

FULL STATEMENT OF MARY L. KENDALL
ACTING INSPECTOR GENERAL FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
“OVERSIGHT OF THE ACTIONS, INDEPENDENCE AND ACCOUNTABILITY
OF THE ACTING INSPECTOR GENERAL
FOR THE DEPARTMENT OF THE INTERIOR”
AUGUST 2, 2012

This hearing is the result of a subpoena and a series of letters sent by this Committee to the Office of Inspector General (OIG) for the Department of the Interior seeking documents concerning an OIG investigation conducted in 2010 regarding the drilling moratorium imposed in the Gulf of Mexico following the *Deepwater Horizon* disaster. The subpoena was dated March 30, 2012; the letters were dated April 6, May 2, May 10, May 22, May 30, and June 25, 2012. On May 24, 2012, another letter was issued from Senators Jeff Sessions, David Vitter and John Cornyn, to the Integrity Committee for the Council of Inspectors General for Integrity and Efficiency citing documents obtained by this Committee from the OIG and press releases issued by the Committee.

Inspectors General, are appointed or designated “without regard to political affiliation and solely on the basis of integrity and demonstrated ability” in a number of fields, pursuant to Section 3 of the IG Act. Section 2 of the IG Act establishes the independence and objectivity expectation. Although neither appointed nor designated, Acting Inspectors General are also expected to conduct themselves with integrity, independence and objectivity in a non-partisan manner, and I have conscientiously adhered to these principles during my tenure in the OIG as Deputy Inspector General, General Counsel and Acting Inspector General.

For the past four months, I have weathered the scrutiny of this Committee which has used a unilateral approach to “investigate” me by requesting select documents from the Office of Inspector General (OIG), drawing conclusions from those documents without all the facts, and presenting those conclusions to the public via press releases, challenging my integrity, independence and objectivity. Therefore, I welcome the opportunity today to testify, respond to questions, and present all the facts, as I know them.

Background

On April 20, 2010, an explosion on the *Deepwater Horizon* oil drilling rig resulted in the tragic deaths of 11 rig workers and injuries to 17 others. After burning for two days, the *Deepwater Horizon* plunged to the bottom of the Gulf of Mexico, causing the drill pipe to rupture, resulting in the largest marine oil spill in the history of the United States and an immediate environmental disaster in the Gulf, spilling 4.9 million barrels of oil over a nearly three-month period.

In the wake of this disaster, the President directed the Secretary of the Interior, Ken Salazar, to conduct a thorough review of this event and report within 30 days on what short-term “precautions and technologies should be required to improve the safety of oil and gas exploration

and production operations on the outer continental shelf.” This was officially titled, *Increased Safety Measures for Energy Development on the Outer Continental Shelf*, but became commonly known as the “30-Day Report.”

Nearly contemporaneously with the President’s directive, Secretary Salazar created, by Secretarial Order (**Attachment 1**), the Outer Continental Shelf (OCS) Safety Oversight Board (OCS Board). The OCS Board consisted of the Assistant Secretary for Lands and Minerals; the Assistant Secretary for Policy, Management and Budget; and the Acting Inspector General. The Deputy Secretary, on behalf of the Secretary, appealed to me personally to participate on the board as an independent and objective member. I agreed to do so, but made clear that I would conduct myself independently and objectively, and that I would not be a part of any policy decisions.

The OCS Board was charged to:

- 1) provide oversight, support, and resources to the then-Minerals Management Service regarding its responsibilities in the Joint Investigation into the *Deepwater Horizon* disaster;
- 2) provide the Secretary with periodic progress reports regarding the Joint Investigation;
- 3) make recommendations on measures that may enhance OCS safety; and
- 4) make recommendations to improve and strengthen the Department’s overall management, regulation and oversight of OCS operations.

Informational Meetings in the Wake of the *Deepwater Horizon* Disaster

When the President directed Secretary Salazar to recommend short-term actions to improve industry practices and standards for deepwater oil drilling, Steve Black, Counselor to Secretary Salazar, was placed in charge of a team responsible for producing the 30-Day Report that contained these short-term recommendations. I was not a member of that team.

In order to fulfill my role on the OCS Board, however, I needed to gain a basic understanding of deepwater drilling. Therefore, I attended a number of information-gathering meetings, organized by Steve Black, with representatives from industry, government, and the engineering and scientific communities. I viewed these meetings as both educational, in terms of learning about myriad aspects of deepwater drilling, and helpful, in terms of navigating the role of the OCS Board. In **none** of these information-gathering meetings that I attended was the substance of the 30-Day Report discussed.

On May 25, 2010, two days before DOI issued the 30-Day Report, I was invited, as a member of the OCS Board, to attend a conference call intended to provide the National Academy of Engineers (NAE) Peer Reviewers an opportunity to comment on the draft 30-Day Report. I was invited to this conference call for informational purposes only. A copy of the already-written draft 30-Day Report was attached to the email invitation (**Attachment 2**). Neither the OCS Board collectively nor I individually commented on the 30-Day Report.

The 30-Day Report, containing 22 recommendations, was issued on May 27, 2010, together with an Executive Summary (**Attachment 3**), the latter of which was still being drafted by Steve Black between 11:38 p.m. on May 26 and 2:13 a.m. on May 27. The Executive

Summary also included the Secretary's recommendation for a drilling moratorium in the Gulf of Mexico. This moratorium recommendation was **not** contained in the 30-Day Report itself. Upon reading the published report and the Executive Summary, the scientists and industry experts who peer reviewed the safety recommendations contained in the 30-Day Report expressed concern that the Executive Summary was worded in a manner that implied that the experts had also peer reviewed and supported this policy decision, when, in fact, they had not and did not.

The allegation that certain emails (See Attachment 2 and **Attachment 4**) suggest that I played a significant role in developing what the Committee calls "the Drilling Moratorium Report" (but which should be called the 30-Day Report) is not borne out. The subject emails merely indicated my attendance at informational meetings organized by Steve Black leading up to the 30-Day Report. I did not, however, participate in the drafting of the 30-Day Report. Regardless, the OIG did not investigate the 30-Day Report. Rather, the OIG investigated the editing of the Executive Summary to the 30-Day Report, drafted and edited by Steve Black and White House personnel in the late hours of May 26 and early hours of May 27, 2010, in which the moratorium recommendation was made (**Attachment 5**). Therefore, the OIG investigation into the manner in which the Executive Summary was edited to suggest that the moratorium was peer reviewed, did not present a conflict of interest for me, and my testimony on June 17, 2010 was accurate.

OIG Investigation

At the request of multiple members of Congress (**Attachments 6 and 7**), including the Chair of this Committee, the OIG launched an investigation into the allegation that DOI senior officials, in an effort to help justify their decision to impose a six-month moratorium on deepwater drilling, misrepresented that the moratorium was reviewed and supported by the National Academy of Engineering scientists and industry experts. The requests asked that the OIG "identify when and how the modification of the report occurred" (see Attachment 6) and clarified the scope: "To be clear, we are not asking you to investigate the moratorium. We are asking you to investigate the changes made to the 30-Day Safety Report by political appointees that were presented to the public as peer-reviewed scientific paper." (See Attachment 7). Therefore, the Executive Summary—not the 30-Day Report—was the focus of the OIG investigation.

When the OIG opened its investigation, I emphasized to investigative staff that the scope of the investigation needed to stay focused on the Executive Summary to the 30-Day Report, where the moratorium recommendation was made—not the moratorium itself, which was, at the time, still the subject of litigation, and not the 30-Day Report. We assigned a senior special agent to this investigation. He was assisted by, and reported to, then-Director of our Program Integrity office, who was a seasoned manager and senior special agent. I did not have significant personal involvement in the direction of the investigation during its course, as I was focused on the efforts of the OCS Board, and on the efforts of my staff in Denver, Colorado who were conducting a massive evaluation of OCS operations on behalf of the Board. (This evaluation served as the basis for the OCS Safety Oversight Board Report of September 1, 2010. The OIG continued its analysis on several other issues the team had identified, and in December 2010, the OIG issued its own, independent report.)

After conducting interviews of the DOI officials involved in drafting the Executive Summary to the 30-Day Report, the OIG investigating agents reviewed the final email exchange regarding the Executive Summary between DOI and the White House. In the version that DOI sent to the White House, the Secretary's recommendation for a six month moratorium was discussed on the first page of the Executive Summary, while the peer review language was on the second page of the Executive Summary, immediately following a summary list of the safety recommendations contained in the body of the 30-Day Report. The version that the White House returned to DOI had revised and re-ordered the language in the Executive Summary, placing the peer review language immediately following the moratorium recommendation. This caused the distinction between the Secretary's moratorium recommendation—which had not been peer reviewed—and the safety recommendations contained in the 30-Day Report—which had been peer reviewed—to become effectively lost, as detailed in our Report of Investigation (ROI). Although the Executive Summary underwent some additional minor editing, it was ultimately published on May 27, 2010, with the peer review language immediately following the moratorium recommendation, resulting in the implication that the moratorium recommendation had been peer reviewed.

All DOI officials interviewed stated that it was never their intention to imply that the moratorium had been peer reviewed by the experts, but rather rushed editing of the Executive Summary by DOI and the White House resulted in this implication. Since the jurisdiction of the OIG does not extend to the White House, we could not compel an interview with the White House personnel involved in the editing of the Executive Summary. The emails exchanged between DOI and the White House did not reveal evidence that the Executive Summary was intentionally edited to lead readers to believe that the moratorium recommendation had been peer reviewed.

Although I was not significantly involved during the course of the investigation, I was personally briefed by the case agent and the Director of Program Integrity on their findings at the end of the investigation. At no time during the briefing did either of the agents express any concern or disagreement about the way in which the investigation had been conducted, or about the conclusion that, while the edits made by the White House to the Executive Summary caused the perception that the moratorium recommendation had been peer reviewed, we did not have evidence that this was done intentionally. At the end of this briefing, I asked the case agent to draft an outline for approval before he embarked on writing the ROI. Instead, he provided both an outline and a draft of the ROI contemporaneously within days of the briefing. Initially, I was quietly annoyed, until I read the draft ROI, and found that it was very well written by the case agent. This is to simply say that I had no hand in the initial drafting of the ROI.

I was, however, very much involved in reviewing and editing the ROI, as I am in all significant reports that issue from our office. As is my practice, whenever I make changes to a report (be it an investigation, audit, or evaluation), I always check with the report's author to ensure that I have not made changes that cannot be supported by the evidence or work papers (which support audits and evaluations). I did the same in this case, as is evidenced in a series of emails between the case agent and me. Again, these emails suggest no disagreement with the way in which the investigation was conducted or the way the report was written or edited. In fact, the case agent, in one email to me, said:

Mary,

Thank you for your comments on the ROI and investigation.

Your email language [about the exchange between DOI and the White House] was far simpler than my own, yet I believe it still clearly captured our finding that DOI's draft Executive Summary had made the distinction between the safety recommendations that were peer reviewed by the experts, and the 6-month moratorium recommendation, whereas that distinction was lost in the Executive Summary as a result of the edits made by the White House.

Obviously, whether that loss of distinction was intentional on the part of an overzealous White House staffer/editor, or simply an honest oversight, the jury will always remain out. The reader of the ROI will have to make their own speculations on that topic. (Emphasis added.) (Attachment 8)

In another, the case agent wrote to me, "Hope the overall ROI/investigation was up to par," to which I replied, "Other than a few editing tweaks and trying to simplify the discussion about the e-mails, I thought it very well done, thorough, and to the point." (Attachment 9)

I was, therefore, taken by complete surprise when we discovered emails authored by the case agent criticizing how the investigation was conducted, and expressing his opinion that the edits made by the White House were, indeed, intentionally made to suggest that the moratorium recommendation had been peer reviewed. For example, in an email to an OIG colleague, the case agent said:

Salazar's statement that our ROI concludes it was a mistake and unintentional is a clear attempt to spin our report – I truly believe the editing WAS intentional – by an overzealous staffer at the WH. And if asked, I – as the Case Agent – would be happy to state that opinion to anyone interested. We simply were not allowed to pursue the matter to the WH. But of course that was not mentioned in our report. (Attachment 10)

To the extent that this claim is intended to suggest that I took action to limit the investigation, it is inaccurate. As demonstrated by my emails to the case agent's supervisor (Attachments 11 and 12), I was awaiting an answer to my inquiry of whether the White House official involved in the editing process would be available for an interview or not. I did not receive a response. The jurisdiction of the OIG for DOI to compel an interview does not extend to the White House.

If an OIG investigator (or auditor or evaluator) feels that an OIG report fails to accurately describe the facts uncovered, I expect that employee to bring such concerns to my attention. The case agent in this instance had multiple opportunities to do so, when he briefed me, personally, on his findings at the end of the investigation, as well as during the email exchanges transmitting edits to the ROI. Since I had also engaged this case agent in such discussions about previous reports, in which he had made his position very clear to me, I am simply bewildered by his silence in this case if he had legitimate concerns about the investigation or the ROI.

For example, in an email string between the case agent and me, as the final edits to the report were being made, the case agent expressed no concerns whatsoever:

From me: (to Case Agent and supervisor) I am attaching language that I propose to replace the narrative on pp. 8-9 of the draft report [discussing the email exchange]. I hope it simplifies the comparison of the draft Executive Summary that was sent by DOI against the drafts that came back from the White House, but if I have somehow changed the meaning of anything, please let me know.

From me: (to Case Agent) Did you have any problems with [my edits to] the e-mail language?

To me: (from Case Agent) Your email language was far simpler than my own, **yet I believe it still clearly captured our finding that DOI's draft Executive Summary had made the distinction between the safety recommendations that were peer reviewed by the experts, and the 6-month moratorium recommendation, whereas that distinction was lost in the Executive Summary as a result of the edits made by the White House.** (Emphasis added.) (See Attachment 9)

I invite the Committee to review the edits that I made to the ROI. (**Attachments 13 and 14**-handwritten comments are mine, as is the typewritten insert with proposed changes to language about email exchange between DOI and White House). Not only do I believe that the edits, on their face, made the ROI more objective and easier to read and understand, but I made sure the case agent had ample opportunity to challenge, object to, or change any edit I proposed before it was incorporated into the ROI. The case agent did not challenge, object to, or change any edit.

Subpoena

This Committee has been in discussions with DOI for an extended period of time over access to certain documents. Some of the documents at issue are those that relate to the communications between senior DOI and White House officials regarding the edits made to the Executive Summary to the 30-Day Report, which include the email exchanges referred to above. When this Committee first requested documents from the OIG relating to our investigation, we provided all relevant documents except those documents that DOI's Office of Solicitor advised may be subject to a claim of executive privilege. I say "subject to" because, as we learned from the Department of Justice's Office of Legal Counsel (OLC), only the President can assert executive privilege.

We went on to explain that the claim of privilege is DOI's to assert (on behalf of the President)—not the OIG's. Therefore, we suggested that the Committee attempt to resolve the issue with DOI. We also explained that we had a long-standing written policy agreement (**Attachment 15**) with DOI that it would not decline to provide privileged documents to the OIG so long as we gave DOI an opportunity to claim a cognizable privilege, as it did here. We also explained that in the absence of such an agreement, the OIG may face difficulty in gaining unfettered access to all documents we request.

The Committee next attempted to obtain the 13 documents withheld through a subpoena issued to DOI. We learned that DOI was in the “accommodation” process with the Committee—an established process used in resolving executive privilege issues between the Executive and Legislative Branches—when on April 11, 2012 the Committee issued a subpoena to the OIG for the very same documents (**Attachment 16**).

In our April 18, 2012 response to the Committee (**Attachment 17**), we reiterated our belief that the documents were DOI’s to claim or waive privilege, not the OIG’s, and declined to provide the documents. On April 26, 2012, we met with the Chair and Committee staff to again explain our position that the OIG could not usurp the President’s prerogative to assert executive privilege and that the Committee needed to pursue the documents through DOI.

Independence and Objectivity of an Acting Inspector General

As Acting Inspector General, I have asserted all the independence and objectivity necessary to meet the OIG mission. I have elected to assert this independence and objectivity in a way that maintains a healthy tension between the OIG and the Department we oversee. I believe, however, that independence and objectivity are not compromised by a respectful relationship with both the Department and Congress, the two entities we “generally report to” pursuant to the IG Act. As a result, we have effected a great deal of positive change over the past 3 years, during my tenure as Acting Inspector General, by working with the Department in a spirit of respect to achieve such change.

As for the question of whether an Acting Inspector General is capable of asserting the necessary independence and objectivity, the answer is yes. Acting Inspectors General are fully capable of asserting the necessary independence and objectivity, as most are long-time career civil servants, many having a long history with and understanding of their departments and agencies, and have the protections afforded all civil servants.

Conclusion

This Committee has repeatedly said that it has questions about me, my independence and objectivity, and my integrity. I hope we can adjourn today having addressed all such questions that the Committee may have. I have been an attorney and member of the bar, in good standing, for nearly 30 years; I have been a public servant for over 26 years, all but three of those years in the law enforcement arena, without blemish on my record; I was born and raised in the Midwest, where one’s honor and word are sacrosanct. The past 17 weeks have been the most painful and difficult of my entire career, not only because of the attacks on my personal integrity, but because this has eclipsed all the outstanding work that the OIG has done and continues to do.