did he have a financial interest, and he assured me he did not.

Mr. LYNCH. Did he say he was approached by Blackwater?

Mr. KRONGARD. He may well have said he was approached by Blackwater, but, again, he is approached by a lot of people, so that didn't surprise me.

Mr. LYNCH. Did he say he was taking some type of position with them?

Mr. KRONGARD. No.

Chairman WAXMAN. Would the gentleman yield?

Mr. LYNCH. Six weeks ago would have been after the date that he received the formal invitation to sit on the board, is that correct?

Mr. KRONGARD. That is correct. I don't know that he had accepted at that time or not. I just don't know.

Mr. LYNCH. And it is actually in October. You are talking—well, I am trying to do this in reverse, but that would be after the date he accepted the position in September. You are saying you had this conversation with him in October. So he would have already been sitting on the board and——

Mr. KRONGARD. I don't know that, because all I see is that the first meeting of the board was yesterday. So I don't see anything that suggests——

Mr. LYNCH. I see where this is going.

Mr. Chairman, I would just recommend that we ought to subpoena Buzzy and get him in here and testify as to his conduct and his conversation with his brother. Thank you. I yield back.

Chairman WAXMAN. Would you yield to me? The gentleman has completed his questioning?

Mr. LYNCH. I yield back, yes.

Chairman WAXMAN. If you would yield to me.

Did you tell your brother why you called him? Did you tell him that you were being called on as the Inspector General for the State Department to look into actions by Blackwater and you want-

ed to make sure that you didn't have anything that would amount to an appearance, even, of conflict of interest?

Mr. KRONGARD. Yes. But the only thing that I knew that had been rumored was a financial interest. I didn't know anything about a board——

Chairman WAXMAN. But you told him why you were asking.

Mr. KRONGARD. Yes.

Chairman WAXMAN. And he said that there was no reason for you to worry, in effect.

Mr. KRONGARD. That was what I took from it.

Chairman WAXMAN. And then he never bothered to call you back.

Mr. KRONGARD. No.

Chairman WAXMAN. Have you had a difficult relationship with your brother?

Mr. KRONGARD. No. We have gone to great lengths to keep our professional experiences separate because of his position and because of my position.

Chairman WAXMAN. Ms. Foxx.

Ms. FOXX. Thank you, Mr. Chairman.

It is my understanding that Chairman Waxman has stated you interfered with an ongoing investigation into the conduct of Kenneth Tomlinson, the head of Voice of America, by passing information about the inquiry to Mr. Tomlinson. Can you tell me did you specifically instruct your secretary to fax to Mr. Tomlinson's office confidential information from a whistle-blower, or did you simply ask your secretary to send Mr. Tomlinson the congressional inquiry received by your office?

Mr. KRONGARD. To be factual, it is neither of those. I had no contact, never had any contact at all, either by fax, phone, or otherwise, with Mr. Tomlinson. I asked my assistant to fax the letter to Brian Conniff, the executive director of the Broadcasting Board of Governors, not to Mr. Tomlinson. And as soon as I learned the inadvertent event that took place, I took steps to recover that immediately.

Ms. FOXX. Did you at any point discuss this congressional inquiry with Karl Rove?

Mr. KRONGARD. I have never met, spoken to, or been in the presence of Karl Rove in my life.

Ms. FOXX. Did Karl Rove ever insert himself into your office's investigation into the allegations against Mr. Tomlinson?

Mr. KRONGARD. I have never heard of any such insertion.

Ms. FOXX. Do you believe that the accidental leak of the whistle-blower allegations had a detrimental impact on your office's effectiveness in investigating the claims against Mr. Tomlinson?

Mr. KRONGARD. I don't believe so, and I would have no reason to believe so, because when you really get down to it, the information in there had been in the general public, had been subject to investigations already. The date of that was 2003. That in no way is meant to be an excuse for doing it because it was totally inadvertent and it shouldn't have happened, but as to whether it had any impact, I have no reason to believe it had any impact. I also, after it happened, told the Congressman in question what had happened, and he didn't think it was any big deal either.

Ms. FOXX. Mr. Chairman, I would like to ask Mr. Krongard to explain a bit, if he will, on a comment you made earlier when I was here, about your experience in coming into this job in comparison with your experience in the private sector, when you talked a little bit about the problem in the offices where people didn't seem to work as a team, where there was competition. I don't think that people appreciate enough the differences——

Mr. KRONGARD. I have thought a lot about this, obviously, in the two-plus years I have been here. I would divide it into two things, at least in my case, a culture clash and an expectations gap. And they are two slightly different things. In the culture clash, I brought with me the experience that people could be openly critical of each other, just as teammates are and partners are, with the idea of making the product better. And let me hasten to say I am not saying that the people in the private sector—I have been accused of saying people in the private sector are better or worse. That is not the case.

But in the private sector, in the partnership, the professional partnership environment, you have clients that are paying for the time and you have huge professional liability if a product is less than perfect. Those two things militate in favor of spending enormous amount of time to getting to a high level of care in your confidence in the product. I mean, I am talking about 99 percent care.

Because there is no client paying in the Government and because you don't have the individual liability, there is less of a threshold for care; it isn't the 99 percent that I was accustomed to. So I came with an expectation that people would really exchange freely criticism, there wasn't pride of authorship, and that the whole objective was for the firm to have a better product. Those things did not stand me well because a lot of what I did was resented.

I will give you another naivete on my part. I honestly believe, because of my training in the private sector, when you signed a legal opinion or an auditor's report, the quality went in before the name went on. It was your responsibility to be absolutely certain of what you were saying and using the firm's name. So I believed that all of the reports, the 100-plus reports that are issued each year by my office, that they went out over my signature, I really believed that I had a personal responsibility. I stayed up hours reading every one of those and then making comments on them. Well, that really surprised a lot of people and it annoyed a lot of people.

So I did have discussions with the people in my office and I recognized that I was expecting too much. But I also recognized that the work product of OIG was in fact below where it should be, particularly in the eyes of our constituents. The history in the OIG was they really talk to themselves and they talk to the State Department and they talk to the Ambassadors, and that is who they were writing the reports for. I viewed our constituency as the Hill, OMB, many other people, and we needed to be more responsive to their needs, to have reports that were readable and understandable by them.

So I used the expression, when I talk to my staff from time to time about this, let's meet halfway. I know I am expecting too much, but I think you have to do better. And now that quote, let's meet half way, has somehow been turned against me as if it is

something wrong. I still believe that concept. I know that I was being too hard. I know I was expecting too much. I know that my background led me to be demanding, and that was not always well received, particularly in an organization where I was specifically retained by the management of the State Department at that time and told, Howard, this is what we expect of you. This organization has not been responsive to the needs of the Department in this complex world, and we need some changes and we need your leadership.

Ms. FOXX. Mr. Chairman, I would just like to say that, in a nutshell, I think he has pointed out what I have observed over and over and over again in these hearings and in my experience in Federal Government, that there is very little accountability and very little sense of responsibility for producing an outstanding result. Our Federal Government is broken. I think you have pointed this out again. It is broken because of the lack of intensity that we have throughout to do things right. We saw it in FEMA and Katrina, we see it everywhere, and somehow we have to get some accountability set up for individual members of this Federal Government so they are held accountability.

We have put this man on the block——

Chairman WAXMAN. The gentlelady's time has expired.

Ms. FOXX [continuing]. And we are not doing anything to anybody else.

Chairman WAXMAN. The gentlelady's time has expired.

The Chair now recognizes Mr. Higgins.

Mr. HIGGINS. Thank you, Mr. Chairman, for this very constructive and substantial oversight of a very important issue.

Mr. Krongard, the U.S. embassy in Baghdad is the most expensive embassy ever built; $600 million in contracts to build this embassy were awarded to First Kuwaiti Trading and Contracting Co. In July, this committee held a hearing in which General Charles Williams, the Director of Overseas Building Operations for the State Department, testified that "the project is on schedule and on budget." But the embassy did not open on time and has now been delayed indefinitely due to serious construction problems, including hundreds of violations of contract specifications and fire safety codes, as well as problems with electrical wiring. A fire inspection report obtained by this committee concluded that "the entire installation is not acceptable."

During the committee's investigation, we identified numerous allegations regarding the embassy that came into your office. For example, your office received at least five hot line complaints regarding the embassy spanning from April 2006 to July 2007. Your office also received a letter in December 2006 detailing "allegations that First Kuwaiti had defrauded the State Department through a variety of schemes." This person later e-mailed you directly and there is evidence that you spoke to this individual personally.

In addition, the Special Investigator General for Iraq Reconstruction warned your office in May 2007 that "things are going to blow up" at the embassy and "important folks are involved." Despite all these allegations, you refused to allow any investigations into the Baghdad embassy.

Mr. Krongard, why didn't you allow your investigations division to open any investigation into these claims? And I don't want to confuse the issue or have you characterize that an audit is an investigation. I want to be clear as to what kind of investigation I am talking about: that of a criminal nature relative to the construction of the U.S. embassy in Baghdad.

Mr. KRONGARD. Sir, it is hard to answer that other than to say I never nixed any investigation. I only had—first of all, we had very limited number of investigators, as I say, 7, 8, 10, 12, at any one time, but only 1 of whom was willing to go to Iraq. I never turned down anything that was well thought out or justified or supportable. That is all I asked for in terms of approving investigations. I never said that somebody couldn't open an investigation. I made it clear all of the many different things we were doing. And you are saying don't talk about audits and so on, but the fact is we have done several audits, we have done several inspections. In addition, if you are talking about the trafficking in persons issues, I did tell people at the time hold off on these until MNF-I IG and myself get our reports completed and issued. So, as to that, we did do that.

There has been an investigation going on which I did approve. The investigators, they may be back by now because I am a little out of the loop, but they were there for some 6 weeks or whatever it has been. So I don't think that I have shut down anything. There have been recommendations made to me from the investigators that I did not agree with, and I could go into those, if you like.

Mr. HIGGINS. Mr. Krongard, your office did eventually initiate an investigation, and this happened on September 11th, 1 week after your office learned that this committee was investigating your failure to pursue these issues. Your decision clearly came too late. Had you engaged earlier, perhaps some of these critical deficiencies could have been addressed before they erupted as they did.

Mr. KRONGARD. Sir, I don't want to pick on dates, but you said September 11th. I mean, I don't know these dates, but if you say that the investigation was open on September 11th—because I was in Afghanistan at that time—this committee's letter was dated September 18th, so it would be the reverse.

Mr. HIGGINS. OK, let me ask you this. The head of your investigations division, John DeDona, stated in an e-mail to your Deputy, Bill Todd, that "Under the current regime, the view within Investigations is to keep working the BS cases within the Beltway and let us not rock the boat with more significant investigations." Is Mr. DeDona correct?

Mr. KRONGARD. No, he is 180 degrees wrong, because we had this dispute many times. It was my view that investigations were not pursuing the really meaningful investigations: following the money, determining what U.S. big programs were doing around the world. My investigators tended to do time and expense sheets and I don't want to say petty, because they are important, but minor violations of people in embassies and one-off of visa fraud cases; whereas, I was trying to push them to do meaningful cases, such as visa fraud cases by companies and interlopers who were allowing large numbers of people to come into the country illegally, which constituted a threat to national security, where they were

doing cases where somebody imported some product without paying $15,000 worth of taxes or something.

So I would say that the dispute went the other way.

Chairman WAXMAN. The gentleman's time has expired.

Mr. Cannon.

Mr. CANNON. Thank you, Mr. Chairman. I think today we got news that the State Department has made the point that they are not going to send people to Iraq who don't want to go to Iraq. Isn't it true that part of your problem here is that you don't have people that will go to do investigations in Iraq?

Mr. KRONGARD. Sir, you are correct. As I stated before, two very important audit engagements had to be either eliminated or redone simply because the auditors refused to go to Iraq.

Mr. CANNON. That makes it sort of hard, right?

Mr. KRONGARD. It sure does.

Mr. CANNON. Are you happy with this policy of the Department, not to send people where they don't want to go?

Mr. KRONGARD. Sir, that is beyond my competence. I am not a policy——

Mr. CANNON. I am not happy with it. I think it really actually is wrong and bad, and I love Duncan Hunter's suggestion that we allow people who have been over there, who know the culture and may have been injured while wearing the uniform, to go back as diplomats. I think that might actually help our diplomatic corps significantly.

Mr. Shays, I am pleased to yield to you, if you would like.

Mr. KRONGARD. Sir, Mr. Shays, I know, has been a great person in terms of going to Iraq; he has been there many times. I have been there, I think, three times.

Mr. CANNON. You have been there three times, right?

Mr. KRONGARD. Yes, sir.

Mr. CANNON. My sense is Mr. Shays has been there, like, 18 times.

Mr. KRONGARD. I remember.

Mr. CANNON. If the gentleman would respond to a question. Are you the Congressman who has gone to Iraq the most?

Mr. SHAYS. I don't know that, but I do know that when I go there, I learn a heck of a lot.

And what I am struck with, Mr. Krongard, first off, I want to say this for the record. To have been in contact with your brother and to have your brother tell you that he was not involved in Blackwater, and then to find out at a hearing that he actually attended and then left, and to find out he is connected is a pretty outrageous thing. He has done you tremendous damage by that, the fact that your brother would say he is not involved. I would like to know do you have more than one family member, brother, sister, sibling? How many siblings do you have?

Mr. KRONGARD. At this point in time I have one.

Mr. SHAYS. Wouldn't it make sense, given your position, to have been up front with your brother, to say, since I investigate everything the State Department does, I need to know any contact that you have because I need to recuse myself?

Now, the other argument could be don't tell me anything you have because then I am not in conflict. But the problem is nobody

is going to believe you, frankly, and we can't just say, they didn't tell me, but they are involved. If they are involved, you need to recuse yourself, and you know that. And it would strike me that what you would do is you would say to your brother I know what you have done in the past, we didn't talk, but now I have my job to do. I need to know everything where I may have to potentially recuse myself. Wouldn't that make sense?

Mr. KRONGARD. Yes, sir.

Mr. SHAYS. And I don't know what kind of conversation you had with your brother when you were on the phone, but I would be one pretty unhappy guy.

I would like to ask you, you have gone on record as saying that you have had no contact with Karl Rove at all, so we are dealing with that issue. Mr. Waxman said you interfered with an ongoing investigation into the conduct of Kenneth Tomlinson, the head of Voice of America and a close associate of Karl Rove, by passing information about the inquiry to Mr. Tomlinson. I would like to know why did you pass information to Mr. Tomlinson?

Mr. KRONGARD. As I stated before, sir, I did not pass anything to Mr. Tomlinson. I never had any contact, either by fax, hone, or meeting, with Mr. Tomlinson.

Mr. SHAYS. So you have had no——

Mr. KRONGARD. That is correct, I have had no contact with Mr. Tomlinson.

Mr. SHAYS. When you have to allocate—it is a little unsettling, as well, for you to say you have 5, 6, 7, 9, 10 inspectors. How many investigators do you have?

Mr. KRONGARD. Investigators. Well, it varies because we have had people on medical disability. It has never been, I think, more than, like, 13. In numbers, we sometimes——

Mr. SHAYS. What do you have now?

Mr. KRONGARD. Roughly—if you don't count the administrative people, who only do——

Mr. SHAYS. Right.

Mr. KRONGARD. We have about a dozen or so, 13, maybe. I don't know, there is one that may still be on medical leave, I am not sure.

Mr. SHAYS. OK. And the issue is they are all involved in particular investigations, is that not correct?

Mr. KRONGARD. That is correct. And they have differing skills and experience, too.

Mr. SHAYS. And your issue is if you move them from one place to another, then you are not going to have them conduct an investigation that—you are going to get blamed no matter what you do, just so you know. It is like a constituent of mine who will say, Congressman, you haven't dealt with global warming, you haven't dealt with the budget crisis, you haven't dealt with the war in Iraq, and the list is as long as they have. And, you know, they are right. I have to pick and I have to choose. So the real issue is what is the motivation behind your making a decision, and I think these are very legitimate questions. Thank you.

Chairman WAXMAN. Thank you, Mr. Shays.

Mr. Braley, I think you are next.

Mr. BRALEY. Mr. Krongard, I want to followup on the very insightful comment that was just directed toward you by the gentleman from Connecticut, and I want to focus a little bit briefly on your background. You are a graduate of Harvard Law School, correct?

Mr. KRONGARD. Yes, sir.

Mr. BRALEY. And you are a practicing lawyer.

Mr. KRONGARD. Yes, sir.

Mr. BRALEY. So like those of us who practice law, we were subjected to ethical rules that included rules that governed the appearance of impropriety.

Mr. KRONGARD. Yes, sir.

Mr. BRALEY. And the need to avoid the appearance of impropriety. So you were familiar with that concept before you went to Deloitte, correct?

Mr. KRONGARD. Yes.

Mr. BRALEY. And then when you went to become general counsel at Deloitte, you not only had your legal background, but you were general counsel to a firm that did auditing and accounting that was subject to its own ethical guidelines that also included prohibitions on avoiding the appearance of impropriety, correct?

Mr. KRONGARD. Yes, sir.

Mr. BRALEY. And then, when you became the Inspector General for the State Department, you were an employee of the executive branch.

Mr. KRONGARD. Yes.

Mr. BRALEY. So you were subject to the standards of ethical conduct for employees of the executive branch. Are you familiar with those?

Mr. KRONGARD. Yes. Yes.

Mr. BRALEY. They are found in 5 C.F.R. 2635 and they talk specifically about the need for executive branch employees to avoid the appearance of impropriety.

Mr. KRONGARD. Yes.

Mr. BRALEY. Mr. Krongard, according to your Deputy, Bill Todd, who met with a State Department official—or, excuse me, you met with a State Department official in August 2007 who was implicated in potential criminal activity regarding to the embassy contract, and 1 day after the individual was interviewed by your audit division, you arranged a special meeting to speak with the individual privately.

According to Mr. Todd, he personally advised you not to have the meeting, and here is what he told us: "And Mr. Krongard said, until they are a subject, why can't I meet with them? And I said, because of the appearance of it. And he said, Bill, I have to do my job, so he met with them." Do you remember that conversation?

Mr. KRONGARD. Not specifically, no.

Mr. BRALEY. Then 3 days after your meeting, that same individual who was the subject of that inquiry failed to show up at a scheduled meeting with the auditors. They were informed that he had returned to the Middle East and has not returned to the United States or made himself available for a followup meeting since.

And this same Mr. Todd reported that you engaged in similar conduct involving another individual. When you left the United States on a trip to Iraq, this individual was a "person of interest" in the Justice Department investigation, and after you arrived in Baghdad, the individual's status was changed to "subject of investigation," and Mr. Todd said he informed you of this fact and advised you not to meet with the individual, stating that it would be questioned by our investigators and would give people cause to comment. Do you remember that conversation?

Mr. KRONGARD. No, I do not. I don't know how it could have taken place because I was gone at that time.

Mr. BRALEY. Well, this is conversation that took place after you had arrived in Iraq. In this case, Mr. Todd went a step further and asked the Justice Department to speak to you directly, and, according to Mr. Todd, the Justice Department did contact you and warned you not to conduct any witness interviews while you were in Baghdad. Yet, despite these warnings, several members of your staff told this committee that you spent several hours with this individual, and when you returned to the United States, your investigators were so concerned that you might taint their investigation that they had specifically asked you not to tell them anything that you had learned. Nevertheless, you sent one of those investigators an e-mail outlining the substance of your conversation with the individual. How do you explain those?

Mr. KRONGARD. Sir, I would like to go by, if we had the time, one by one, each of them—and I didn't write each of them down, but virtually every one of those I disagree with. Let me take the most obvious, the Department of Justice. When I planned my trip to Iraq, before I went to Iraq I was aware of three Department of Justice investigations. I called all three of them to tell them exactly what I was doing, what I could do for them while I was over there, and did they have any concerns about it. Two of them I spoke with on the phone and one group I went over and met in person. In fact, some of them really appreciated what I was doing because they didn't know what each other was doing. I knew more about what each of them were doing than they did. So all three of those—and I can give you the names, all three groups, because there was more than one involved from each of those, I can tell you what groups from Justice they were—they knew exactly what I was doing and, as I say, I really asked them—and I have records to show this—how can I help you while I am there.

Mr. BRALEY. Has the Justice Department advised you to recuse yourself from embassy investigation?

Mr. KRONGARD. Absolutely not. On the contrary. After I had completed my work in Iraq with regard to the new embassy compound—because that was only a small part of what I was doing in Iraq—after I completed that, I got an e-mail that was hard to understand, but it suggested—and it may be the one you are talking about—it suggested that I should have no witness interviews. And, by the way, I would like to tell you what I was doing. These were not witness interviews, and I would like to tell you what exactly I was doing both with Mr. Golden and Ms. French. But when I got that, I was troubled by that. So, from Iraq, I made contact with and through my deputy—and I forget exactly how it happened, but

I spoke with a senior Justice Department official to ask him am I reading this right, am I supposed to not be doing this after talking with each of these people? And that person, after checking on it and getting back to us, who is more senior than any of the other people, told me exactly not, that there was no problem with what I was doing.

Mr. BRALEY. So your testimony is that your deputy and your entire office counsel did not advise you to recuse yourself from the embassy investigation.

Mr. KRONGARD. I don't believe I was advised to recuse myself, no, I don't.

Mr. BRALEY. Have you ever——

Mr. KRONGARD. But I have, by the way. Since I came back and since the activities of this committee, I have stepped aside from that.

Mr. BRALEY. Have you formally recused yourself in a public way so that people know you are no longer involved in that investigation?

Mr. KRONGARD. Well, I have sent e-mails to people. I have told people. I have told people in the State Department. I don't know what else—I don't do press releases, if that is what you are talking about.

Mr. BRALEY. Are you announcing today that you have formally recused yourself, in front of this committee, from any investigation into the embassy in Iraq?

Mr. KRONGARD. When you say any investigation, I am not exactly sure. If you are talking about the one that—by the way, when you say I sent the agency, I didn't send the agency. In fact, I couldn't have. The agent was one of the whistle-blowers. If I had sent him to Iraq, I would have been accused of retaliatory comment. I discussed with him the opportunity to go not only for that, but to do something else that I had been working on there which he was very interested in. So I presented him with the opportunity; e-mails are replete with that. He decided what he wanted to do.

Chairman WAXMAN. The gentleman's time has expired.

There is something I don't understand. Why did you recuse yourself from the embassy involvement? The Justice Department didn't ask you to recuse yourself. Your brother is not working in any way that would involve you having a potential—why did you recuse yourself?

Mr. KRONGARD. Because of the activities of this committee.

Chairman WAXMAN. Because of the investigation of this committee you decided you should recuse yourself?

Mr. KRONGARD. No, sir. You instructed me in the letter not to have any communications with the people who were being interviewed by you and not to allow any communications between them, and I wrote you back saying that was of great concern to me because it paralyzed our office. What effectively we did was to sort of keep me out and not to have communications among all of our senior people on the specific issues but you raised. But your request was even broader than that, it was not to have any communication at all.

Chairman WAXMAN. Mr. Yarmuth, I am going to give you the choice. We can do your 5 minutes now, but we are going to have

to come back anyway, and it is going to put us pretty close to the time, but we should be able to make the vote. So it is up to you.

Mr. YARMUTH. Let me do it. I will try to keep it quick, Mr. Chairman.

Chairman WAXMAN. OK.

Mr. YARMUTH. Before I ask the one question I want to ask, following up on something that Mr. Shays mentioned, I want to just refer to a comment that Mr. McHenry made earlier in the hearing—he is not here now—in which he called this a drive-by oversight and also mentioned the fact that this committee had not done anything legislatively based on what we had heard during the course of the year, and I would just like to mention that already this year we have passed whistle-blower protection legislation, we have dealt with legislation related to the free flow of information, Government contracting, Blackwater and other private security firms, and also procurement policies and defense appropriations bills. So I just want to correct the record that Mr. McHenry implied that we—not implied, stated that we had not done anything legislatively.

I want to go back just for a minute to the question of the Tomlinson investigation. You said that you had not had any contact with Mr. Tomlinson. Yet, people have told us that the letter that was sent to your office from Congressman Berman and Lantos and Senator Dodd and a complaint actually ended up in the hands of Mr. Tomlinson that was faxed to his executive director. Did your office have anything to do with faxing that letter of complaint to the executive director of the board?

Mr. KRONGARD. Yes. Well, not executive director of the board. The executive director of the organization.

Mr. YARMUTH. The organization.

Mr. KRONGARD. Yes, sir, I did. The faxing of the letter was intended. The faxing of the attachment to the letter was inadvertent, and as soon as we learned that we instructed him to return it to us, and he assured us at that time that it had not been shown to anyone else, and it was only a day or so.

Mr. YARMUTH. You say it was inadvertent. I mean, it seems like a pretty serious mistake to alert someone or alert an organization that was being investigated that there was a compliant against them.

Mr. KRONGARD. The facts are pretty clear. I don't dispute the facts in any way. I had a phone conversation with Mr. Conniff is his name because of the nature of the information that was required from the congressional letter. I told him that we would need help at his highest level in getting things like time sheets and information and so on, and he said what do you need it for, and I gave him a general background, I didn't refer to any congressional letter. And he immediately said, oh, you are talking about the double-dipping and the 40-hour a week. He knew each of the issues. I was brand new; I had only been in office about 6 weeks. But, apparently—and this turned out to be the fact—these same issues had already been the subject of an investigation both by the Corporation for Public Broadcasting and the Office of Government Ethics. So he well knew the issues. So at that point I said, yes, this is a request on the same issues.

And since he knew those issues, I said I will just send you the letter and you can see what it is. And I told my assistant, who was a temporary person at the time, fax the letter to Conniff. I don't think anybody disputes that was the instruction, fax the letter to Conniff. She was within, I think, her right to interpret that to fax the attachment. It was not my intention that it include the attachment; I was only thinking of the letter. When we learned, I think it was the next day, that the attachment had been faxed, I instructed my legal counsel to call Brian Conniff to ask him to return immediately the attachment, and that was done.

Mr. YARMUTH. But, in fact, Peter Lubeck, who was the person who was investigating this, the chief investigator on this matter, has testified that one of the witnesses said what happened—and this is quoting Mr. Lubeck: "What happened as a result of this, two of the witnesses were observed shredding documents related to this case. When I interviewed the two witnesses, they said, oh, we were just housekeeping." So, apparently, that letter had potentially very serious implications.

Mr. KRONGARD. I think that is a leap of faith, sir. I really do. To say that with all the knowledge and all the media attention that was being given at that time, already, and had been given to these allegations against Mr. Tomlinson, to say that a shredding party took place because of my discussion with Brian Conniff, who we have no reason not to trust—he was the highest ranking officer in that organization—I can't say one way or the other, but I wouldn't jump to the conclusion that is what caused it.

Chairman WAXMAN. Mr. Yarmuth, if you would allow me, I am confused, because when Mr. Shays asked you whether you had any communications with Mr. Tomlinson or others that would get to him, you said no, absolutely not. Now it turns out you directed a fax that inadvertently had an attachment to it, which you tried to pull back afterwards. Isn't that a communication?

Mr. KRONGARD. There is a great difference in my mind between the executive director, Mr. Conniff, and Mr. Tomlinson. I answered faithfully the question that I did not provide anything to Mr. Tomlinson. There was no way we could have conducted our investigation without the cooperation of someone at a high level of BBG so we could get the materials we needed—the time sheets, the pay sheets, all of the records—and the person we would go to would be the executive director.

Chairman WAXMAN. Well, let me tell you this. If you ever investigate me and you send an information to my chief of staff, I am going to know about it. Don't you think Mr. Tomlinson would have known about it?

Mr. KRONGARD. No, because the chief of staff is in a different relationship than the executive director and the chairman of the Board.

Chairman WAXMAN. In some offices they talk to each other.

Mr. KRONGARD. Sir, with all due respect, I don't know, sitting here today, who, other than Mr. Conniff, we would have gone to to get information of the type we needed.

Chairman WAXMAN. We have another vote on the House floor. We are going to recess. There are four votes, so it will probably

take us a half hour, but we will come back and will wrap up at that point, but there are some more questions.

[Recess.]

Chairman WAXMAN. The committee will come back to order.

Mr. Issa, I want to recognize you for questioning.

Mr. ISSA. Thank you, Mr. Chairman.

I have a number of questions, but perhaps the one that is most vexing to me, on the staff report for House Oversight—I guess this is the majority report—I am a little confused. On page 93—oh, I am sorry, the minority report. Thank you. I am sure it says minority somewhere here, I just missed that.

There is a quote here that I would like you to comment on. It appears that, following the July 31st meeting at the Justice Department with Assistant U.S. Attorney and Chief of the Eastern District of North Carolina, Robert Higdon, that he wrote—and I think I am quoting: Thank you for taking time to meet with the Deputy Criminal Chief, Jim Candelmo and me earlier this week when we were in Washington. We appreciate the frank exchange of views and information. We will remain cognizant of these issues and will work closely with you and your staff to move this matter forward in the most expeditious way possible. Your decision to allow your case agent to continue to work on this matter will make that much easier.

Can you comment on why they would thank you and then we are sort of hearing the opposite in this hearing?

Mr. KRONGARD. Well, I quoted from this earlier, sir, for the same reason. I can only go by what they said to me both in the meeting, where they expressed appreciation, and in their followup letter. What is being said either second or third-hand, which I am just hearing, I don't know how to resolve those. I go by what they said to me.

Mr. ISSA. OK, I am confused. This hearing, I can't figure out if it is about the Iraqi embassy or if it is about you. If it is about the Iraqi embassy, the embassy is on time and on budget, and normal construction errors, and maybe even not so normal construction errors, are being dealt with both through your office and through General Williams' office, and so on. And in the case of these specific areas of joint investigation, it appears as though you and Justice, at least officially, and through the participation of resources, are working together. Is that what it appears in your case to be?

Mr. KRONGARD. Yes, sir. I think that is correct. I think, at the end of the day, we have been helping them to the best of our ability.

Mr. ISSA. So, Mr. Chairman, my question to you is where is the beef? I really have to try to understand your opening statement versus these facts, which seem to have—yes, they are controverted. They are controverted by the empty seats there.

I guess I am going to switch from the things that don't appear to be here, which there doesn't seem to be a case for the Iraqi embassy, per se, being in trouble, other than it is a big project and there are things to be fixed. There doesn't appear to be any lack of willingness with appropriate oversight by yourself and your office to working together with Justice. So let me ask you this. You have a lot of areas, 252 embassies and missions around the world,

that you have to do statutory oversight on, that you have to investigate. What are your priorities? I would like to know what you are working on, because what this hearing is about today appears not to be a problem. But I would like to hear about the problems that you would like us to know you are working on that maybe we should focus attention on.

Mr. KRONGARD. Well, that is a really important question, sir, because when I came into office, one of the things I spoke about at my confirmation and always in the early days was that I wanted my priorities to be set not by the calendar, but by the priorities of the day. And I come from an audit background, where you go to the highest risks first, and I used to say I don't want to have to go to Island in the Sun because I haven't been there for 5 years and, oh, no, you can't go back to Kabul because you were there last year.

I think the problem is that, when I first came in, 70 percent of our work was mandated, so what we were working with, in order to fix our own priorities, is not significant. I mean, most of our work is—when you say what are we working on, I can tell you a lot of it, but it wouldn't necessarily be my highest priorities. As I said, in investigations, we are doing a lot of time and expense. I would like to be doing program.

Mr. ISSA. Well, let me give you an example of a question that I have had. State Department took a couple of decades to sell and buy a new embassy grounds in Lebanon. They no more than closed escrow and I am now told they will never build there, that they will have to find a new site. Is that something that your department looks at, the decision process and whether it was a legitimate change in events as a result of the assassination of Hariri, or whether, in fact, this is indicative of a selection process that we may be repeating around the world at great cost to the taxpayers?

Mr. KRONGARD. That is the kind of thing we do, and I hate to speculate about something that took place before my time, but my recollection is that, before my time, there was an inspection of Embassy Beirut that did get into this issue, but that is my recollection.

Mr. ISSA. Well, you can followup for the record, if you don't mind.

Mr. KRONGARD. We will, certainly. And let me tell you, sir, that one of the things that was highest on my priority lists is in the process of being achieved thanks to the Congress, which was setting up a Middle East regional office. Remember, we are talking about all these people who act in Afghanistan and Iraq. They all have people there. We have never had a single person in the Middle East, whether it is Baghdad or Kabul or anyplace else, and thanks to the Congress and my efforts of over 2 years to try and get support, we were given $1.5 million to set up a Middle East regional office, and the people just returned from Amman yesterday, where it is being set up. And the reason we picked Amman is because our problems aren't just Iraq and Afghanistan, they include Beirut, and that is one of the places we want to be.

Mr. ISSA. Well, thank you, and thank you for your service. And I will end by saying that first week of December the President is having a Christmas party. I have an extra guest ticket. After today, I know that you have earned it. I would be happy to have

you use my guest ticket, and then you will get a picture with the President and then you will get to meet him, as well you should. Thank you for your service.

Mr. KRONGARD. Thank you, sir.

Chairman WAXMAN. Thank you, Mr. Issa.

Mr. Shays, you are recognized.

Mr. SHAYS. Thank you. Mr. Chairman, first off, I want to say that what troubles me about this hearing is that, Mr. Krongard, you have not been confronted by your accusers. You were confronted with a 14-page document. We don't want our IGs to be politically interfered with by the executive branch or Congress, and yet you have disclosed that you were basically forced to recuse yourself because of this committee, when in fact you may not have had to, because of the interference of this committee.

The chairman has said something that I think was totally inaccurate. We all make mistakes, but the chairman said we don't need to have your accusers here because they were deposed by this committee under oath. They weren't deposed and they weren't under oath. John DeDona, in regards to the September 18th letter, was an interview not under oath; Ralph McNamara, who has made accusations in the September 18th letter, was an interview, he was not under oath; Brian Rubendall and Ron Militana, September 28th letter, they were interviewed, but they were not under oath; and Peter Lubeck, October 4th, was interviewed, but was not under oath.

They haven't come before this committee. You have not been given the kind of courtesy that we have given other people who come before this committee to know what they have said and we can compare the testimony and they can be under the light of public disclosure, as you have been today.

And then there were two other individuals who are whistle-blowers who have made accusations that the majority has chosen not to share with us who they are, so we can't question them about it because we don't know who they are.

So I just want to say we all make mistakes, and in this case I think this committee has made a number. You have made a mistake, in my judgment, in not being clear with your brother the importance of him being up front with you, and I think that has really been not helpful at all. That is the one thing that I have learned in this hearing that I think is very uncomfortable to me. All the other issues, the travel, the allocation of your resources, to me seem fairly straight forward. So I leave this hearing thinking that you are an honorable man, you have tried to be up front with us, and I wonder sometimes why anybody would want to work for Government. You ran a big business, you obviously had a lot of employees, so it is not like you don't have management skills.

And your point to us, which I accept, is that you came in as a change agent and know you have limited time, and probably pushed it a little more quickly in the public sector than you can in the private sector, and that is the reality of working in the public sector, and it is one reason why Government sometimes is ineffective, because it can't respond to the kinds of changes that we need.

I would like to ask you, as it relates to the embassy. There have been a number of allegations concerning construction deficiencies at the Baghdad embassy. Does your office have investigators with the required skills to go to the constructionsite and add value to an investigation of issues such as the proper wall strength needed to withstand rocket attacks, whether the building is properly wired, has proper plumbing, or has adequate fire suppression systems?

Mr. KRONGARD. No, we don't have that kind of skill.

Mr. SHAYS. Isn't it true that the allegations of construction deficiencies are being handled by other investigative entities that have some expertise in construction and building security matters?

Mr. KRONGARD. That is true, but without meaning to interrupt your train of thought, can I answer more fully? Because this is not intended to be self-promotional, but I want this fact out on the table, that when I was in Iraq in September, I think I made two very valuable contributions. It was I who insisted upon and obtained the agreement that the fire suppression system would have to be certified by an outside, independent, third-party expert and that an outside, independent, third-party expert would have to certify as to the structural integrity of the buildings. I insisted upon that.

Mr. SHAYS. Let me ask you. When you went to Iraq, people are treating this as if you were doing an investigation. My sense, in hearing you, is that you went as the Inspector General to get information in general, that you were not conducting any investigation. I surmise from that you were also trying to determine where to allocate your resources and what areas you felt should be investigated and not. Am I looking at it the way I should be or is there more to the story?

Mr. KRONGARD. There is more to it. I was gone for 3 weeks, I visited five countries, and the principal reason for my visit was a——

Mr. SHAYS. You visited five countries?

Mr. KRONGARD. The whole trip. The principal reason for my trip was to do a classified investigation with the Inspector General of the Department of Defense. That was what my principal reason for that 3-week trip was. I carved it out so that I have a couple of extra days on my own in Baghdad——

Mr. SHAYS. So that wasn't connected to any investigation.

Mr. KRONGARD. Not connected to anything we have talked about today. And I carved out some time while I was in Baghdad to attend to other things that are of interest to me, where I have made contributions: rule of law, anti-corruption, and the new embassy construction. So that was something that I carved out because I was there, it was not the principal reason for my trip.

Mr. SHAYS. Thank you.

Chairman WAXMAN. The gentleman's time has expired. I just want to say, Mr. Shays, again, that the witnesses that talked to our committee staffs jointly and that were put up to question——

Mr. SHAYS. Excuse me. Is this on your time? Because I used it on my time. I am just curious.

Chairman WAXMAN. Well, I think this is just something for the record.

Mr. SHAYS. OK, because I just want to say I used my 5 minutes, and I would appreciate not having to do it. But, anyway, continue.

Chairman WAXMAN. Well, it looks like you don't want the record to be complete, but I just want to point out——

Mr. SHAYS. No, I would just like you to use your 5 minutes like I used mine.

Chairman WAXMAN. I see. Well, I am not going to use my 5 minutes in correcting a record as chairman of the committee. And as chairman of the committee, the procedures by which we have followed in interviewing witnesses is to give them a choice of a deposition or an interview, and we have never heard any objection from the Republican side of the aisle on that process..

Mr. SHAYS. We don't object to that.

Chairman WAXMAN. Excuse me, I am still talking.

The second point I want to make is that when somebody is responding to questions in an interview, as opposed to a deposition, they are still subject to criminal penalties if they lie or misrepresent information. And, third, you have never requested that these witnesses be here today. You have come in and completely complained at every opportunity they are not here, but we never had a request from the Republican side of the aisle to bring them in. So I just want the record to reflect that.

Mr. SHAYS. Could I ask a question in this regard?

Chairman WAXMAN. Yes, certainly.

Mr. SHAYS. Am I incorrect, didn't you say that these people had been under deposition and had been under oath? That is what you said, and I wanted to correct the record that they weren't, and that is true. And, second——

Chairman WAXMAN. No, I said that some were under oath in a deposition and some were interviewed. It was a combination of the two.

Mr. SHAYS. And they were not. None of these individuals that made these charges were under oath, and please——

Chairman WAXMAN. That is not an accurate statement.

Mr. SHAYS. Please——

Chairman WAXMAN. Maybe the individuals you are referring to, but not all the people we talked to.

Mr. SHAYS. So let me be clear. The individuals that I named were not under oath?

Chairman WAXMAN. I am going to tell you this, what I told you earlier. We will give a list——

Mr. SHAYS. I just want the truth. I just want the truth.

Chairman WAXMAN [continuing]. Of the people that talked under deposition and then talked under interview circumstances. We gave, for the most part, the people the choice.

Mr. SHAYS. And the question I would then end in, why do we swear in a witness if we don't need to swear in a witness, if they have to tell the truth anyway? Why are we doing that to Mr. Krongard, but we are not doing it to the people who made the charges?

Chairman WAXMAN. Well, the rules of the committee provide that anybody that testifies before a committee meeting, a committee hearing must testify under oath. The process by which we interviewed or deposed witness has been to give the individual a

choice. We have never heard any objection from anybody to that process. We think it has worked well. It is only at this hearing that we are now hearing complaints.

And, second, we never had a request from the Republicans to bring all those witnesses in. We had a report put out by the Democrats, a report put out by the Republicans. Mr. Krongard knows well the concerns that we have raised and he is here to answer them, and he told us, or at least we have seen quotes from him, that he welcomed this opportunity. He may not have chosen it at his first choice of how to spend the day, but this is the only way that we think, is to get him in and answer questions.

Now it is Mr. Cummings' turn, if he wants to ask questions.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I will be very brief.

Mr. Krongard, Congressman Shays just made a statement that I thought was very profound, when he said that the one thing that troubled him was with regard to the statements you made with regard to your brother, and I came to this hearing today, I must tell you, with an open mind, and if there is anybody on this committee who, over the years, has guarded witnesses and tried to make sure that they were treated fairly, I have done that. But in light of all the evidence we have, it is increasingly difficult, I must tell you, to give you the benefit of the doubt and to find your testimony credible, and let me just explain to you why. And you don't have to look so confused, I am just telling you what I am feeling.

In fact, the only way you can be credible is if all your employees who have given sworn testimony to our committee, over a dozen that is, are wrong in their statements and if the Justice Department is wrong in the information that it has shared with us. Let's just summarize your testimony as we close this hearing. As I have listened, and I have not been in the entire committee, but I have watched it on TV, the Justice Department told us you impeded their investigation. You have told us that not only haven't you blocked the Department's work, but that the Department doesn't believe you blocked its work. So you are telling us you are right and the Department is wrong.

The Justice Department and the agent you assigned to the Blackwater inquiry told us you put your congressional and public affairs officer in charge of obtaining relevant documents. You have told us that isn't true, even though the congressional and public relations director confirmed the two other accounts. So, again, you are telling us you are right and they are wrong.

Your employees have uniformly told us of the abusive and hostile environment that you created. This morning you told us the problem wasn't with you, but was a reflection of the low quality of the people working for you. In fact, you previously told them the Office of Inspector General was a "banana republic" and belittled the standards they followed. In response, your Chief Counsel, Erich Hart, told us that "I think everybody in that room was personally offended by that statement. I was offended. I come from a military background and my standards are exceedingly high." In this case you are telling us you were right and, again, your senior employees were wrong.

Despite the recommendations of the head of your audit division, your chief counsel, and your deputy that you not allow the State Department to replace a qualified audit of its financial statement with a clean audit, you did this in both 2005 and 2006. This morning you told us that you did this to preserve the integrity of the audit process, notwithstanding the views of your top advisors, and when they objected, you told one of them he was "irrelevant." Bill Todd, your deputy, told the committee that "Howard said I was wrong. Howard told Duda he was wrong and Howard told Erich Hart he is wrong."

A number of your senior advisors told us your personal investigation into First Kuwaiti's alleged labor trafficking was unorthodox, "didn't comply with any standards," was "an embarrassment to the community," and "an affront to our profession." But this morning you have stuck to your position and insist you were right and they were wrong.

A number of those same advisors and the Justice Department have also told us they warned you that your proposed participation into an ongoing criminal inquiry was wrong and could taint the real investigation. Again, you insisted today that you were right and they were wrong.

In fact, the only time today that you have admitted you were wrong relates to your brother, Buzzy Krongard. You were adamant this morning that he did not serve on the Blackwater board. As a matter of fact, after you gave your statement, you were emphatic that you had talked about him and gave me the impression that you had just talked to him recently, and then came back and said it had been a while. I am just saying that was the impression I got.

Mr. Krongard, I just don't believe that everybody is wrong and you are the only one who is right. But I will give you one more chance to reflect on these overwhelming facts and reconsider your testimony, and if you would like to do that, you may.

Mr. KRONGARD. Thank you, sir. I am not sure I can do every one, because I wasn't writing fast enough. Let's start with DOJ. I am accused of impeding their investigation and you say that I am disagreeing with them or the people who are speaking for them. When I read you the letter, which reflects exactly what they said—and that letter very clearly makes the point that I was cooperating with them, they appreciated what I was doing, they liked my candor, they liked the fact that I had assigned to them a good investigator. So I don't think it is a question of my saying that they are wrong; I am relying on their own words.

With respect to the congressional and public affairs person, it is true as to the documents. You said that I denied that the congressional and public affairs person was responsible for getting the documents. I stated the contrary; she was because she was doing it for SIGIR, as well, and, therefore, it made it easy to do it for both. What I said she was not doing was any investigative activities. She wasn't an investigator, I agree with you.

Mr. CUMMINGS. Mr. Krongard, I want to interrupt you for 1 second. That letter from the Justice Department was after the July meeting that you had with them. The complaints we are getting are from all the things you did after that.

Mr. KRONGARD. Well, let me get to that.

Mr. CUMMINGS. So just the chronology.

Mr. KRONGARD. Let me get to that, then.

Mr. CUMMINGS. OK, go ahead.

Mr. KRONGARD. I was following the Congressman's order, but let me get to that. I made it clear in my testimony, and I will stand by it, that I communicated by phone and in person with each of the three branches of the Justice Department that had investigations, to my knowledge, before I went to Iraq, told them what I was going to do in Iraq, and asked them if there was anything I could do to assist them. I don't know what else—I am not disagreeing with them. I did talk to them and I know what they said to me, so I do disagree with you on that.

I am not disputing that the problem is all somebody else's. I didn't try and say that. I tried to say I have been very hard on the people. I came to do a very difficult job. I gave up a lot to come down and do that, and I wanted to make the contribution that was expected of me, and I wasn't prepared very well for what I found, and, yes, I have created an environment that a lot of people felt uncomfortable.

But you haven't heard from any of the people that like what I am doing, and admire and respect what I am doing. It would have been nice if some of those people had been consulted. But I am not saying the problem is all with them as far as the work environment. It is a work environment that I have been very demanding; I have been very critical. I have tried to get to a high level of care. When I read every report and I make comments on it, some people view that as micro-managing, some people view that as interference.

Each of the seven names, I believe, that Congressman Shays read with respect to giving this adverse testimony are all from the investigations group. I came into a situation where that investigations group had never been managed. They viewed any management, any oversight as interference. So, yes, I am part of the problem. I have tried to deal with it. I would like to do better.

There are e-mails in here, frankly, that I am embarrassed to see in print when I see them in print by themselves, without seeing what led to them and what pushed me to them. But, nevertheless, I am embarrassed by them. And it has not been asked, but I will tell you I learned a really good lesson through this, and I am going to think long and hard before hitting that send button, which we all should. E-mail is a terrible thing.

So I don't say it is everybody else.

As to who is right and wrong, on the audit, absolutely I knew I was going against the majority, and I believe to this day that one of the best things I have done in the Department since I have been there is that memorandum that I wrote with respect to why I was doing what I was and had the support of the American Institute of Certified Public Accountants, OMB, and GAO, and I think to this day what I did was correct.

And the people who disagreed with me, by the way, even though they disagreed with me in principle, acknowledged, including Erich Hart, the legal counsel, that there was nothing illegal about what we were doing, and our role as not being the auditor, but just being the overseer, was only to make sure they didn't do anything illegal

or unprofessional. So on that I really do believe I was right and the other people were wrong, and so be it, that is the way.

On the work on the new embassy compound, as I say, I have made real contributions there. With respect to getting the fire suppression system certified by an outsider and the structural integrity, I pushed for that, and I demanded it and I got it.

So I have tried to do the best job I can. That is all I can tell you. I am not perfect. I am not going to be here telling you everybody else is wrong and I am right.

Mr. CUMMINGS. I see my time is up. Thank you.

Chairman WAXMAN. Your time is up.

Mr. Krongard, the thrust of those last questions is you are right and everybody else is wrong. That is the way it appears to some of us, but what strikes me is the enormous gap between your strong reputation in previous jobs and your performance and the Inspector General. There is a string of incompetent actions that you took. Now, I took notes when you testified originally, and you said I took on a mission that put me in conflict with people resisting change. Then you also said I never allowed staff to affect my judgments. I sometimes think that is an incredible statement, because you had staff there that should have affected your judgment, because many of them had more information, knowledge, experience than you did.

Now, all the people that were critical were not from the inspections unit. Bill Todd said that what you were doing was very unorthodox. He was the Deputy Inspector General. Patty Boyd said your audit was an embarrassment. Erich Hart, your counsel, said it was wrong to give the State Department more time on the audits, which you did for 2 years running.

Despite strong warnings from the Justice Department, you insisted on meeting with a person of interest. You investigated and wrote a report on human trafficking that was widely ridiculed by your career investigators for being the furthest thing from an investigation. Your staff specifically warned you not to debrief them on your discussions with subjects of investigation for fear that it would taint their investigation, and you then proceeded to send a detailed e-mail to one of the agents doing exactly what they asked you not to do. In the case of Ken Tomlinson, you shared with him a whistle-blower letter detailing the allegations that were being investigated. And there were other instances. You met with two State Department officials that were persons of interest, and that was a problem.

There is one area after another where you seem to ignore the people who had ideas of what to do and instructed you that they thought there was a problem, but you put your judgment over theirs. And I would submit it looks like your judgment in every case was not better than theirs. This record of incompetence is completely at odds with your previous professional reputation. I don't know how to reconcile the two, but I know that we can't ignore the facts.

You have a critical role as an inspector general for the State Department. The State Department needs your help to make them more effective and to make the most of their resources, and the challenges that are facing the State Department are enormous in

Iraq, particularly; they have profound implications for our relations with the entire world. So you have to do the oversight to keep them honest.

Our job is to do the oversight to keep you and the State Department honest, and to make sure that you are doing the job you need to do.

Now, our investigation and our hearing today has been belittled by the Republicans. When they were in power, they didn't do any investigations over anything that might embarrass the Bush administration. It is as if they had nothing to do with it all. They were only Members of Congress, although the Constitution spells out we have a job, providing the checks and balances. Now that we are trying to do that, we get a lot of criticism.

But back to you. I will take the criticism. Back to you. How is it that you ignore and put yourself in a situation where you belittle the people that are trying to have you do your job right? Are they all wrong and you are right? And it seems to me it is not just a question of credibility; it is a question of what has happened has been viewed as incompetent. How do you respond to some of these specifics and my general comments?

Mr. KRONGARD. OK, let me try, sir.

Chairman WAXMAN. And, with that, we are going to end the hearing.

Mr. KRONGARD. Let me try, sir, because there are some things that have been said, really, for the first time to me and are wholly implausible. For example, I have heard for the first time today that I was told not to tell the investigators information that I had acquired in Baghdad, and they didn't want to know it and I forced them to know it. Let me read to you the e-mail which I sent to the agent—I won't use his name—as soon as I got back from Baghdad.

It says, "When I was in Baghdad last week discussing so-and-so, here is what happened," and I did tell him. Here is the response from the agent on October 5th: "Howard, thanks for the information. I believe this is an area of interest to the prosecutors, so I will forward the information to them as well." That seems to me a total acceptance of what I did.

I then followed up with him and said, "Good. Have you had a chance to consider my suggestion at our meeting Tuesday?" We had met.

Chairman WAXMAN. You wouldn't give your e-mails to the Justice Department because you told them what? Why didn't you provide the Justice Department the information they need? You are supposed to work with them; they are the ones in charge of criminal prosecutions, not you. And if they ask for information, why wouldn't you give it to them?

Mr. KRONGARD. They never asked for this information, sir. I had not even been aware that there was an investigation, because it happened while I was in Iraq. I provided my investigator with the information. I didn't even know he was working on an investigation with the Justice Department.

Chairman WAXMAN. Well, you are reading aloud from e-mails that are not on the public record. Do you want that on the public record?

Mr. KRONGARD. You have put on the public record a statement that I was told something that I wasn't told. This is directly contrary. I was cooperating with this agent. I gave him information that he liked. I gave him an opportunity to go to Iraq and I put the choice to him. I mean——

Chairman WAXMAN. Let me just ask you to hold off for a minute, because I think you are maybe going to adversely affect other investigations by what you are saying here.

Mr. KRONGARD. But the allegation——

Chairman WAXMAN. We have to respond to the vote.

Mr. SHAYS. He has to be able to defend himself to the charges.

Chairman WAXMAN. Well, I am not going to deprive him of being able to defend himself, but if he uses information that he has that has some——

Mr. KRONGARD. I will submit this right now to you.

Chairman WAXMAN. Where did you get that?

Mr. KRONGARD. It is my e-mails. It is my record. I produced this——

Chairman WAXMAN. Now, this is something we subpoenaed and we never received. Why didn't we get that when we asked for it under subpoena.

Mr. KRONGARD. You would have to ask the person who processed this. I gave up my e-mails to the person processing this. Maybe it was determined that this is, like you are saying, affects investigations. It may be. I wouldn't have gotten into it but for the allegation against me that has been made today.

Chairman WAXMAN. I know, but we asked for the information from you. We even——

Mr. KRONGARD. I gave it to the person. I gave it to the person.

Chairman WAXMAN. You gave it to our committee?

Mr. KRONGARD. No, I gave it to the person—I was recused and separated from the production process. I produced all of my e-mails to legal counsel in my office who was responsible for the production. I don't know if this was produced or not.

Chairman WAXMAN. As I understand it, the Justice Department objected to our getting that e-mail because they said it was sensitive to a prosecution, and now you are reading it.

Mr. KRONGARD. The parts that I read went only to whether the agent appreciated or objected to my providing him information. That is all I have read and that is my point.

Mr. SHAYS. You answered his question. Thank you for answering his question.

Mr. KRONGARD. OK, can I try one more? I mean, there was a whole string. Because you asked why I didn't allow my staff to influence my job selection and allocation, and you referred to what I had said before.

Chairman WAXMAN. Not job selection, not allocation of funds. They asked you to do and not do certain things, and you just absolutely ignored them. In fact, the record that they have given us is that you belittled them. You told them they were irrelevant, that they didn't know what they were talking about.

Mr. SHAYS. These are people that haven't come before the committee, I am sorry.

Chairman WAXMAN. These are people who have come before our committee.

Mr. SHAYS. Not him.

Mr. KRONGARD. My only point was you referred to my written and oral statement this morning. I just want to clarify what I actually said. I said the clashes were unfortunate, but I need to emphasize that I never allowed them, the clashes—not the people—to affect my judgment. I did take into account recommendations, positions, and other advice that came from my staff.

In the course——

Chairman WAXMAN. You took them into account, but you didn't follow them.

Mr. KRONGARD. I did the best I could. If I felt that my judgment, as I did in the audit question that we have talked about, was better, I followed mine. But, more important, sir, in these de-conflict situations, the investigators who are governed by very strict confidentiality, they generally known what they are doing. They don't know what the auditors are doing and they don't necessarily know what the inspectors are doing, and all don't know what the others are doing.

I am the one that is on the top of this, that has to put all this together and make the determinations as to what is good from a resource point of view, what is good from a conflict point of view, what is good from doing the job that I swore to undertake to do. That is my responsibility. Yes, it is hard, and maybe I don't always make the right decision, but I can tell you my motivation has been nothing different from when I came to Washington in the first place.

Chairman WAXMAN. Well, no one has attacked your motivation except what we are attacking as your competence and your credibility.

Mr. KRONGARD. Well, sir, I will stand on my record of competence.

Mr. SHAYS. Mr. Chairman, you have attacked his motivation. The whole letter was attacking his motivation. You basically charge this man with being corrupt; you charged him with so many things. It is an outrage.

Chairman WAXMAN. My letter will speak for itself, not your characterization of it. The facts will speak for themselves, not your characterization of it.

We have a vote and there are 2 minutes left. Rather than ask you to come back further, I think we have gotten to the point where we know what your position is and we know what others have said, and we know what the Republicans think of this and we have our executive summary and the Democratic summary of the information we received. We will let the facts speak for themselves.

With that, I am going to adjourn the meeting. Thank you for being here.

[Whereupon, at 2:10 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

Kenneth Y. Tomlinson
SPRINGBROOK FARM
P.O. BOX 1508 • MIDDLEBURG, VIRGINIA 20118
540/364-1940 FAX 540/364-1914

January 14, 2008

Dear Chairman Waxman:

Your November 2007 Report on Allegations Regarding State Department Inspector General Howard Krongard contains unfounded and untrue allegations about me and members of my former staff at the Broadcasting Board of Governors (BBG) that must be corrected. This letter, which I respectfully request be added to the final report or record regarding the Krongard matter, sets the record straight.

The Report alleges that a Congressional letter of complaint against me was faxed to the BBG in mid-July 2005. The Report (pp. 6, 32) then quotes a State Department Inspector General investigator as stating: "[W]hat happened as a result of this, two of the witnesses were observed shredding documents related to this case" ... (emphasis added).

This statement is nothing more than false, unfair speculation.

The IG issued a Report of Investigation on matters relating to my conduct on August 22, 2006. Despite repeated requests, I have not been given or even shown this Report, although I have seen a publicly-released two-page summary. There is no finding in that summary that any improper shredding was conducted at my instruction or otherwise. Rather, it is my understanding that any shredding that occurred was routine housekeeping and was done on a widely-used and very observable shredder. I am particularly disturbed that your Report on Mr. Krongard would contain innuendo that wrongly besmirches two totally honest government servants.

Then there is the equally misguided allegation in the Report (pp. 5, 30) that I improperly charged the BBG and the Corporation for Public Broadcasting, which I also chaired, for the same hours of work. This allegation was thoroughly investigated by the State Department I.G.'s office, which, according to the public summary of its Report as to my conduct, specifically declined to reach such a conclusion.

I was, perhaps, the first person in history to hold the Chairmanship of two Presidential-appointed boards.[1] Recognizing the special problems this might cause, I specifically instructed my staff to ensure that, for any given day, I billed only one agency for work done, even though I might have also performed tasks for the other. I did so despite the advice of the BBG's General Counsel, in an opinion I attach, that it would not be "illegal" to bill both agencies for the work done for each on a single day.

Because of clerical errors, there were only a handful of instances where both the BBG and CPB were billed for different work done on the same day. Even though there was nothing illegal about this, I long ago repaid either BBG or CPB for work done on days where I determined I had billed both entities. There were also many more hours of work for the BBG – e.g., at night, on the weekends and while

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[1] As you may know, I also had successfully and honorably served as Director of the Voice of America and Chairman of the National Commission of Libraries and Information Science, member of the U.S. Board for International Broadcasting, and as the Editor-in-Chief of the Reader's Digest.

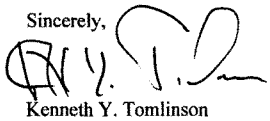
traveling or on days I billed only CPB -- for which I never billed the federal government. It was because of this work that the BBG was able to secure funding to launch in 2004 the Arabic language satellite television network to the Middle East. It was because of this work that we now have 16-hours a day of satellite television in Persian to Iran.

As noted, the State Department I.G.'s office did not find that I had improperly billed the federal government by "double-dipping." It is thus disturbing to me that such an allegation is featured in your Committee's Report as to Mr. Krongard, without mentioning that the I.G.'s Report on my conduct made no such finding.

Now that Mr. Krongard has resigned, your investigation of his conduct may be over. However, in the interest of fairness, this letter should be attached to any final report on that matter or, if there is no further report, included in the investigative record relating to it.

Thank you for your attention to this important matter.

Sincerely,



Kenneth Y. Tomlinson

Attachment: As stated

The Honorable Henry A. Waxman
Chairman
House Committee on Oversight & Government Reform

MEMORANDUM TO: BBG - Kenneth Y. Tomlinson

FROM: GC - Carol M. Booker

SUBJECT: Compensation for CPB and BBG Work

As you requested, we have reviewed information provided by the Corporation for Public Broadcasting (CPB) Executive Office regarding payments and reimbursements to you during the period 12/6/01 through 7/22/03 for your service as a Member of the CPB Board of Directors. We compared those payments to time sheets you submitted for work done on BBG matters during the same period. There appear to be only five instances where you worked on the same day for both the CPB and the BBG and submitted claims to both (11/19/02, 1/28/03, 2/4/03, 4/29/03, and 7/22/03).

As you know, under the CPB statute, members of the Board of Directors are paid at the rate of $150 per day for attendance at meetings or while engaged in duties related to such meetings or other activities of the Board. [47 U.S.C. 396(d)(2).] Total compensation in any one fiscal year is capped at $10,000. By contrast, the BBG's statute provides that Members of the Board are entitled to receive compensation "equal to the daily equivalent of the compensation provided for level IV of the Executive Schedule" while attending meetings of the BBG or while engaged in duties relating to such meetings or in other activities of the Board. [22 U.S.C. 6203(e).] Historically, this has been interpreted to provide, not for a daily rate, but for an hourly rate computed by dividing by eight the daily equivalent rate of level IV of the Executive Schedule.

As a Special Government Employee of the BBG, you are not precluded from receiving compensation for outside employment. Therefore, we do not believe that you need repay any of the additional compensation you received from the CPB. However, because the CPB is publicly funded, we believe that in the future you should refrain from billing both organizations for work done for both on the same day. We suggest that you bill the BBG only on such occasions.

We recommend this because being paid a daily rate by the CPB presupposes that you would be spending a whole day on CPB matters, precluding you from working for another organization on that day on an hourly basis.

This recommendation is not meant in any way to suggest that such double-billing would be illegal. It is simply to avoid any appearance of impropriety or any possible public perception that you are double-dipping from two publicly funded sources.

Please let me know if you have any questions about this.

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