



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

**Staff Report
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Committee on Oversight and Government Reform**

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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.

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 blitz⁶ 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:

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

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

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 unsupported 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

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] 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 multidisciplinary 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.

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

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

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

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

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:

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

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

* * *

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?

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

* * *

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?

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:

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

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

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

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

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

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?

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.

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

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

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?

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

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

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.

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.

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

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;

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

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

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

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?

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

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

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

* * *

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?

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

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 them²⁰⁵

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

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?

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 travel²¹²

* * *

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. . . **you get the world travel, and you'll be able to go from black tux to blue jeans.** 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?

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

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

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?

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

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,**

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.

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

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.

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

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.

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

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,

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

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 this²⁵⁶

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.

²⁵⁶ *Id.* at 99 .

²⁵⁷ GAO Report at 25.

²⁵⁸ *Id.* at 25.

²⁵⁹ Krongard Letter to Delahunt at 17.

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.

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.

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.

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 work²⁷⁵

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 it²⁷⁸

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

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

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, your 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?

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.

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"?

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.

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.

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

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:

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

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

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

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

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

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.

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?

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

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 it 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

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.

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

* * *

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

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

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

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.

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?

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 HOCR 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

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.