

**ALLEGATIONS OF MISCONDUCT AT THE GENERAL
SERVICES ADMINISTRATION**

HEARING

BEFORE THE

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM**

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

MARCH 28, 2007

Serial No. 110-35

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>
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U.S. GOVERNMENT PRINTING OFFICE

40-153 PDF

WASHINGTON : 2008

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ALLEGATIONS OF MISCONDUCT AT THE GENERAL SERVICES ADMINISTRATION

WEDNESDAY, MARCH 28, 2007

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

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

Present: Representatives Waxman, Maloney, Cummings, Davis of Illinois, Tierney, Clay, Watson, Lynch, Higgins, Braley, Norton, McCollum, Van Hollen, Sarbanes, Welch, Davis of Virginia, Burton, Shays, Mica, Platts, Duncan, Turner, Issa, Foxx, and Bilbray.

Staff present: Phil Schiliro, chief of staff; Phil Barnett, staff director and chief counsel; Kristin Amerling, general counsel; Karen Lightfoot, communications director and senior policy advisor; David Rapallo, chief investigative counsel; John Williams, deputy chief investigative counsel; David Leviss, senior investigative counsel; Susanne Sachsman, counsel; Molly Gulland, assistant communications director; Mark Stephenson and Daniel Davis, professional staff members; Earley Green, chief clerk; Teresa Coufal, deputy clerk; Caren Auchman, press assistant; Zhongrui "JR" Deng, chief information officer; Leneal Scott, information systems manager; Will Ragland, Kerry Gutknecht, Sam Buffone, Bret Schothorst, and Lauren Belive, staff assistants; David Marin, minority staff director; Larry Halloran, minority deputy staff director; Jennifer Safavian, minority chief counsel for oversight and investigations; Keith Ausbrook, minority general counsel; Ellen Brown, minority legislative director and senior policy counsel; John Brosnan, minority senior procurement counsel; Steve Castor and Charles Phillips, minority counsels; Edward Kidd, minority professional staff member; Patrick Lyden, minority parliamentarian and member services coordinator; Brian McNicoll, minority communications director; and Benjamin Chance, minority clerk.

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

Today's hearing has been called to investigate allegations of misconduct at the General Services Administration. There are probably plenty of Americans who have never heard of GSA, but it is the Government's premier contracting agency. It focuses on the nuts and bolts of Government's logistics. GSA manages nearly \$500 billion in Federal assets, including Federal buildings, courthouses, and other facilities, and it handles the purchase of billions of dollars worth of services on behalf of other Government agencies.

The Administrator of GSA is Lurita A. Doan, and she is with us today. Also with us is Brian Miller, the Inspector General of GSA. And we are pleased to have, as well, Senator Charles Grassley, who has been following these issues closely, joining us, as well.

We welcome all three witnesses and look forward to their testimony.

One of Congress' most important oversight goals is to ensure that our Government serves the interests of the American taxpayer, not the interests of favored contractors, a particular Federal agency, or a single political party. The American people expect Government officials to uphold a public trust. That is what the taxpayers are paying them for, and nothing else.

Over the past several months, however, multiple allegations have surfaced about actions by top GSA officials that do not serve the interests of the taxpayers. These are the allegations we will investigate today.

The first issue we will examine is a political briefing that took place at GSA on January 26th of this year. This briefing was conducted by Scott Jennings, Karl Rove's deputy at the White House. Mr. Jennings has been in the news for his involvement of the firing of the U.S. Attorneys, and is one of the White House officials that both the House and Senate have asked to testify.

Also at this briefing were Administrator Doan and 40 other political appointees at GSA, some of whom participated by video-conference. The briefing was held at GSA facilities during the work day, but there were no career GSA officials allowed at the briefing.

We have obtained the PowerPoint presentation that Mr. Jennings gave to the GSA officials that day. This is the White House Office of Political Affairs.

It would be perfectly appropriate for a meeting at the Republican National Committee or with campaign operatives, but it is the last thing taxpayers would expect at a Government agency like GSA.

Here is one of the slides. I think we have it on the screen. This is from Mr. Jennings' presentation. In this slide Mr. Jennings identified by name the 20 Democratic Members in the House that the White House is targeting for defeat in 2008. We have another slide. This one identifies by name 20 Republican Members that the White House considers most vulnerable in the upcoming election. The White House briefing was partisan. It was strategic. And it had absolutely no connection to GSA's Government mission. When the White House presentation was over, Ms. Doan asked her staff, "How can we help our candidates in the next election?"

Well, here are the facts as we know them: One, GSA's top political appointees were assembled to hear a confidential White House briefing on the Republican campaign strategic for 2008; two, they were asked to consider how GSA resources could be used to help Republican candidates; three, they did this in a Federal building during work hours at taxpayer expense.

This appears to be a textbook example of what should never happen at a Federal agency. Unfortunately, the January 26th briefing may not be the only example of politicization of the Government's premier procurement agency. Inspector General Miller will testify today that GSA's Administrator Doan and her top staff intervened in a contract with SUN Microsystems to reverse the judgment of

three career contract officers. According to the Inspector General, the Administrator's personal intervention resulted in a sweetheart deal for SUN Microsystems that will cost taxpayers tens of millions of dollars.

I want to read one sentence about the SUN contract from the Inspector General's testimony. "As a direct consequence of her intervention and in breach of GSA's fiduciary duty to the U.S. taxpayers, the pricing concessions made to SUN means that the U.S. taxpayers will inevitably pay more than they should."

That is a remarkable finding, but it appears to be corroborated by evidence received by our committee, including the statements of contracting officers involved in the negotiations.

Perhaps even more disturbing, the information we received appears to directly contradict statements that Ms. Doan made to Senate Grassley about her involvement in the SUN contract. Ms. Doan wrote Senator Grassley that, "I had no knowledge of the negotiations or basis for decisions made regarding this contract." But, as will become apparent today, there is a written record documenting Ms. Doan's personal involvement in reversing the position of career contracting officials.

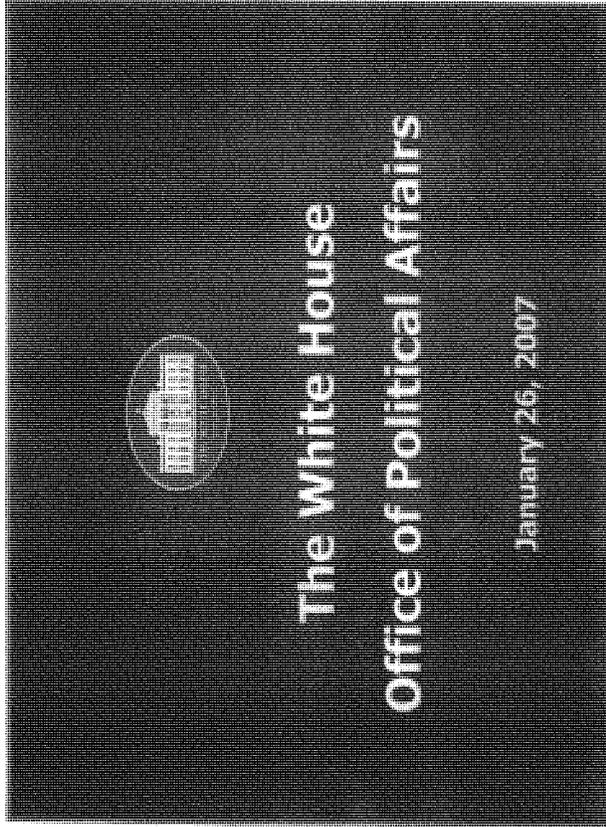
A third issue we will explore is the no-bid contract that Ms. Doan gave to her former business associate and friend, Edie Fraser. According to the Inspector General, this is a serious violation. In his testimony he states, "We are talking about the violation of a key contracting principle: promoting open competition and avoiding any appearance of personal favoritism in awarding Government business, by the leader of Government's premier civilian contracting agency."

On this issue, too, there is a troubling question about Ms. Doan's candor. The Inspector General found, "The record paints quite a different picture than what Administrator Doan told the OIG investigators."

In our own investigation, we also found striking discrepancies between the assertions of Ms. Doan and the evidence we gathered.

Well, there are a number of documents that I would like to make part of this hearing record. These documents include the White House PowerPoint presentation, the briefing memo prepared by the staff, the documents cited in the briefing memos, the transcripts and depositions the committee has received, the audit and investigative reports provided to the committee by the Inspector General, and the documents that Members will be referring to today in their questioning. Without objection, they will be made part of the record.

[The information referred to follows:]



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W-02-0355

Historical Look

All 2nd Midterms

President	Year	President's Party House Change	President's Party Senate Change
Bush	2006	-30	-6
Average		-28	-5

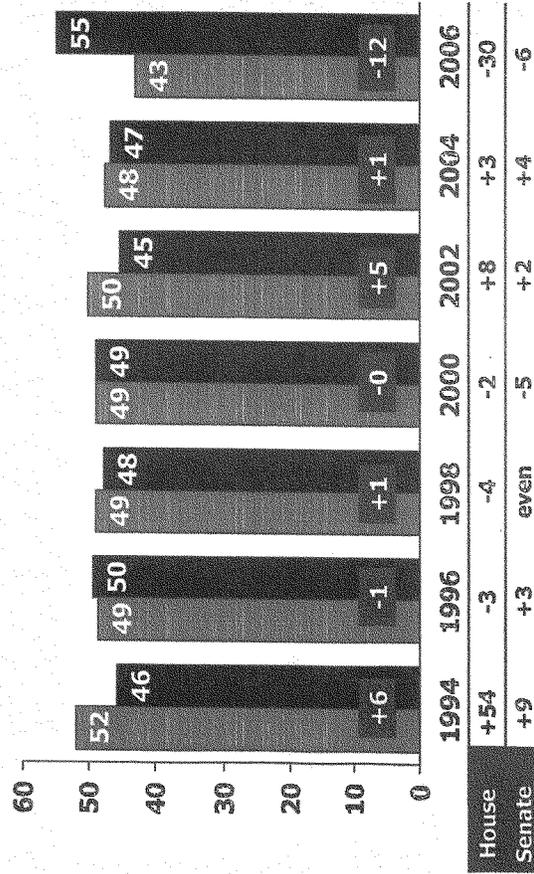
All Wartime Midterms

President	Year	President's Party House Change	President's Party Senate Change
Bush	2006	-30	-6
Average		-32	-5

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W-02-0356

Generic Ballot Suggested Tsunami



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W-02-0557

GOP Losses From Scandal, Complacency

10 losing GOP candidates tainted by scandal; 10 in Kerry districts; 6 were complacent

Scandal Seats



GOP Candidates in Kerry Districts



Complacent Incumbents



TOTAL:

22 SEATS*

* Taylor, Pomba, Weldon, and Leach are in 2 categories each

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W-02-0558

Net Loss in Seats for Incumbent Party

1.	John F. Kennedy	-4
2.	Harry Truman	-7
3.	George H. W. Bush	-8
4.	Lyndon Johnson	-12
5.	Jimmie Carter	-15
6.	Ronald Reagan	-13
7.	George W. Bush	-19
8.	Bill Clinton	-47
9.	Natalie Ford	-48
10.	Barack Obama	-52
11.	William W. Jefferson	-57
12.	Dwight D. Eisenhower	-68
13.	Franklin D. Roosevelt	-71
14.	Warren E. Hearnes	-77
15.	Wendell Willkie	-99

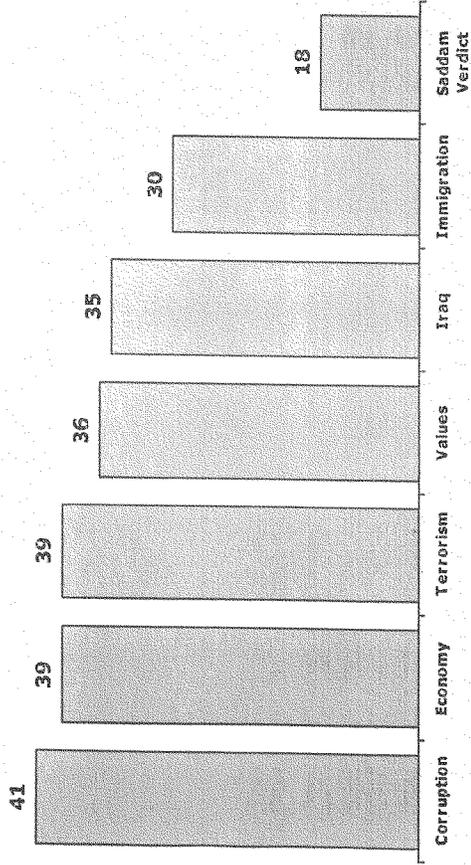
* Does not include "Original Contests"

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W-02-0559

"Corruption" Voters' Top Issue

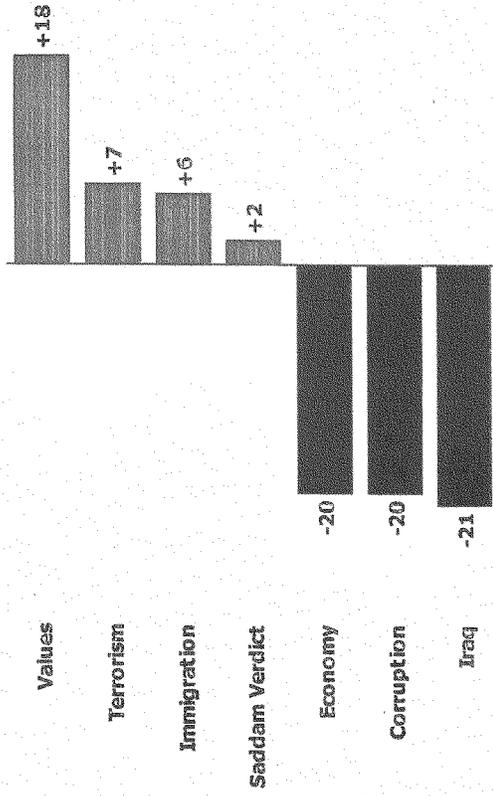
(% "Extremely Important," Exit Polling)



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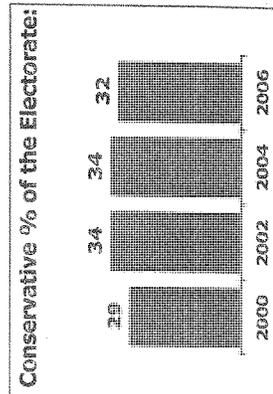
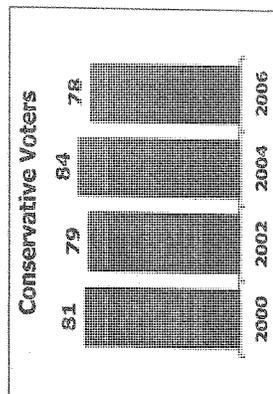
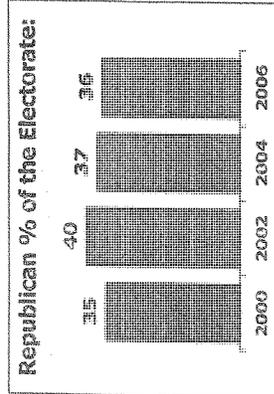
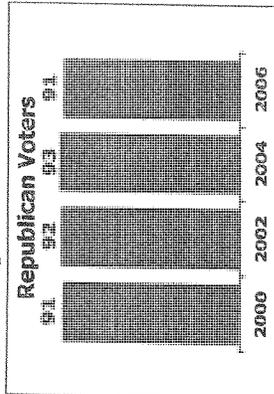
W-02-0560

Dems Won Corruption, Econ., Iraq Voters (% GOP - % Dem, Exit Polls)



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Republican Base About the Same

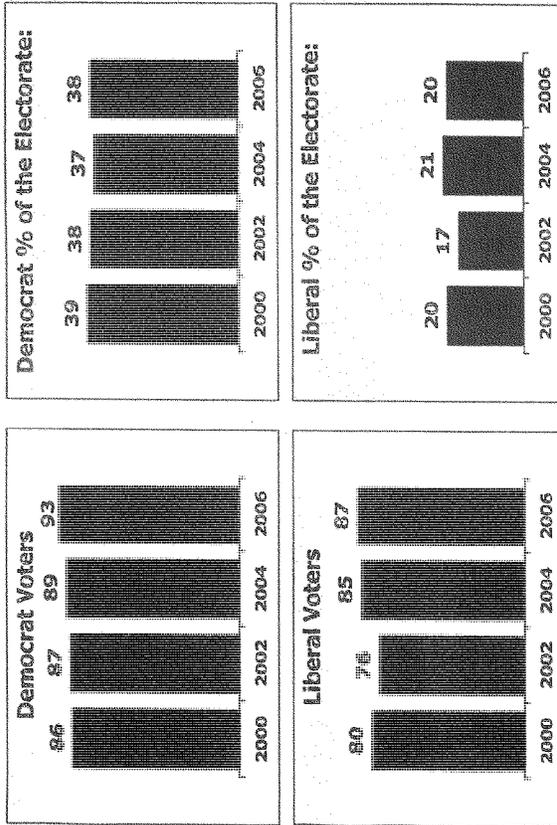


Source: Exit Polling

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W-02-0562

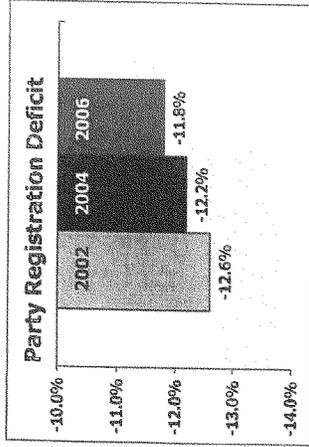
Democrat Base Did Not Grow



Source: Exit Polling

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Not Yet an Ideological Shift



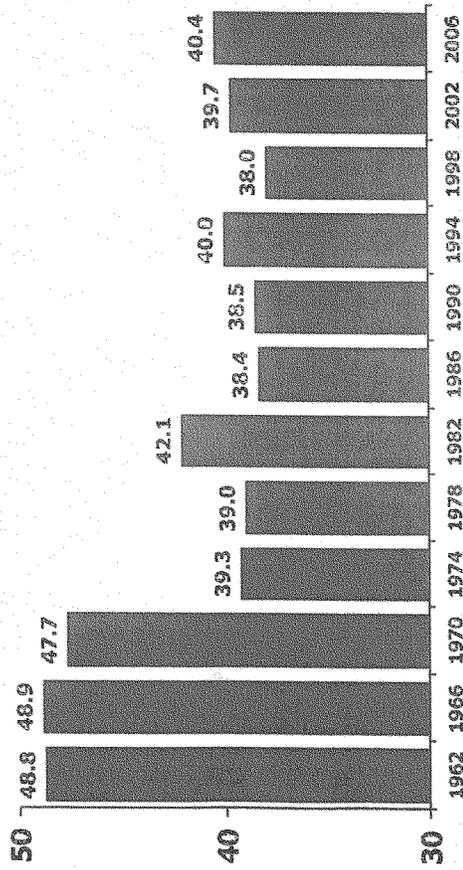
States where GOP Registration margin increased (16 states) since last cycle:
 AZ, CA, CT, FL, KY, LA, NC, NE, NJ, NM, NY, OK, OR, SD, WV, WY
 Net increase: +554,402

States where GOP Registration margin decreased (8 states) since last cycle:
 CO, DE, IA, KS, MD, MN, NY, PA
 Net decrease: -611,579

More about rejecting Republican conduct than about supporting Democrat ideology

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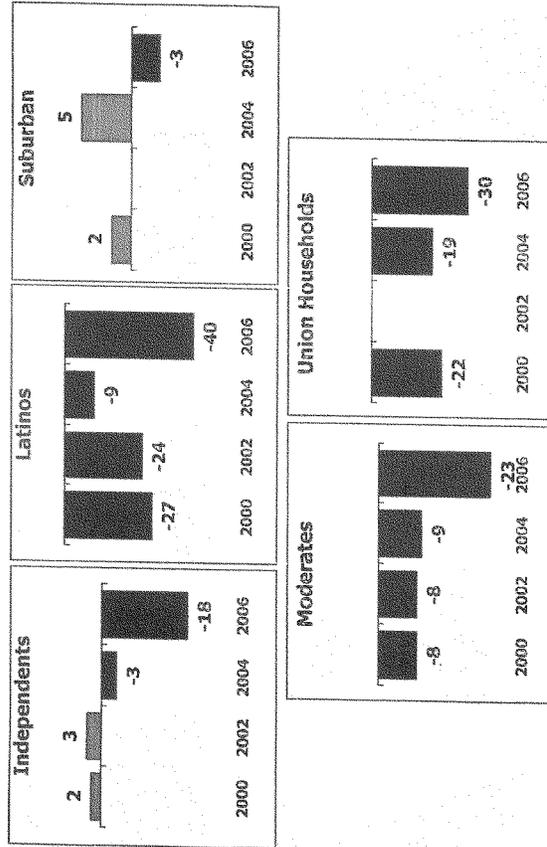
Midterm Election Turnout, 1962-2006
(As % of VAP, Center for the Study of the American Electorate)



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W-02-0565

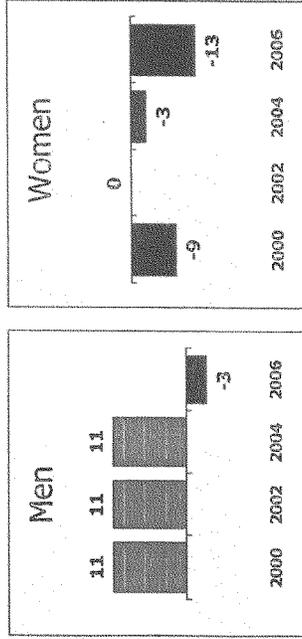
Lost Ground With Swing Voters



Source: Exit Polling

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Bigger Losses Among Men

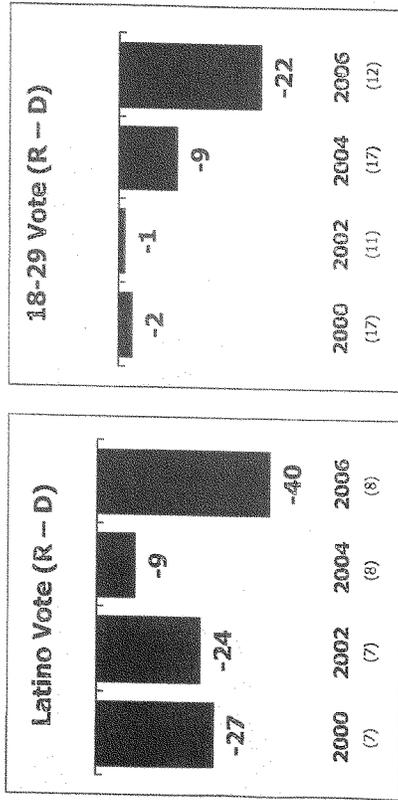


Source: Exit Polling

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W-02-0567

Long Term Problems: Among Latinos and Youth Vote



Source: Exit Polling

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W-02-0568

Races Extremely Close Because Of GOP Ground Game

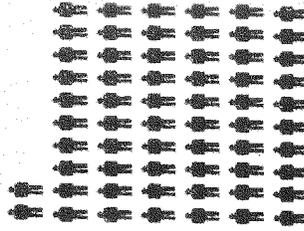
- 22 races decided by two points or less—Republicans won 13 and lost 9, including two GOP challengers in GA.
- In 2002 and 2004, just seven races were decided by two points or fewer.
- 18 races decided by fewer than 5,000 votes; R's won 12; all 18 combined were decided by 49,445 votes
- 6 races decided by fewer than 1,000 votes, combined margin 3694 votes.
- 35 races in which the winner received 51% or less of the popular vote

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W-02-0569

More "Split" Districts Represented By Democrats

62 Democrats represent Bush '04 districts;
8 Republicans represent Kerry '04 districts



Democratic Congressmen
In Bush Districts

Republican Congressmen In
Kerry Districts

Democrats Have Precarious Hold On Power

- Democrats represent 33 districts President Bush carried with 55% or more of the vote and 21 districts where he won 58% or more in 2004
- No Republican represents a district Kerry won with more than 53% of the vote in 2004
- Of 62 Dems in Bush districts, 23 won election this year with 55% or less of the vote
- Almost half the Democratic freshman class— 19 of 41—represents districts President Bush won in '04

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W-02-0571

72 Hours: Voter Registration Made a Difference in Individual Races

In 2006, 72-hour staff in 45 target districts registered 70,559 new Republicans and identified 1,788,060 new GOP voters



4,924 Republicans registered by 72 Hour



Porter Margin:
3,966 votes



7,862 Republicans registered by 72 Hour



Wilson Margin:
1,395 votes

72 Hours: Absentee/Early Vote Effort

Voting prior to Election Day carried GOP candidates in close races

California-50 (Bilbray)



- Prior to June special election, GOP held 14,912-vote advantage over Dems , 52%-32%.
- **GOP Victory Margin**
7,195 votes

Colorado-04 (Musgrave)



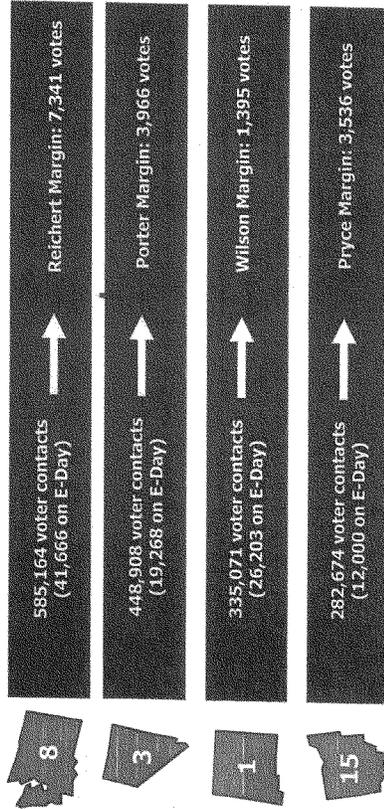
- Prior to Election Day, GOP held 20,991-vote advantage over Dems, 46%-30%.
- **GOP Victory Margin:**
5,984 votes

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W-02-0573

72 Hours: Voter Contact Made a Difference in Individual Races

35.0 million voter contacts made between 2/17 and 11/7; 12.9 million contacts in the last 96 hours.



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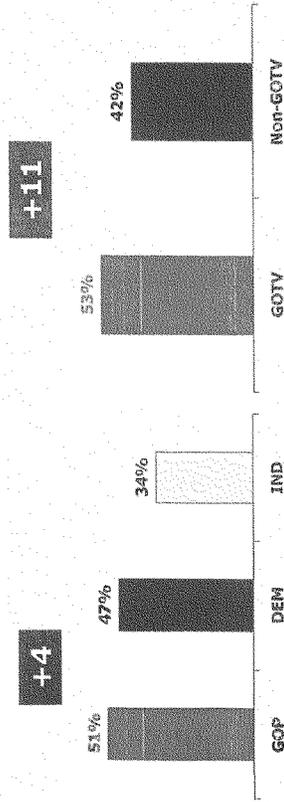
W-02-0574



Case Study: Nevada-03

3
GOP turnout exceeded Dem turnout by 4,212 voters in NV-03;
Porter won by 3,966 votes.

Turnout By Party Turnout By GOTV Universe



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W-02-0575

72-Hour Improved On Final Poll Standing

Final Poll		Election Result		Δ
	44% 43%	Davis Lucas	51% 44%	+6
	43% 41%	Bachmann Wetterling	51% 44%	+5
	44% 46%	Roskam Duckworth	51% 49%	+2
	46% 46%	Pryce Kilroy	51% 49%	+2
	44% 44%	Gerlach Murphy	51% 49%	+2

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W-02-0576

Campaigns Without 72 Hour Lost Ground

Final Poll		Election Result		Δ
	54% 38%	Hayes Kissell	50% 50%	-16
	50% 37%	Northup Yarmuth	49% 51%	-15
	49% 44%	Leach Loebsack	48% 51%	-8
	47% 46%	Hart Altmire	48% 52%	-5
	43% 49%	Taylor Shuler	46% 54%	-2

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W-02-0577

2008 House Targets: Top 20

State	Rep	Rep Name	MC 08 %	MC 07 %
TX	22	Lamar Smith	53%	52%
FL	15	Tommy Davis	49%	49%
CA	11	Michael McNulty	53%	53%
OH	10	Spencer Hahn	63%	63%
IN	7	Jeff Miller	60%	60%
PA	18	Chris Chabot	53%	53%
VA	10	Walter Jones	50%	50%
NC	7	Boyd Black	51%	51%
PA	7	Charles W. Stenfort	50%	50%
DC	1	Eliot L. Engel	51%	51%
NC	11	Richard Hanna	50%	50%
TX	21	Louie Gohmert	50%	50%
WI	4	Robert J. Wittman	51%	51%
VA	8	Robert W. Good	51%	51%
IN	7	Tim Wirth	50%	50%
CA	10	Walter Jones	50%	50%
PA	8	Alcee Hastings	52%	52%
NY	15	Robert C. Gibbs	51%	51%
NY	20	Charles W. Stenfort	53%	53%
SD	1	Tim Wirth	50%	50%

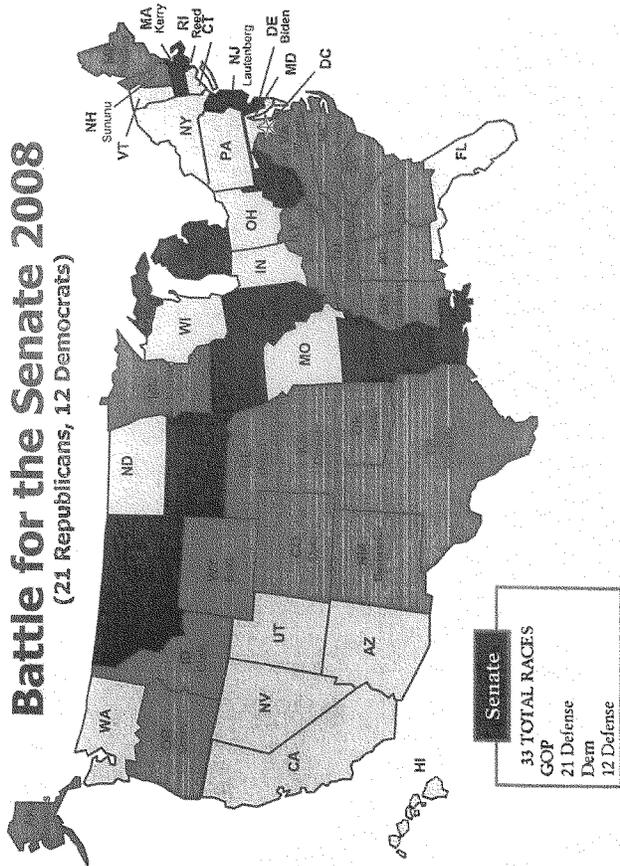
W-02-0578

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2008 House GOP Defense

PRIORITY FUNDING		GENERAL FUNDING		LEGISLATIVE DEFENSE	
State	Amount	State	Amount	State	Amount
AK	100	AK	100	AK	100
AL	100	AL	100	AL	100
AR	100	AR	100	AR	100
CA	100	CA	100	CA	100
CO	100	CO	100	CO	100
CT	100	CT	100	CT	100
DC	100	DC	100	DC	100
DE	100	DE	100	DE	100
FL	100	FL	100	FL	100
GA	100	GA	100	GA	100
IA	100	IA	100	IA	100
IL	100	IL	100	IL	100
IN	100	IN	100	IN	100
KS	100	KS	100	KS	100
KY	100	KY	100	KY	100
LA	100	LA	100	LA	100
MA	100	MA	100	MA	100
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ME	100	ME	100	ME	100
MI	100	MI	100	MI	100
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MS	100	MS	100	MS	100
MT	100	MT	100	MT	100
NC	100	NC	100	NC	100
ND	100	ND	100	ND	100
NH	100	NH	100	NH	100
NJ	100	NJ	100	NJ	100
NM	100	NM	100	NM	100
NV	100	NV	100	NV	100
OH	100	OH	100	OH	100
OK	100	OK	100	OK	100
OR	100	OR	100	OR	100
PA	100	PA	100	PA	100
RI	100	RI	100	RI	100
SC	100	SC	100	SC	100
SD	100	SD	100	SD	100
TN	100	TN	100	TN	100
TX	100	TX	100	TX	100
UT	100	UT	100	UT	100
VA	100	VA	100	VA	100
VT	100	VT	100	VT	100
WA	100	WA	100	WA	100
WI	100	WI	100	WI	100
WV	100	WV	100	WV	100
WY	100	WY	100	WY	100

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W-02-0580

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2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (902) 225-6901
Facsimile (202) 225-4714
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MEMORANDUM

March 27, 2007

To: Members of the Committee on Oversight and Government Reform

Fr: Majority Staff, Committee on Oversight and Government Reform

Re: Supplemental Information Regarding Full Committee Hearing on the General Services Administration

On **Wednesday, March 28, 2007, at 10:00 a.m., in room 2154 of the Rayburn House Office Building**, the full Committee will hold a hearing entitled, "Allegations of Misconduct at the General Services Administration." The official Committee memo for this hearing was circulated last week. This memo offers supplemental information to assist members in preparing for the hearing.

On March 6, 2007, Chairman Waxman sent GSA Administrator Lurita Doan a 10-page letter describing concerns about (1) Ms. Doan's efforts to award a no-bid contract to Edie Fraser; (2) Ms. Doan's role in political activities at GSA headquarters; and (3) Ms. Doan's involvement in contract negotiations with Sun Microsystems. This letter, a copy of which is attached, provides additional background about issues that may be raised at the March 28 hearing. A front-page article in yesterday's *Washington Post* provides further important details.

Since the March 6 letter, the Committee has conducted 14 transcribed interviews and one deposition and reviewed thousands of pages of documents related to allegations of misconduct at GSA. As described below, these interviews and documents provide significant new information about one of the issues to be discussed at the hearing: Ms. Doan's involvement in the Sun Microsystems contract.

The new information suggests that Ms. Doan and her top advisors pushed through a government contract with Sun Microsystems under terms that will cost the taxpayer millions of dollars more than these same services cost in the open market. Email correspondence, other internal documents, and interviews provide evidence that the decision to award this contract under such unfavorable terms contradicted the explicit recommendations of multiple civil service

contracting officials at GSA and was made after direct intervention by Sun representatives with Ms. Doan herself.

I. BACKGROUND

In the late 1990s, GSA awarded several contracts that allowed Sun Microsystems to sell its products and services to government purchasers through supply schedules maintained by GSA. These contracts were eventually merged into one contract, which GSA signed on August 23, 1999. This contract had a duration of five years, and it included three options to renew for five-year periods. Under the contract, Sun sold government customers its information technology hardware and software products, as well as "support services" to maintain these products.

The first contract term expired on August 22, 2004. GSA did not approve a five-year renewal at that time because Sun and GSA were unable to resolve several key terms. Over the course of the next two years, GSA granted Sun at least eight temporary, short-term extensions, allowing Sun products and services to remain on the GSA schedule while negotiations continued. Between 1999 and 2006, Sun sold products and services worth over \$120 million to government purchasers under the contract.

During the period between the expiration of the contract in August 2004 and August 2006, at least three warranted GSA contracting officers, with combined federal procurement experience of almost 50 years, refused to renew Sun's contract for a new five-year term. They objected for two primary reasons: Sun's refusal to provide competitive "discount rates" for services; and Sun's refusal to honor "price reduction" clauses.

Under federal acquisition regulations and GSA rules, companies seeking to make their products available to federal government purchasers through GSA's "Multiple Award Schedule" are required to extend to GSA the same prices that they give their "most favored" commercial customers.¹ Before products and services can be placed on the schedule, a GSA contracting officer must certify that the prices a company is offering the government are "fair and reasonable."² GSA has the ability to obtain marketing and pricing information from potential GSA contractors to ensure that the government is getting the lowest price to which it is entitled.

With respect to the Sun contract, Sun offered discounts to its commercial customers that GSA contracting officials wanted for the government. After examining Sun's discount rates under its first five-year contract, the GSA Inspector General issued a report on January 20, 2006, that concluded that Sun failed to extend to government buyers discount rates as favorable as those offered to comparable commercial customers. This report suggested that government purchasers were paying millions of dollars more than commercial buyers for the same products and services. For example, the IG found that Sun's discount rates under the first five years of the

¹ General Services Administration Manual § 538.270.

² Federal Acquisition Regulation § 8.404(d).

GSA contract for support services should have been roughly twice as large.³ The IG also found that during its 1999 initial contract negotiations with GSA, Sun misled GSA negotiators about the discounts it extended to certain commercial customers. The Committee has learned that the IG shared this information with federal prosecutors in the spring of 2006.

During the negotiations over the contract extension, Sun agreed to increase its discount rates to the government. But according to GSA contracting officers interviewed by the Committee, the company still provided greater discounts to its commercial customers.

Another key negotiating term involved price reduction clauses. These clauses ensure that if a contractor extends additional discounts to commercial customers during the course of a contract, it should offer the same additional discounts to the government.⁴ This tool keeps government prices competitive over the term of the contract even as the vendor's commercial prices improve. The GSA contracting officials insisted on effective price reduction clauses in the negotiations because IG auditors had discovered that in the contract's first five-year term, Sun had improperly excluded what it called "transactional" discounts from its price reduction calculations. This practice deprived government customers of millions of dollars in discounts.

During the negotiation period between August 2004 and August 2006, Sun conceded some ground on this issue, but it insisted on several "exclusion" clauses and other provisions that GSA contracting officials found objectionable because they diluted the effect of the price reduction clause.

II. THE POSITION OF GSA CONTRACTING OFFICIALS

From August 2004 to August 2006, three different GSA contracting officers independently concluded that entering into further contracts with Sun would not benefit the taxpayer, and they recommended terminating negotiations with the company. Their recommendations were supported by the management of GSA's IT Acquisition Center, which concluded in July 2006 that government purchasers had already lost as much as \$77 million in discounts and that millions more would be at risk if a new contract was signed.

In 2004, the GSA contracting officer in charge of the Sun contract, Robert Overbey, recommended canceling the contract because Sun was overcharging government customers.⁵ In February 2005, Mr. Overbey's supervisor, Herman Caldwell, took over the Sun contract. Mr. Caldwell told Committee staff that he hoped to reach an agreement to keep Sun products and

³ General Services Administration, Office of the Inspector General, *Preaward Review of Multiple Award Schedule Contract Extension, Sun Microsystems, Inc.* (Contract # GS-35F-0702J), Report # A050193/F/3/X06036 (Jan. 20, 2006).

⁴ Federal Acquisition Regulation § 8.405-4.

⁵ Telephone conversation between Staff, House Committee on Oversight and Government Reform, and Robert Overbey (Mar. 14, 2007); Interview of Herman Caldwell, House Committee on Oversight and Government Reform (Mar. 15, 2007).

services on the GSA schedule.⁶ According to Mr. Caldwell, however, Sun would not agree to reasonable contract terms. In June 2005, Mr. Caldwell recommended canceling the contract due to Sun's failure to submit commercial price data in a timely manner and Sun's refusal to move from unacceptable negotiating positions.⁷

In February 2006, GSA replaced Herman Caldwell with another contracting officer, Michael Butterfield. Mr. Butterfield informed Committee staff that he spent four months developing a detailed, peer-reviewed, 30-page "pre-negotiation memorandum" in which he laid out a range of contract prices and terms that would be acceptable to the government.⁸ After several months of tough negotiation, Mr. Butterfield informed his superiors that he too had come to the conclusion that a deal was impossible because Sun refused to meet even his minimal negotiation goals.⁹

This two-year negotiation culminated in an official "impasse briefing" on August 14, 2006. The audience at this impasse briefing included Jim Williams, the Federal Acquisition Service (FAS) Commissioner, and David Drabkin, Administrator Doan's senior procurement advisor. During the briefing, Mr. Butterfield's managers at the IT Acquisition Center presented his final position, explaining why he opposed concluding the contract with Sun.¹⁰ Mr. Butterfield told the Committee that he later informed Mr. Williams and Mr. Drabkin that the terms Sun had been offering were "inferior" and did not merit renewal.¹¹

Mr. Butterfield's managers prepared a "Fact Sheet" around that time in which they explained how much the Sun contract was costing taxpayers. Using figures provided by the auditors, this Fact Sheet estimated that government customers may have lost as much as \$77 million in discounts between 1999 and 2005 due to Sun's failure to honor the price reduction clause.¹² The document also asserted that accepting Sun's current position would be tantamount

⁶ Interview of Herman Caldwell, House Committee on Oversight and Government Reform (Mar. 15, 2007).

⁷ *Id.* (citing an email from Herman S. Caldwell Jr., Division Director, Information Technology Acquisition Center, General Services Administration, to Patricia Pierson, Director, Information Technology Acquisition Center, General Services Administration (May 23, 2005), in which he explains to his superiors: "Presently we have no effective price reduction clause and preliminary audit information suggests that there is a substantial disparity between MAS pricing and commercial pricing").

⁸ Interview of Michael Butterfield, House Committee on Oversight and Government Reform (Mar. 16, 2007).

⁹ *Id.*

¹⁰ General Services Administration, IT Acquisition Center, *Impasse Briefing Slide Presentation* (Aug. 14, 2006) (G-14-10386 through G-14-10396).

¹¹ Interview of Michael Butterfield, House Committee on Oversight and Government Reform (Mar. 16, 2007).

¹² General Services Administration, IT Acquisition Center, *Fact Sheet: Sun Microsystems* (July 26, 2006) (G-14-10383).

to "gutting" the price reduction clause and would forfeit \$14.4 million in government discounts over the next three years.¹³

The Fact Sheet stated:

Impact

In the post award audit, which covered 1999 to 2005, we have forfeited \$70.4 million in reseller price reductions and \$7.04 million in GSA contract price reductions (Total \$77.44 million) by having an ineffective price reduction clause. For the remaining three years on the extension option, if we accept SUN's proposed price reduction clause, we estimate we will lose a minimum of \$13.1 million in reseller price reductions and \$1.31 million in GSA contract price reductions (Total \$14.41 million). In all, the Government overpaid an estimated \$77.44 million during 1999 to 2005. For the next 3 years remaining on the option, we project a total overpayment of \$14.41 million by our customers. If the SUN option is awarded with an ineffective price reduction clause, we risk unrecoverable damages of \$14.41 million over the next 3 years. Furthermore, if GSA agrees to effectively granting SUN an exemption from the price reduction clause, we risk negatively impacting the auditor's position with DOJ.

* * *

Conclusion

We are at an impasse in negotiations over the price reduction clause and maintenance support. To accept SUN's proposal would not be in the best interest of the Government.¹⁴

At the August 14 impasse briefing, slides prepared for Mr. Williams and Mr. Drabkin included a draft press release announcing that GSA had canceled the Sun contract. The press release read:

The decision to discontinue the current contract came after many months of exhaustive negotiations. The decision not to continue the current relationship was based on GSA's customers' reliance that, upon order placement, the order represents the best value and results in the lowest overall cost alternative to meet the government's needs.¹⁵

¹³ *Id.*

¹⁴ General Services Administration, IT Acquisition Center, *Fact Sheet: Sun Microsystems* (July 26, 2006) (G-14-10383, G-14-10385).

¹⁵ General Services Administration, IT Acquisition Center, *Impasse Briefing Slide Presentation* (Aug. 14, 2006) (G-14-10396).

III. INTERVENTION BY THE GSA LEADERSHIP

The evidence before the Committee suggests that in response to the recommendations by the contracting officers to abandon the Sun contract, top GSA officials launched an effort to bypass the contract officers and locate someone else within GSA who would execute the contract on an expedited basis even if that meant accepting terms that were unfavorable to the government. This effort was successful, and the new contracting officer signed the contract extension in a matter of weeks. The evidence indicates that GSA Administrator Doan was personally involved in the effort to override the judgment of career contracting officers.

On August 27, 2006, Marty Wagner, deputy to FAS Commissioner Williams, sent an e-mail to Administrator Doan's Chief of Staff, John Phelps, explaining that the Sun contract was likely to be canceled because "we could not achieve good enough prices and a process for keeping them current that met the requirements for inclusion in a Schedule."¹⁶ Mr. Phelps immediately forwarded this email to Ms. Doan with the message: "Lurita: Wasn't sure you'd seen this or not. Looks like Jim's prediction came true."¹⁷ The reference to "Jim" was a reference to FAS Commissioner Jim Williams.

Three minutes later, Administrator Doan wrote back to Mr. Phelps and Mr. Williams:

This is truly unfortunate: there will be serious consequences felt across FAS since SUN now intends to run most of its business through SEWP.¹⁸

Less than an hour later, Mr. Williams wrote back to Ms. Doan and Mr. Phelps that he had scheduled a meeting with Sun's President of Federal sales in order to "see what can be done to resurrect the partnership, but it sounds like it is unlikely to continue any time soon."¹⁹

After the impasse briefing, Mr. Drabkin, Ms. Doan's senior procurement advisor, began developing a proposal to "exercise the option." Under this proposal, Mr. Drabkin planned to renew Sun's contract for a five-year term with the existing contract language and then attempt to

¹⁶ Email from Marty Wagner, Deputy Commissioner, Federal Acquisition Service, General Services Administration, to John Phelps, Chief of Staff, General Services Administration (Aug. 27, 2006) (G-14-0009, G-14-0010).

¹⁷ Email from John Phelps, Chief of Staff, General Services Administration, to Lurita A. Doan, Administrator, General Services Administration (Aug. 27, 2006) (G-14-0009, G-14-0010).

¹⁸ Email from Lurita A. Doan, Administrator, General Services Administration, to John Phelps, Chief of Staff, General Services Administration, and Jim Williams, Commissioner, Federal Acquisition Service, General Services Administration (Aug. 27, 2006) (G-14-0009, G-14-0010) (referring to NASA's Scientific Engineering Workstations Program (SEWP), through which government agencies can purchase Sun products and equipment).

¹⁹ Email from Jim Williams, Commissioner, Federal Acquisition Service, General Services Administration, to Lurita A. Doan, Administrator, General Services Administration, and John Phelps, Chief of Staff, General Services Administration (Aug. 27, 2006) (G-14-0009, G-14-0010).

negotiate retroactive concessions. Mr. Butterfield, the latest contracting officer assigned to the Sun case, told the Committee that when Mr. Drabkin and Mr. Williams presented this “exercising the option” strategy to him, he said he was “uncomfortable” because it would not result in an acceptable level of discounts for the government.²⁰

On August 28, 2006, Mr. Drabkin sent an email to top GSA officials. Bearing the subject line “HOT!!!!!! – Expiration of SUN Schedule Contract,” his email described his “exercise the option” proposal, while acknowledging that Mr. Butterfield refused to participate:

KO [contracting officer] does not believe that existing prices are fair and reasonable. His supervisor and the IT Center Director also agree. To exercise the option we would have to find someone in the chain with a warrant or the HCA [Head of Contracting Activity] would have to sign the extension. I would do it myself but I am not in the chain in FSS [Federal Supply Service], nor am I the HCA for FSS.²¹

The following day, August 29, 2006, Ms. Doan requested a meeting on short notice with senior auditing staff from the GSA Inspector General’s office. According to IG staff, Ms. Doan said it was essential for GSA to complete the contract renewal with Sun. When the IG officials explained their concerns about Sun’s inflated prices, Ms. Doan responded by criticizing the audit of Sun’s pricing. Ms. Doan then stated that she believed Mr. Butterfield was too “stressed” to continue in his position as contracting officer.

An additional document produced to the Committee mentions another previously undisclosed conversation between Ms. Doan and Mr. Williams on August 30, 2006, the day after her impromptu meeting with the IG staff. This document is a calendar entry for Ms. Doan setting up a “Phone Call from Jim Williams, Sun Microsystems.”²²

According to Mr. Butterfield, the next day, on August 31, 2006, Mr. Williams told him directly: “Lurita wants this contract awarded. I want it awarded.”²³ Mr. Williams then asked

²⁰ Interview of Michael Butterfield, House Committee on Oversight and Government Reform (Mar. 16, 2007).

²¹ Email from David Drabkin, Deputy Chief Acquisition Officer and Senior Procurement Executive, General Services Administration, to Marty Wagner, Deputy Commissioner, Federal Acquisition Service, General Services Administration (Aug. 28, 2006) (G-14-10409, G-14-10410) (the Head of Contracting Activity is a GSA official designated to have general contracting power by the FSS Commissioner, which at the time of this email was vested with the Assistant Commissioner for Commercial Acquisition at FSS).

²² Lurita A. Doan, Administrator, General Services Administration, Calendar Entry (Aug. 30, 2006) (G-14-0011).

²³ Interview of Michael Butterfield, House Committee on Oversight and Government Reform (Mar. 16, 2007).

Mr. Butterfield if he wanted to continue working on the contract, and Mr. Butterfield responded that he did not.²⁴

A new contracting officer, Shana Budd, was assigned to the Sun contract within a matter of hours. In an interview with Committee staff, Ms. Budd described herself as sympathetic to contractors' points of view. According to Ms. Budd, unlike the previous contracting officers, she does not use audit materials to inform her negotiating posture, nor does she use pre-negotiation memoranda to set out criteria and goals for the contract.²⁵ Instead, she makes her assessment by "going in and asking questions of the contractor from the horse's mouth."²⁶ She said that her supervisors knew of her negotiating practices and often called her into stalled contract negotiations because she could quickly conclude them.²⁷

Ms. Budd signed an agreement with Sun Microsystems on September 8, 2006, nine days after she was appointed, to exercise the next five-year option on the contract. The final agreement Ms. Budd signed on behalf of GSA contained discount rates and price reduction language that the earlier contracting officers had repeatedly rejected. In fact, according to Mr. Butterfield, Ms. Budd accepted a discount rate for Sun support services that was less favorable than a rate that Sun had proposed a few months earlier. In addition, she accepted Sun's modification to an earlier-negotiated interim discount clause that auditors estimate cost government customers another \$1 million in lost discounts.

After she signed the contract, Ms. Budd was transferred to Colorado, a post she previously requested but was denied. She also received a \$1,400 bonus in part "for stepping in to negotiate a highly sensitive and political contract with a strategically important vendor after impasse occurred."²⁸

IV. MS. DOAN'S LETTER TO SENATOR GRASSLEY

On March 13, 2007, Administrator Doan wrote Senator Charles Grassley about her role in the Sun contract. In her letter, she asserted: "I was not briefed by FAS in August, or at any other time, on the Sun Microsystems contract deficiencies." In addition, she stated she learned of FAS Commissioner Jim Williams' meeting with Sun only when GSA staff informed her of the

²⁴ *Id.*

²⁵ See e.g., Interview of Shana Budd, House Committee on Oversight and Government Reform (Mar. 16, 2007) (describing auditors as "police officers" who write speeding tickets and contracting officials as "judges" who hear "extenuating circumstances" motorists present in court).

²⁶ *Id.*

²⁷ *Id.*

²⁸ General Services Administration, *Cash Bonus Description for Employee Shana Budd* (Sept. 2006) (G-14-10433).

meeting in preparation for her response to Senator Grassley.²⁹ Based on the evidence received by the Committee, these statements appear to be misleading. As described above, Ms. Doan was personally involved in the efforts to award the contract to Sun and was in regular contact with FAS Commissioner Jim Williams about the Sun contract. In an interview with the Committee, Mr. Williams confirmed providing several updates to Administrator Doan about the Sun contract negotiations.³⁰

In her letter to Senator Grassley, Ms. Doan also wrote: "I have never met nor had any discussions with Sun Microsystems Managers since becoming Administrator of GSA" and "I had no knowledge of the negotiations or the basis for decisions made regarding this contract prior to preparing for this submission."³¹ When viewed together, these statements by Ms. Doan also appear to be misleading. The evidence before the Committee indicates that Ms. Doan had multiple contacts with a consultant representing Sun's interests during the final stages of the Sun negotiation.

On September 7, 2006, the day before the Sun contract was finalized, Ms. Doan received an email from Larry Allen. Mr. Allen is a senior executive at the Washington Management Group, a consulting firm hired by Sun.³² Mr. Allen is also the executive vice president of the Coalition for Government Procurement, which is a group that represents "companies that sell commercial services and products to the federal government primarily through multiple award schedule (MAS) contracts and GWACs." Sun is one of the Coalition's top 50 "Premiere" members.³³

In the email, entitled "Sun Follow up," Mr. Allen states:

Mrs. Doan – I understand that new life has been breathed into the Sun situation. They are meeting with Mr. Williams today, among other things. I understand that a new deal is indeed possible within the 30 day time frame you have envisioned.³⁴

²⁹ Letter from Lurita A. Doan, Administrator, General Services Administration, to Senator Charles Grassley (Mar. 13, 2007).

³⁰ Interview with Jim Williams, House Committee on Oversight and Government Reform (Mar. 26, 2007).

³¹ Letter from Lurita A. Doan, Administrator, General Services Administration, to Senator Charles Grassley (Mar. 13, 2007).

³² Interview of Herman Caldwell, House Committee on Oversight and Government Reform (Mar. 15, 2007); Telephone conversation between Staff, House Committee on Oversight and Government Reform, and Carolyn Alston, General Counsel, Washington Management Group (Mar. 22, 2007).

³³ Coalition for Government Procurement, *List of Premiere Members* (accessed Mar. 26, 2007) (online at www.thecgp.org/content.asp?contentid=418).

³⁴ Email from Larry Allen, Executive Vice President, Coalition for Government Procurement, to Lurita A. Doan, Administrator, General Services Administration (Sept. 7, 2007) (G-14-0006).

Ms. Doan responded to Mr. Allen within minutes from her Blackberry:

Thank you also for alerting me. I feel confident that with Jim Williams' involvement, an agreement will be reached to everyone's satisfaction.³⁵

Two days later, Ms. Doan received final word from Mr. Williams that GSA and Sun had actually signed the contract papers. Four minutes after receiving this information, Mr. Allen was one of the first people Ms. Doan informed:

Dear Larry, I believe that the SUN relationship with GSA is back on solid ground again. Jim Williams and his team, as well as SUN's willingness to negotiate, have yielded a true success for the American taxpayer. Thanks so much for your quick alert to me that there was an issue and thus giving GSA an opportunity to resolve. Have a great weekend! Lurita.³⁶

³⁵ Email from Lurita A. Doan, Administrator, General Services Administration, to Larry Allen, Executive Vice President, Coalition for Government Procurement (Sept. 7, 2007) (G-14-0006).

³⁶ Email from Lurita A. Doan, Administrator, General Services Administration, to Larry Allen, Executive Vice President, Coalition for Government Procurement (Sept. 9, 2007) (G-14-0006).

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"Jocelyn Webster"
<jwebster@gwb43.com>
01/19/2007 02:39 PM

To tessa.truesdell
cc
bcc

Subject FW:

History: This message has been forwarded.

Please do not email this out or let people see it. It is a close hold and we're not supposed to be emailing



it around. Thanks! Post Election Presentation.ppt

W-02-0310

John B. Horton/A/COGSA/GOV
 01/26/2007 01:27 PM

To "Scott Jennings" <SJennings@gwb43.com>
 cc
 bcc
 Subject: Re: today's meeting at GSA

Do you know where the room is? We can come and get you if needed...

----- Original Message -----
 From: "Scott Jennings" [SJennings@gwb43.com]
 Sent: 01/26/2007 01:23 PM
 To: John Horton
 Subject: Re: today's meeting at GSA

Cool- we are here.

-----Original Message-----
 From: john.horton
 To: Scott Jennings
 Sent: Fri Jan 26 12:59:26 2007
 Subject: today's meeting at GSA

Scott:

we are excited about you coming to GSA at 1:30 today - as Jocelyn may have told you, we are meeting in room 5141.

Just a little note for you to think about for your talk with the team here - I think you could really help us out with morale issues by taking a second to give encouragement to our political team, especially the Administrator - Lurita Doan. she has been beat up pretty badly in the press because of internal leaks and the DC nasty games that are being played on the Hill and inside GSA career ranks, and some words of support and/or encouragement to her leadership from you would really go a long way... it looks to be a tough two years with the stakeholders on the hill, and would be good to hear some positive words from the WH

See you in a few!

JB

W-02-0432

Tessa A. Truesdell
----- Original Message -----

From: Tessa A. Truesdell
Sent: 01/19/2007 04:04 PM
To: Jason Donow
Cc: Chris Brooks; Christine Chisholm; Whitney Roberts
Subject: Re: Room reservation

Jason-

I just heard back from the presenter, and as much of the information is highly sensitive, he would prefer not to email it. Can you test the system using a sample presentation? I've attached one for your use.

Thanks!

[attachment "DHSch3part2.ppt" deleted by Jason M. Donow/IOC/CO/GSA/GOV]

Tessa Truesdell
Confidential Assistant to the Administrator
General Services Administration
Desk: [REDACTED]
Cell: [REDACTED]
Jason M. Donow/IOC/CO/GSA/GOV

Jason M. Donow/IOC/CO/GSA/GOV
To: Tessa A. Truesdell/A/CO/GSA/GOV@GSA
cc: Chris J. Brooks/CONTRACTOR/IOC/CO/GSA/GOV@GSA, Christine L. Chisholm/WPG/RW/GSA/GOV@GSA, Whitney L. Roberts/A/CO/GSA/GOV@GSA
Subject: Re: Room reservation
01/19/2007 01:30 PM

Tessa,

We have successfully done the video conferencing with regional participation, but we have not introduced the Powerpoint element yet. It is possible, but we'll need a rough draft of the Powerpoint to make sure it displays well on the screen. We need to test the presentation output using the video bridge provided by FTS (now FAS). We also need contacts for all the Regional Administrators to request video phone numbers to create the connection prior to the call.

If you have any questions, please contact Chris Brooks at [REDACTED]

Thank you,

W-02-0008

James A.
Williams/O/CO/GSA/GOV
08/27/2006 03:13 PM

To: Lurita A. Doan/A/CO/GSA/GOV@GSA, John F.
Phelps/A/CO/GSA/GOV@GSA
cc
bcc
Subject: Re: Expiration of SUN Schedule Contract []

I am scheduled to meet with the Sun Federal president for a few minutes during the offsite in Baltimore just so he can tell me they are walking away. I will see what can be done to resurrect the partnership, but it sounds like it is unlikely to continue any time soon.

Jim

----- Original Message -----

From: Lurita A. Doan
Sent: 08/27/2006 02:24 PM
To: John Phelps; James Williams
Subject: Re: Expiration of SUN Schedule Contract

This is truly unfortunate; there will be serious consequences felt across FAS since SUN now intends to run most of its business through SEWP.

Lurita
Lurita Doan
GSA Administrator
Sent from my Blackberry
Have A Great Day!

----- Original Message -----

From: John F. Phelps
Sent: 08/27/2006 02:21 PM
To: Lurita Doan
Subject: Fw: Expiration of SUN Schedule Contract

Lurita: Wasn't sure whether you'd seen this or not. Looks like Jim's prediction came true. JP
-----Forwarded by John F. Phelps/A/CO/GSA/GOV on 08/27/2006 02:20PM -----

To: John F. Phelps/A/CO/GSA/GOV
From: Marty Wagner/M/CO/GSA/GOV
Date: 08/25/2006 03:29PM
cc: david.blbb [REDACTED], david.drabkin [REDACTED], Jon K. Anderson/XAP/CO/GSA/GOV@GSA, James A. Williams/O/CO/GSA/GOV@GSA, Pat A. Brooks/FCI/CO/GSA/GOV, Patricia L. Pierson/FCI/CO/GSA/GOV@GSA, Jeffrey A. Koses/FXC/CO/GSA/GOV@GSA, Bobbi L. Conde/F/CO/GSA/GOV@GSA, Carolyn A. Phillips/F/CO/GSA/GOV@GSA, Karen J. Hampel/FEI/CO/GSA/GOV@GSA, Laura J. Stanton/TRP/CO/GSA/GOV@GSA, Maureen E. Lyons/F/CO/GSA/GOV@GSA, lenny.loewentrit [REDACTED]
Subject: Expiration of SUN Schedule Contract

John,

G-14-0003

As you may know, we were not able to reach a meeting of the minds on our Schedules contract with SUN. In essence, we could not achieve good enough prices and a process for keeping them current that met the requirements for inclusion in a Schedule

The SUN Schedules contract will end on August 31. A press release is in process for Lurita's concurrence as well as a letter to customers at our level.

We have been over this at some length and do not take this action lightly. Fortunately, most agency customers who use SUN go through resellers and are not directly affected by this. This includes DoD's Enterprise Software Initiative. Nonetheless, there will be a customer impact that we will attempt to mitigate.

We regret that we could not come to an agreement.

Marty

Marty Wagner, Acting Deputy Commissioner
Federal Acquisition Service
U.S. General Services Administration
2200 Crystal Drive, Room 1100, Arlington, VA 22202

G-14-0010

Calendar Entry
Meeting

Notify me 
 Mark Private Pencil In

Subject	Phone Call from Jim Williams, Sun Microsystems			Chair	Lunita A. Doan/A/CO/GSA/GOV
When	Starts	Wed 08/30/2006	12:30 PM	Sent By	Meghan C. Espinoza
	Ends	Wed 08/30/2006	01:00 PM	Location	6137
			30 mins	Where	Reserved No rooms or resources have been reserved
		<input type="checkbox"/> Specify a different time zone			
Invited	The following invitees have been invited				
Invitees	Required (to)	John F. Phelps/A/CO/GSA/GOV@GSA			
	Optional (cc)	martha.duncan [REDACTED]			
Scheduler	 Click to see invitee status				
Description					

G-14-0011



Lurita A.
Doan/A/CO/GSA/GOV
09/09/2006 03:28 PM

To "Larry Allen" [REDACTED]
cc
bcc
Subject Re: Sun Follow up [REDACTED]

Dear Larry,

Just a head's up: I believe that the SUN relationship with GSA is back on solid ground again. Jim Williams and his team, as well as SUN's willingness to negotiate, have yielded a true success for the American taxpayer. Thanks so much for your quick alert to me that there was an issue and thus giving GSA an opportunity to resolve.

Have a great weekend!
Lurita

Lurita A. Doan/A/CO/GSA/GOV

Lurita A.
Doan/A/CO/GSA/GOV
09/07/2006 09:30 AM

To "Larry Allen" [REDACTED]
cc
Subject Re: Sun Follow up

Thank you also for alerting me. I feel confident that with Jim Williams' involvement, an agreement will be reached to everyone's satisfaction.
Cordially,
Lurita
Lurita Doan
GSA Administrator
TEL: [REDACTED]
Sent from my Blackberry
Have A Great Day!

----- Original Message -----

From: "Larry Allen" [REDACTED]
Sent: 09/07/2006 09:08 AM
To: Lurita Doan
Subject: Sun Follow up

Mrs. Doan - I understand that new life has been breathed into the Sun situation. They are meeting with Mr. Williams today, among other things. I understand that a new deal is indeed possible within the 30 day time frame you have envisioned.

Thanks for any help you provided.

Larry Allen
Executive Vice President
Coalition for Government Procurement

G-14-0006

***** -COMM. JOURNAL- ***** DATE JUL-19-2006 TIME 16:49 *****

8

MODE - MEMORY TRANSMISSION START-JUL-19 16:48 END-JUL-19 16:49
FILE NO. 4396

STN NO. CTRY. ABRB NO. STATION NAME/TEL NO. PAGES DURATION
001 OK # [REDACTED] 002/002 00:00:23

-END-

***** -WASHINGTON DC - ***** 202 833 1500- *****

1990 M ST. NW, 7th Floor
Washington, DC 20036
[REDACTED]
http://www.BWNi.com



Fax

To: <u>Lurita Doan</u>	From: <u>Eddie Fraser</u>
Company: [REDACTED]	Email: [REDACTED]
Phone: cell [REDACTED]	Phone: [REDACTED]
<input checked="" type="checkbox"/> Fax [REDACTED]	Fax: [REDACTED]
<input checked="" type="checkbox"/> Data 1	Pages: <u>2 (including cover)</u>

Urgent
 Requested Information
 Please Reply
 Please Recycle

Based on this, GSTA will issue a Purchase Order

Work to be completed by 9-30-06



BPCC 9

An IVillage Company



CONFIRMATION OF SERVICE ORDER

Service: Produce a Best Practices report – to profile the best practices in GSA Contracting for minority and w
Fee: owned business and publish a data report with case studies.
 320,000
Term of Service: Project to be completed by September 30, 2006

Description of Service:

RATIONALE:

GSA has major achievements that deserve to be recognized. The benchmarking will assist in moving to the next steps or plateaus.

TASK:

Produce a report with data and case examples, show progress and significance of where GSA stands and its deep commitment to the fit

PROCESS:

- Work with GSA Small Business Utilization, Felipe Mendoza and team to assess data and examples
- Summarize the data, gain the best practices and produce the profiles and product.
- Estimate is that this is approximately 24 pages in length (To be determined)

TASKS:

1. Interview and work with GSA on its data
2. Queries as to what is historical data, 2005 results and projections on targets for fiscal 2006 and beyond
3. Gain examples especially in WOB, MBD (Hispanic, African-American, Asian-American), Veterans, HUB Zone
4. Profile case studies for the report and share photos
5. Gain sign-off for the report
6. Make recommendations for how to use the report
 - Internal distribution
 - Internet and Internal web and e mail to GSA employees
 - External distribution (review options)
7. Consider all of the venues to further showcase leadership
 - i.e. Administrator addressing VA, ARMY and Air Force June 27th in Las Vegas
 - i.e. Other agency events and venues such as GSA is doing with DOE
 - i.e. SBA events and support
 - i.e. MED-Week
8. Consider media opportunities for showcasing results and contractors and highlighting employees of GSA

Purchasing Customer/Client:

Name: _____
 Title: _____
 Company Name: _____
 Street Address: _____
 City, State, Zip Code: _____
 Phone: _____ Fax: _____
 E-mail: _____

By signing this Confirmation of Service order, you agree to pay our fee for the services described above within thirty (30) days of receipt of invoice(s) and we can use your company logo and other materials submitted by you in connection with your membership.

Customer/Client: _____ Diversity Best Practices: _____
 Signature: _____ Signature: _____ PAG 00024
 Date: _____ Date: _____

Please fax this signed Confirmation of Service order to Sandy Strzyzewski at 202-466-5292 within 48 hours of receipt.

To complete your order, also mail the original signed Confirmation of Service order to the Public Affairs Group, Inc., 1990 M Street, NW 700, Washington, DC 20036, Attn: Sandy Strzyzewski.

- 7. Consider all of the venues to further showcase leadership
 - i.e. Administrator addressing VA, ARMY and Air Force June 27th in Las Vegas
 - i.e. Other agency events and venues such as GSA is doing with DOE
 - i.e. SBA events and support
 - i.e. MED-Week
- 8. Consider media opportunities for showcasing results and contractors and highlighting employees of GSA

Purchasing Customer/Client: LURITA DOAN
 Name: _____
 Title: ADMINISTRATOR
 Company Name: GSA
 Street Address: 1300 F STREET, NW
 City, State and Zip Code: WASHINGTON, DC 20007
 Phone: _____ Fax: _____
 E-mail: _____

By signing this Confirmation of Service order, you agree to pay our fee for the services described above within thirty (30) days, receiving an invoice(s) and we can use your company logo and other materials submitted by you in connection with your sponsorship and any media used to commemorate (i.e. videos, photos, recordings) the sponsored event or publication.

Customer/Client:	Signature: <u>[Signature]</u>	Diversity Best Practices:	<u>2/25/10</u>
Signature:	Date: <u>7/25/08</u>	Signature:	Date: <u>7/25/08</u>
Village:	Signature:		
Date:			

Please fax this signed Confirmation of Service order to Sandy Strzyzewski at 202-464-5292 within 48 hours of receipt.

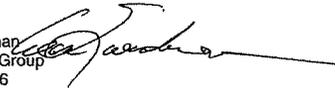
To complete your order, also mail the original signed Confirmation of Service order to the Public Affairs Group, Inc., 1990 M Street, NW, Suite 700, Washington, DC 20036, Attn: Sandy Strzyzewski.

PAG 00025

4

MEMORANDUM

To: John Phelps
From: Alan Swendiman
Re: Public Affairs Group
Date: August 3, 2006



John,

1. Felipe Mendoza called this afternoon to inform me that his office is receiving calls from the program manager at the Public Affairs Group requesting information so that they can begin work under the contract executed July 25, 2006. I advised Mr. Mendoza not to return the calls.
2. It would appear that either the Public Affairs Group has not been notified that the contract is terminated or the program manager has not been so informed.
3. If this is the case, the contract must be terminated immediately and in writing.
4. Attached is a proposed termination letter to be transmitted both by facsimile and certified mail.
5. If the Administrator would prefer not to sign the letter herself, a contract officer can do so.
6. Please advise me when a notice of termination for convenience of the government has been transmitted.

Lurita A.
Doan/A/CO/GSA/GOV
08/04/2006 11:42 AM

To John F. Phelps [REDACTED]
cc
bcc

Subject Re: Termination of Diversity Contract

History: This message has been replied to.

Okay.

Now, for the next step: the SOW. Who is doing that, Felipe or Edie?

And, I think it would be helpful if you put either Felipe, Tauna or David Bethel (one, not all) as the point person to move this forward and let the other two know who's got the lead, since I think we have quite a few cooks now stirring this broth.

Thanks,
Lurita
Lurita Doan
GSA Administrator
Sent from my Blackberry
Have A Great Day!
John F. Phelps

From: John F. Phelps
Sent: 08/04/2006 11:29 AM
To: Lurita Doan
Subject: Re: Termination of Diversity Contract

Lurita: Done. JP
Lurita A. Doan/A/CO/GSA/GOV

Lurita A.
Doan/A/CO/GSA/GOV
08/04/2006 11:23 AM

To John F. Phelps [REDACTED]
cc
Subject Re: Termination of Diversity Contract

Sounds like a good plan.
Lurita
Lurita Doan
GSA Administrator
Sent from my Blackberry
Have A Great Day!
John F. Phelps

From: John F. Phelps
Sent: 08/04/2006 11:21 AM
To: Lurita Doan
Subject: Termination of Diversity Contract

Lurita: I'm going to have Donna Hughes--our in-house contracting officer-- terminate order in writing to keep this straight. Will regroup internally with staff. I will also let Edie's folks know--they (Kevin Briscoe and Sandy Strzyewski) have placed several calls this morning asking about getting started. I will simply

tell them that we have more work to do on our end before moving forward. JP

Lurita Doan and GSA

Page 1 of 1

REDACTED

From: Edie Fraser [REDACTED]
Sent: Wednesday, September 06, 2006 10:34 PM
To: luritad@[REDACTED]; Lurita.doan@[REDACTED]
Subject: Lurita Doan and GSA

Native American Meet and Greet:
They all were thrilled. Loved how you reached out and tried to get action items.
Major progress and salute to your leadership.
Glad to meet Emily Murphy and others as well from GSA family

Hispanic are ready
Disabled are ready
African American in process
Asian American in process

Lurita, I will do anything for you and will do for the rest of my life.
Bottom line, want relationship with GSA and will keep delivering as you know.
But I have spent so much time at GSA from the report planning to these sessions with ZERO \$\$
How do we solve

Edie Fraser, president, Diversity Best Practices, BWN, BPCC
[REDACTED]
Diversitybestpractices.com; BWN1.com

26 July 2006
3:29pm
saved

**FACT SHEET
SUN MICROSYSTEMS**

Background: The base 5 year period of the SUN contract expired August 2004. The contract has been temporarily extended several times over the past 2 years while either the audit review was conducted or because of on-going negotiations. GSA and SUN are currently at an impasse to make an award for the remaining 3 years of the 1st five year option period. The issues numbers 1 and 2 (identified below) are at impasse. Issue three has not reached the impasse stage but appears to be headed in that direction and therefore has been brought to your attention. The IG has conducted a post award review or is in the process of completing the review which is investigating serious defective pricing issues that the Department of Justice (DOJ) has an interest in.

Issue 1 - Price Reduction Clause as proposed by SUN.

One of the goals for GSA in the negotiation stage of the contract was to try and clarify and simplify the application and understanding of the Price Reduction Clause (PRC) as it applies to the contract. One of the concerns by the audit team was that an effective price reduction clause be built into the contract.

Throughout the process, from audit review to obtaining current discount information (CSP data), SUN has indicated that they do business on an

[REDACTED]

Part of the negotiation process is for both parties to agree on what will constitute a price reduction. SUN has been adamant about having a PRC that is based on a

[REDACTED]

The Contracting Officer has found this PRC offer to be unacceptable for the following reasons:

- 1) As mentioned above all reviews and information indicated that SUN had discounted [REDACTED]

G-14-10382

- 2) The solicitation calls for the CO to be notified of any price reduction subject to this clause as soon as possible, but not later 15 days. SUN wanted "prospective application" (meaning going forward with the new discount) which would be applied after a six month review. SUN indicated that because of revenue recognition that the books close on a quarterly basis therefore, they can't make any adjustments until the next quarter. GSA countered with prospective application on a quarterly basis. A six month waiting period for a price reduction is unacceptable.

Impact

1. In the post award audit, which covered 1999 to 2005, we have forfeited \$70.4 million in reseller price reductions and \$7.04 million in GSA contract price reductions (Total \$77.44 million) by having an ineffective price reduction clause. For the remaining three years on the extension option, if we accept SUN's proposed price reduction clause, we estimate we will lose a minimum of \$13.1 million in reseller price reductions and \$1.31 million in GSA contract price reductions (Total \$14.41 million). In all, the Government overpaid an estimated \$77.44 million during 1999 to 2005. For the next 3 years remaining on the option, we project a total overpayment of \$14.41 million by our customers. If the SUN option is awarded with an ineffective price reduction clause, we risk unrecoverable damages of \$14.41 million over the next 3 years. Furthermore, if GSA agrees to effectively granting SUN an exemption from the price reduction clause, we risk negatively impacting the auditor's position with DOJ.
2. The integrity of the Price Reductions Clause is likely to be compromised. While the legal office does not object to tailoring the price reductions clause, a 'gutting' of the clause is not acceptable based on policy. While statute does not require a PRC, as a policy matter, the Center will need to be prepared to accept such similar terms from other vendors.
3. The government could lose money by paying more for product because we did not keep pace with SUN's commercial customers, namely end-users.

Issue 2 Support Services – Maintenance

G-14-10383

Due to the interest by DOJ, the contracting officer has attempted to stay close to the audit recommendations as much as possible concerning the discounts. Maintenance (support services) is the top seller under the SUN contract. SUN has

2

numerous GSA resellers that offer products and estimates are that most of the business for SUN on the products side runs through resellers. Auditors and the previous contracting officer indicated that GSA needed to achieve a discount level of [REDACTED]. According to the audit report this was the average discount for five tracking customers proposed by SUN.

The audit team identified over 230 commercial customers receiving discounts in excess of the [REDACTED] offered to GSA. Based on audit recommendations, the contracting officer's objectives were established as follows: high level of [REDACTED], medium objective [REDACTED] and the low objective of [REDACTED].

GSA conveyed the high goals to SUN and SUN countered with a [REDACTED] increase up to [REDACTED] discount. SUN has not moved off the [REDACTED] discount. The contracting officer indicated that since SUN and GSA were closer on hardware and software then maybe both sides could move forward in that direction. Upon additional discussions by the GSA team members, it was decided that GSA would try to bring support services back into the offer. SUN countered with an offer that would in effect amend a previously negotiated agreement. The contracting officer found the aforesaid counter proposal to be unacceptable.

SUN has made it clear that they will not offer discounts higher than the previously proposed [REDACTED]. Under the terms that SUN has proposed it appears that an award of maintenance is doubtful as the contracting officer cannot determine [REDACTED] discount to be fair and reasonable.

Impact

1. See reasons under Issue 1 Impact.
2. Over the life of the contract, since 1999, SUN has sold over \$70 million in maintenance service to our customers. Therefore a large number of customers will need to find another source for SUN maintenance.
3. Currently, there are several resellers under schedule 70 that provide some form of SUN maintenance Service. If Maintenance Service is not awarded under the SUN contract due to a non-determination of price reasonableness, the resellers who offer SUN maintenance will either be required to offer better discounts or SUN support services will be cancelled from the resellers' contract.
4. Our customers will therefore be required to procure maintenance service on the open market.

G-14-10384

3

Issue 3 Data Rights FAR 52.227-14

SUN has taken exception to the Data Rights Clause listed in the solicitation. The clause is FAR 52.227-14. After extensive discussions and upon receiving advice from GSA counsel, the contracting officer offered to leave the FAR clause in the contract but have a statement underneath along the lines of "this clause does not apply to SUN since SUN does not offer professional services". SUN has responded that the status is still "open" and that it "requires further clarification and discussion with GSA on intent of this clause and its understanding." The contracting officer has suggested that both legal counsels work on this issue to resolve their concerns.

Conclusion

We are at an impasse in negotiations over the price reduction clause and maintenance support. To accept SUN's proposal would not be in the best interest of the Government.

The contracting officer is extending the SUN Contract period of performance through September 30, 2006 while SUN attempts to develop a counter position that will address SUN's concerns as well as protect the interest of the Government. In the likelihood that this does not occur, this contract will expire on September 30, 2006. One additional short extension may be required so that we can notify the customers that SUN is no longer a schedule contractor if an option agreement cannot be reached.

G-14-10385

4

Chairman WAXMAN. There is a common thread that ties together the allegations we will be exploring today. There are basic rules that are supposed to apply to Federal officials. You can't engage in partisan politics while you are on Government time. You can't give no-bid contracts to your friends and business partners. And you should put the taxpayers first when negotiating contracts.

The question the committee needs to examine is whether Ms. Doan and her team at GSA violated these bedrock principles. Americans want a Government that works. They don't want basic Government services politicized and they don't want their tax dollars squandered. Today we will have an opportunity to explore how well Ms. Doan is meeting these standards at GSA.

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

**Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Oversight and Government Reform
Hearing on Allegations of Misconduct at the
General Services Administration
March 28, 2007**

Today's hearing has been called to investigate allegations of misconduct at the General Services Administration. There are probably plenty of Americans who have never heard of GSA, but it is the government's premier contracting agency. It focuses on the nuts and bolts of government logistics. GSA manages nearly \$500 billion in federal assets, including federal buildings, courthouses, and other facilities. And it handles the purchase of billions of dollars worth of services on behalf of other government agencies.

The Administrator of GSA is Lurita A. Doan, and she is with us today. Also with us is Brian Miller, the Inspector General of GSA. And we have Senator Charles Grassley, who has been following these issues closely, joining us. We welcome all three witnesses and look forward to their testimony.

One of Congress' most important oversight goals is to ensure that our government serves the interests of the American taxpayer — not the interests of a favored contractor, a particular federal agency, or a single political party. The American people expect government officials to uphold a public trust. That's what the taxpayers are paying them for, and nothing else.

Over the past several months, however, multiple allegations have surfaced about actions by top GSA officials that do not serve the interests of the taxpayer. These are the allegations we will investigate today.

The first issue we will examine is a political briefing that took place at GSA on January 26. This briefing was conducted by Scott Jennings, Karl Rove's deputy at the White House. Mr. Jennings has been in the news for his involvement in the firing of the U.S. Attorneys and is one of the White House officials that both the House and Senate have asked to testify.

Also at this briefing were Administrator Doan and 40 other political appointees at GSA, some of whom participated by

videoconference. The briefing was held in GSA facilities during the work day, but there were no career GSA officials allowed at the briefing.

We have obtained the PowerPoint presentation that Mr. Jennings gave to the GSA officials that day. It would be perfectly appropriate for a meeting at the Republican National Committee or among campaign operatives. But it's the last thing taxpayers would expect at a government agency like GSA.

Here's one of the slides from Mr. Jennings's presentation. In this slide, Mr. Jennings identified by name the 20 Democratic members in the House that the White House is targeting for defeat in 2008.

And here's another slide. This one identified by name the 20 Republican members that the White House considers most vulnerable in the upcoming elections.

The White House briefing was partisan. It was strategic. And it had absolutely no connection to GSA's government mission.

And when the White House presentation was over, Ms. Doan asked her staff, "How can we help our candidates in the next election?"

Here are the facts as we know them: (1) GSA's top political appointees were assembled to hear a confidential White House briefing on the Republican campaign strategy for 2008; (2) they were asked to consider how GSA resources could be used to help Republican candidates; and (3) they did this in a federal building during work hours at taxpayer expense.

This appears to be a textbook example of what should never happen at a federal agency.

Unfortunately, the January 26 briefing may not be the only example of the politicization of the government's premier procurement agency.

Inspector General Miller will testify today that GSA Administrator Doan and her top staff intervened in a contract action with Sun Microsystems to reverse the judgment of three career contract officers. According to the Inspector General, the Administrator's personal intervention resulted in a sweetheart deal for Sun that will cost taxpayers tens of millions of dollars.

I want to read one sentence about the Sun contract from the Inspector General's testimony: "As a direct consequence of her intervention, and in breach of GSA's fiduciary duty duty to the U.S. taxpayers, the pricing concessions made to Sun means that the U.S. taxpayers will inevitably pay far more ... than they should."

That's a remarkable finding. But it appears to be corroborated by the evidence received by our Committee, including the statements of the contracting officers involved in the negotiations.

Perhaps even more disturbing, the information we received appears to directly contradict statements that Ms. Doan made to Senator Grassley about her involvement in the Sun contract. Ms. Doan wrote Senator Grassley that — and I quote — “I had no knowledge of the negotiations or basis for decisions made regarding this contract.” But as will become apparent today, there is a written record documenting Ms. Doan’s personal involvement in reversing the position of career contracting officials.

A third issue we will explore is the no-bid contract that Ms. Doan gave to her former business associate and friend, Edie Fraser. According to the Inspector General, this is a serious violation. In his testimony, he states:

We are talking about the violation of key contracting principles — promoting open competition ... and avoiding any appearance of personal favoritism in awarding government business — by the leader of the Government’s premier civilian contracting agency.

On this issue too, there is a troubling question about Ms. Doan's candor. The Inspector General found — and again I quote — “the record paints quite a different picture than what Administrator Doan told the OIG investigators.” In our own investigation, we also found striking discrepancies between the assertions of Ms. Doan and the evidence we gathered.

There are a number of documents that I would like to make part of this hearing record. These documents include the White House PowerPoint presentation, the briefing memos prepared by staff, the documents cited in the briefing memos, the transcripts and depositions the Committee has received, audit and investigative reports provided to the Committee by the Inspector General, and the documents that members will be referring to today in their questioning.

There is a common thread that ties together the allegations that we will be exploring today. There are basic rules that are supposed to apply to federal officials. You can't engage in partisan political activity on government time. You can't give

no-bid contracts to your friends and business partners. And you should put the taxpayer first when negotiating contracts.

The question the Committee needs to examine is whether Ms. Doan and her team at GSA violated these bedrock principles.

Americans want a government that works. They don't want basic government services politicized, and they don't want their tax dollars squandered. Today, we will have an opportunity to explore how well Ms. Doan is meeting these standards at GSA.

Chairman WAXMAN. I want to now recognize Mr. Davis for his opening statement, and then we will proceed right to the witnesses.

Mr. DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

You know how much I respect you and how much I value our work together, but your description of this investigation brings to mind what Mark Twain said about fraud science—one gets such wholesome returns of conjecture out of such a trifling investment of fact—for that is what we are dealing with today: accusatory conjecture based on the selective and biased interpretation of very few facts.

The title of today's hearing pretty much says it all: Allegations of Misconduct at the General Services Administration, not facts, not findings, not even credible complaints, just allegations picked up from hostile media reports based on unvetted sources. We will see at the end of the day these allegations will still be, as the dictionary defines the term, assertions unsupported and by implication regarded as insupportable.

Sadly, this hearing represents the fullest expression yet of the modus operandi adopted by the new majority. Citing yesterday's news clips, releasing accusatory conclusory inquiry letter, through amplification and repetition of mere allegations, seek a conviction in the court of public opinion, and call a hearing. First the verdict, then the trial.

This process renders hollow the promise of collegiality and consultation with the minority. Only after the fact are we told witnesses have been threatened with subpoenas unless they submit coercive, transcribed interviews, never anticipated by committee rules. In these non-deposition depositions, the prior notice and other procedural protections otherwise due to witnesses in the minority can be ignored. Future witnesses be advised: when the committee expresses their hope to proceed without a subpoena, volunteer for a deposition. That way we will all have time to prepare and we will all know how and when the transcript can be used to support official committee business.

In this case the committee has expended significant resources searching for anything to support their a priori conclusions, but they found virtually nothing. We received and reviewed over 14,000 pages of documents from the General Services Administration. Without consultation with the minority staff or the ranking member, the majority staff, largely through the threat of subpoena, conducted 14 transcribed interviews securing the voluntary attendance of current and former GSA officials from as far away as Boston and Denver.

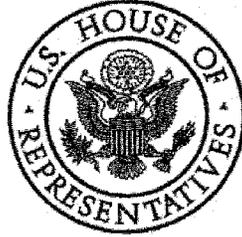
Two GSA officials flew from Boston to Washington, D.C., for interviews regarding the Hatch Act violations. The Boston officials were questioned for as little as 30 minutes in one instance and 40 in another. No reason was supplied why these interviews couldn't take place telephonically. Agency counsel was not permitted to be present at these interviews. Personal counsel was said to be permitted; however, four witnesses stated for the record they were not told they were permitted to retain personal counsel for these transcribed interviews. Nevertheless, one interviewee did bring personal counsel.

Not surprisingly, this flawed process has produced an equally flawed product. As discussions at length in the staff report we are releasing today, the accusations leveled against the GSA Administrator, Ms. Lurita Doan, are either flat-out wrong or based on a distorted and myopic view of the management responsibilities of the head of a major Federal agency.

I would ask unanimous consent at this point that our minority report to our Members be included in the record.

Chairman WAXMAN. Without objection, we will put it in the record.

[The information referred to follows:]



**Allegations of Misconduct at the
General Services Administration: A Closer Look**

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

Tom Davis, Ranking Member
March 28, 2007

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On March 28, 2007 at 10:00 a.m., the Committee will hold a hearing entitled "Allegations of Misconduct at the General Services Administration." This hearing is part of an investigation Chairman Waxman initiated in response to a January 19, 2007 front page story in the *Washington Post*.¹ The newspaper published allegations concerning an internal investigation by the General Services Administration (GSA) Inspector General into a contemplated arrangement between GSA and a well-recognized firm specializing in diversity and small business issues. In addition Doan is said to have intervened in the negotiation process for the exercise of an option under a Federal Supply Schedule contract held by Sun Microsystems, intervened in an on-going suspension and debarment process, as well as engaging in partisan campaign activities on federal property. Our staff has carefully analyzed the facts and circumstances surrounding these charges. This staff report provides a closer look at the allegations raised and evidence submitted to date against the Administrator of General Services.²

¹ Scott Higham and Robert O'Harrow, Jr., "GSA Chief Scrutinized For Deal With Friend," WASH. POST, Jan. 19, 2007, at A1 [hereinafter Higham and O'Harrow, Jan. 19, 2007].

² The Minority has raised concerns with the Majority about being excluded from discussions with the GSA Office of Inspector General (IG). Questions posed to witnesses reflect information supplied by the Office of Inspector General that never was supplied to the Minority. As auditors from the IG participated in the Sun Microsystems contract renegotiation among other matters under investigation by the Committee, their testimony is necessary. The prepared statement of Inspector General Miller dated March 28, 2007, delivered to the Committee on March 26, contains information not previously produced to the Minority. The Inspector General's statement also reveals that an official referral to the Office of Special Counsel was made by its office regarding the Hatch Act allegations. The IG states that a copy of this referral was provided to the Committee. Such referral was not produced to the Minority staff.

The Inspector General's statement reveals what might be an unofficial partnership between his office and the Majority staff. One example, at page 13 of his statement is telling: "In describing what happened, GSA's General Counsel at the time, Alan Swendiman, told this Committee he repeatedly advised that the contract be terminated, but was unable to convince Administrator Doan to do so." What does Miller know about what Swendiman told the Committee?

In any event, Swendiman did not say this. Swendiman met with Committee staff, on February 2, 2007, and stated he prepared a memorandum to John Phelps, Doan's Chief of Staff, advising that a termination for convenience be transmitted to Diversity Best Practices to avoid any misperceptions this arrangement was to be carried out. Swendiman had no discussions with the Administrator about terminating the contemplated arrangement with Diversity Best Practices. The only communication between Swendiman and the Administrator on this topic was in the form of Swendiman's memorandum (GSA 01-07-0014). In an interview with Minority staff on March 14,

I. Executive Summary

The massive expenditure of Committee resources throughout this inquiry -- 14,086 pages of documents from the General Services Administration (GSA) and 14 so-called voluntary transcribed "interviews" of government employees from as far away as Boston and Denver -- has failed to establish that the Administrator of General Services engaged in any form of misconduct. When she was told that GSA could not enter a sole source contract for a report on improving diversity practices at GSA, she agreed. GSA never entered a contract for the report.

Similarly, there is no evidence to support the allegation that the Administrator intervened in the suspension and debarment process. The Administrator merely contacted her Chief of Staff and asked that the matter, which could have resulted in a government-wide prohibition against awarding any contracts to most of the major accounting firms be suspended until she could be briefed. Such an inquiry was ordinary and appropriate. The agency's suspension and debarment official stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." Further, he stated, ". . . I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."

There is simply no evidence to support the allegation that the Administrator acted improperly with respect to the Sun Microsystems contract option negotiations. At no time during the negotiation process did the Administrator speak to any of the contracting officers nor did she pressure any of the contracting officers to exercise the Sun option.

2007, the Administrator said, as a matter of practice, she takes all telephone calls from three people at the agency, her Chief of Staff, the Inspector General, and the General Counsel. Accordingly, had Swendiman called Doan, she would have spoken with him. Both Doan and Swendiman have said there were no conversations, just the memo.

On the morning of March 27, 2007, less than a day before the scheduled hearing, the Majority released a memorandum entitled "Supplemental Information Regarding Full Committee Hearing on the General Services Administration." In this document, two interviews are cited, that with Robert Overbey on March 14, 2007 (footnote 5) and Carolyn Alston on March 22, 2007 (footnote 32). Instances like these demonstrate that the Minority has not had an opportunity to participate meaningfully in all phases of this investigation.

Further evidence that the Majority and Inspector General are working in concert appears at page 22 of his testimony where he notes that one of the contracting officers in "has gone on the record that he was not stressed by the considerations of the audit findings or litigation potential during the Sun negotiations." The Inspector General quotes from the Committee's confidential interview transcripts. These are not public.

As far as the alleged “partisan campaign activities” are concerned, some witnesses recalled that on January 26, 2007 at the conclusion of a staff luncheon attended by GSA political appointees, the Administrator made an offhand comment about “helping our candidates.” It is important to note the date of this meeting; January 26 -- a bit late for a campaign push. **And when concerns were raised that the conversation may have been straying into inappropriate territory, that discussion stopped.**

There is absolutely no evidence to support the additional allegations that follow-up discussion centered on efforts to exclude Speaker Pelosi from the ceremonial opening of a federal building in her congressional district. Nor did we find any evidence that any GSA officials improperly considered the prospect of inviting Senator Martinez to the opening of a federal courthouse in Miami, Florida.

The Administrator and GSA Inspector General Brian D. Miller have a well-chronicled contentious relationship. They have tangled over the performance of contract auditing, budgetary matters, and have had various unpleasant public exchanges. Miller’s background as a Justice Department official raises an important consideration – should Inspectors General be drawn from the auditing discipline? Shouldn’t they be specialists in the areas of accounting and financial analysis? Chairman Waxman thinks so. In a January 2005 staff report, the then Ranking Member’s staff called for Inspector Generals with prior audit experience. Prior to assuming the post of GSA Inspector General, Miller predominantly worked as a government lawyer. Miller possesses no accounting or auditing experience.

The Administrator has raised concerns that the details of private intra-agency meetings and investigations are being leaked by someone in Mr. Miller’s office to the newspapers as part of a plan to publicly harm her, and to disrupt her efforts in leading GSA. The Administrator and Mr. Miller have also quarreled publicly over budget considerations.

Finally, the Majority has repeatedly exercised its subpoena authority to coerce witnesses into transcribed interviews. Witnesses repeatedly told of being offered a subpoena to induce them to the “voluntary” interview. With an interview instead of a deposition (under subpoena or not), the witnesses (and the Minority) are not entitled to notice of the deposition and are not entitled to review and request corrections to the transcripts, which also, unlike a deposition transcript, could be released at any time.

The Minority was not consulted about this use of the subpoena authority -- we found out about it at the interviews. This is not the kind of consultation about the use of that authority that was promised at the Committee organizational meeting. Minority staff was also not consulted about scheduling of interviews -- the Majority simply announced when they had scheduled them. In at least one case, the interview was scheduled late in the afternoon for the next day.

Finally, it was clear from the interviews that the Majority had documents it had not shared with the Minority. Again, this is not cooperation.

Given the evidence, it is important that the Committee on Oversight and Government Reform hold a hearing -- to clear the air and set the record straight.

II. Findings

- **Re Diversity Best Practices Contract:** The Majority has failed to establish that the Administrator engaged in any kind of elaborate scheme to enrich an acquaintance in her efforts to acquire a study regarding GSA's use of small businesses, particularly those owned by minorities and women. The evidence supports the conclusion that the Administrator was embarrassed and concerned that GSA received an "F" from the Small Business Administration regarding its use of disadvantaged small businesses, and the Administrator sought to engage the services of the well-known diversity consultant, Diversity Best Practices. The Administrator erroneously believed she had the authority to acquire these services on an expedited sole-source basis. When she discovered she did not have that authority, the arrangement was called off. No contract was awarded. No work was ever performed. No money changed hands.
- **Re Sun Microsystems Contract:** There is no evidence the Administrator acted improperly with respect to the Sun Microsystems contract option negotiations. At no time during the negotiation process did the Administrator speak to any of the contracting officers, nor did she pressure any of the contracting officers to exercise the Sun option.
- **Re Suspension and Debarment Process Interference:** There is no evidence that the Administrator intervened in the suspension and debarment process. The GSA debarment official had initiated preliminary proceedings against the major accounting firms (KPMG, PriceWaterhouseCooper, BearingPoint, Ernst & Young, and Booz Allen Hamilton). The Administrator merely contacted her Chief of Staff and asked that the matter be suspended until she could be briefed. In a written statement prepared by the debarment official and produced to the Committee, he stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." Further, he stated, "I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."
- **Re Hatch Act Allegation:** On January 26, 2007 at the conclusion of a staff luncheon attended by GSA political appointees, several

witnesses reported that the Administrator made an offhand comment about “helping our candidates,” an alleged violation of the Hatch Act. **Any concerns that this was inappropriate were addressed immediately, and the discussion was terminated.** There is no evidence to support the additional allegations that follow-up discussions centered on efforts to exclude Speaker Pelosi from the ceremonial opening of a federal building in her congressional district. No evidence was found that any GSA officials improperly considered the prospect of inviting Senator Martinez to the opening of a federal courthouse in Miami, Florida.

III. Background

A. *The Investigation*

In the January 19, 2007 *Post* story, the newspaper presented allegations that Administrator Lurita A. Doan sidestepped federal laws and regulations to give a so-called “no-bid” contract to a longtime friend.³ *On the same day*, Chairman Waxman wrote to Doan asking for more information on matters contained in the newspaper article.⁴ In addition to initiating an examination into the diversity consulting arrangement, Chairman Waxman asked for information and documents concerning the Administrator’s interactions with the Office of Inspector General, and the Administrator’s involvement in the debarment process.

On March 6, 2007, Chairman Waxman again wrote to the Administrator.⁵ In this letter, the Chairman outlined some of the evidence the Committee had received, and raised new concerns. The Chairman advised Doan that the Committee was looking into alleged Hatch Act violations, as well as allegations that the Administrator improperly interfered with the contract option process with a technology provider, Sun Microsystems.

³ Higham and O’Harrow, Jan. 19, 2007.

⁴ Letter from Rep. Henry A. Waxman, Chairman, H. Comm. on Oversight and Gov’t Reform [hereinafter Gov’t Reform Comm.] to Lurita A. Doan, Administrator, U.S. General Services Administration [hereinafter GSA], (Jan. 19, 2007) [hereinafter Waxman Letter, Jan. 19, 2007].

⁵ Letter from Rep. Henry A. Waxman, Chairman, Gov’t Reform Comm. to Lurita A. Doan, Administrator of GSA, (Mar. 6, 2007) [hereinafter Waxman Letter, Mar. 6, 2007].

In the course of investigating these matters, the Committee received and reviewed 14,086 pages of documents from GSA. Without consultation⁶ from the Minority staff or the Ranking Member, Chairman Waxman's staff, largely through the threat of subpoena, conducted 14 transcribed "interviews,"⁷ securing the "voluntary" attendance of current

⁶ Minority staff was invited to attend the transcribed interviews, but was, in some instances, restricted from examining the witnesses. Brief inquiries were sometimes permitted, but it was not uncommon for the Majority staff to protest and attempt to terminate the Minority counsel's questioning. Although Rule 22 of the Rules of the Gov't Reform Comm. [hereinafter Comm. Rules] provides that "the chairman and ranking member shall be provided with a copy of the transcripts of the deposition at the same time," this did not occur. Minority staff was required to obtain all interview and deposition transcripts through the Majority clerk. Minority staff was not provided electronic copies of the transcripts until several days after the delivery of the hard copy transcripts.

⁷ Transcribed Interview by Gov't Reform Comm. Staff with Matthew R. Sisk, GSA, Region 1 (Boston), in Wash., D.C. (Mar. 12, 2007) [hereinafter Sisk Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Dennis R. Smith, GSA, Region 1 (Boston), in Wash. D.C. (Mar. 12, 2007) [hereinafter Smith Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Michael Berkholtz, GSA, in Wash. D.C. (Mar. 12, 2007) [hereinafter Berkholtz Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Christiane Monica, GSA, in Wash. D.C. (Mar. 13, 2007) [hereinafter Monica Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Justin Busch, GSA, in Wash. D.C. (Mar. 13, 2007) [hereinafter Busch Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Jennifer Millikin, GSA, in Wash. D.C. (Mar. 13, 2007) [hereinafter Millikin Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Edie Fraser, The Public Affairs Group, Inc., in Wash. D.C. (Mar. 14, 2007) [hereinafter Fraser Interview]; Deposition Pursuant to Subpoena by Gov't Reform Comm. Staff with Emily Murphy, former Chief Acquisition Officer, GSA, in Wash. D.C. (Mar. 15, 2007) [hereinafter Murphy Deposition]; Transcribed Interview by Gov't Reform Comm. Staff with George Barclay, GSA, in Wash. D.C. (Mar. 15, 2007) [hereinafter Barclay Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Herman Caldwell, Jr., GSA, in Wash. D.C. (Mar. 15, 2007) [hereinafter Caldwell Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Michael Butterfield, GSA, in Wash. D.C. (Mar. 16, 2007) [hereinafter Butterfield Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Shana Budd, GSA, Region 8 (Denver), in Wash. D.C. (Mar. 16, 2007) [hereinafter Budd Interview]; Transcribed Interview by Gov't Reform Comm. Staff with Donna Hughes, GSA, in Wash. D.C. (Mar. 19, 2007) [hereinafter Hughes Interview]; and Transcribed Interview by Gov't Reform Comm. Staff with James Williams, Commissioner, Federal Acquisition Service, GSA, in Wash. D.C. (Mar. 26, 2007) [hereinafter Williams Interview, Mar. 26, 2007].

and former GSA officials from as far away as Boston and Denver.⁸ Two GSA officials flew from Boston to Washington, D.C., for “interviews” regarding the Hatch Act allegations. The Boston officials were questioned for as little as 30 minutes in one instance⁹ and 40 minutes in another.¹⁰ No reason was supplied why these “interviews” could not take place telephonically. Those “interviewed” were not permitted to be joined by agency counsel at the interview. Although the Majority claimed to have informed witnesses that personal counsel could be present, four witnesses stated for the record they were not made aware they were permitted to retain personal counsel for these transcribed interviews.¹¹ One “interviewee” attended with personal counsel.¹²

There is no meaningful distinction between the transcribed “interviews” and formal depositions. Although the “interviewees” were not administered an oath and consequently not exposed to a potential perjury prosecution, they were subject to the false statements statute, 18 U.S.C. section 1001, which makes it a crime to provide false statements to legislative branch officials.

B. The Agency

Congress enacted the Federal Property and Administrative Services Act in 1949 to provide for an “economical and efficient system” for the federal government’s management of real property, procurement, administrative services, and records.¹³ This act, which established GSA, authorized the Administrator of General Services to procure and distribute supplies and services needed by federal agencies “in the proper discharge of their responsibilities.”¹⁴ In order to obtain these goods and services, the act transferred to the Administrator authority to oversee and control the General Supply Fund, a special U.S. Treasury account.¹⁵

⁸ One of the 13 GSA officials questioned – former GSA Chief Acquisition Officer Emily Murphy – appeared pursuant to Subpoena and was questioned under the Comm.’s Deposition Authority, Rule 22, Rules of the Comm.

⁹ Sisk Interview.

¹⁰ Smith Interview.

¹¹ Millikin Interview at 6-7; Butterfield Interview at 5-6; Busch Interview at 5; Barclay Interview at 5-6.

¹² Emily Murphy was represented by personal counsel at her Deposition.

¹³ 41 U.S.C. § 251 et seq.; Stephanie Smith, Congressional Research Service, Acquisition Services Reorganization at the General Services Administration, CRS no. RL33068, Jan. 24, 2007 [hereinafter CRS GSA Reorganization Report].

¹⁴ CRS GSA Reorganization Report.

¹⁵ *Id.*

GSA provides support to federal agencies in meeting their acquisition requirements in such areas as supplies, equipment, telecommunications, and integrated information technology.¹⁶ GSA has responsibility for nearly \$66 billion in federal spending and for managing assets valued at nearly \$500 billion.¹⁷ These assets include more than 8,300 government-owned or leased buildings, an interagency fleet of 170,000 vehicles, and technology programs and products ranging from laptop computers to systems that cost over \$100 million.¹⁸ As GSA provides for the office and space requirements of the federal workforce, it is sometimes referred to as the government's "landlord."¹⁹

The Administrator of General Services, who heads GSA, may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers, who get their authority through the head of the agency.²⁰ Contracting officers have the authority to enter into, administer, or terminate contracts and make related determinations and findings.²¹

IV. Public Disagreements with Inspector General

The GSA Administrator and Inspector General Brian D. Miller have a well-chronicled contentious relationship.²² They have tangled over the performance of contract auditing and budgetary matters, and have had various disagreements exposed in public exchanges. The Inspector General (IG) has claimed, for example, that Doan has

¹⁶ GSA, Organization Overview, <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelId=-13261> (last visited Mar. 22, 2007).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ FAR § 1.601(a).

²¹ FAR § 1.602-1.

²² See generally, Elise Castelli, *GSA Administrator Reduces IG's Role in Contract Audits*, *FEDERAL TIMES*, Oct. 23, 2006, at 4 [hereinafter *FEDERAL TIMES*, Oct. 23, 2006]; Editorial, *Reining In the Watchdog*, *N.Y. TIMES*, Dec. 13, 2006, at 32; Matthew Weigelt, *GSA's Doan, IG Struggle Over Money*, *FEDERAL COMPUTER WEEK*, Dec. 4, 2006 [hereinafter *FCW*, Dec. 4, 2006].

characterized IG officials as “terrorists.”²³ *The Washington Post* has reported, “Doan said [the Inspector General’s] effort to examine contracts had ‘gone too far and is eroding the health of the organization.’”²⁴

A. Sensitive Information Leaked About Administrator

Has the IG’s prosecutorial background – Miller was most recently an Assistant United States Attorney for the Eastern District of Virginia and Counsel to Deputy Attorney General Paul J. McNulty – led him to overemphasize criminal-like investigations to the detriment of the IG’s programmatic oversight responsibilities? Miller’s prepared statement for the March 28 hearing reads like a legal brief in opposition to the Administrator.

Miller’s background as a Justice Department official raises an important consideration – shouldn’t Inspectors General be drawn from the auditing discipline? Shouldn’t they be specialists in the areas of accounting and financial analysis?

Chairman Waxman thinks so. In a January 2005 staff report, the then Ranking Member’s staff called for Inspectors General with prior audit experience.²⁵ Prior to assuming the post of GSA Inspector General, Miller predominantly worked as a government lawyer.²⁶ Miller possesses no accounting or auditing experience.²⁷

The Administrator has raised concerns that the details of private intra-agency meetings and investigations are being leaked to newspapers as part of a plan to publicly harm her, and to disrupt her efforts in leading GSA.²⁸ Through counsel, the Administrator, has written to the President’s Council on Integrity and Efficiency, the Executive Branch entity with oversight responsibility of inspectors general, to raise

²³ Scott Higham and Robert O’Harrow, Jr., *GSA Chief Seeks to Cut Budget For Audits*, WASH. POST, Dec. 2, 2006, at A1 [hereinafter Higham and O’Harrow, Dec. 2, 2006].

²⁴ Higham and O’Harrow, Dec. 2, 2006.

²⁵ Minority Staff, H. COMM. ON GOV’T REFORM, 109TH CONG., “THE POLITICIZATION OF INSPECTORS GENERAL” (Jan. 7, 2005).

²⁶ Nominations of Richard L. Skinner and Brian D. Miller Before the S. Comm. on Homeland Security and Gov’t Affairs, 109th Cong. (July 18, 2005).

²⁷ Nominations of Richard L. Skinner and Brian D. Miller Before the S. Comm. on Homeland Security and Gov’t Affairs, S. Hrg. 109-199, 109th Cong. (Comm. Print July 18, 2005), at 73-74.

²⁸ Letter from Michael J. Nardotti, Patton Boggs LLP, Counsel to Doan, to James Burrell, Chair, Integrity Committee, President’s Council on Integrity and Efficiency (Jan. 31, 2007) [Nardotti Letter, Jan. 31, 2007].

serious charges regarding possible leaks to the news media by the Inspector General.²⁹ During the course of the Administrator's interview with *The Washington Post* on January 17, it became apparent the reporters had been provided confidential and protected documents and information from the IG's investigative file on the Administrator.³⁰ According to Doan, her Chief of Staff John Phelps observed materials with the Patton Boggs LLP – the law firm Doan hired to assist her with the IG investigation – letterhead among the documents in the possession of the reporters.³¹ It appeared the reporters had obtained correspondence between the Administrator's counsel and the Inspector General's office. Having observed this, Doan and Phelps began to question whether a calculated effort was afoot by the GSA Inspector General to harm the reputation and the ability of the Administrator to lead the agency.³²

B. Public Dispute Over Role of IG Personnel as Contract Auditors

Miller and Doan's first public disagreement occurred in October 2006, when Doan announced her intention to reduce the agency's Office of Inspector General's role in contract audits.³³ The Administrator believed that shifting the auditing responsibility, both pre- and post-award, outside of the agency would allow GSA to increase the speed of the contract award process.³⁴

It is common, but by no means universal, for the government's contracting officers to use the support of auditors in the negotiation of contracts. The contracting officer (CO) is the decision-making official. The auditors act only as advisors to assist the contracting officer in making the decision. The CO may or may not follow their advice. There is no requirement that they be used at all. Generally speaking, contracting officers are the only officials who may enter into contracts on behalf of the government.³⁵

²⁹ Nardotti Letter, Jan. 31, 2007.

³⁰ *Id.*

³¹ Telephonic Interview by Gov't Reform Minority Comm. Staff with Lurita Doan, Administrator, GSA, in Wash., D.C. (Mar. 14, 2006) [hereinafter Doan Telephonic Interview].

³² Doan Telephonic Interview.

³³ *FEDERAL TIMES*, Oct. 23, 2006.

³⁴ *Id.*

³⁵ FAR § 1.601.

The Administrator's consideration of moving the auditing function from the IG is not at all surprising or unusual. In fact, it is somewhat unusual for contract support audit work to be performed by auditors from an Inspector General's office. Virtually all of the government agencies (DOD, DHS, and NASA among others) that expend large amounts of funds through contracts use the highly acclaimed Defense Contract Audit Agency (DCAA).³⁶ Most other agencies use other in-house auditors. It is our understanding that the only other large agency regularly using IG resources for contract audit support is the Veterans Administration. So it is perfectly reasonable for the Administrator to question the practice of using IG auditors for this purpose. Shifting the contract auditing function from the IG's office to another entity such as DCAA would have been routine. However, the Administrator's idea to migrate the contract auditing function to private auditing firms caused some alarm.³⁷ That concept, however, has not been finalized or even initiated.

C. Public Dispute Over the IG's Budget

The Administrator and the IG have also quarreled publicly over budget considerations.³⁸ Following this dispute, the IG called the Office of Special Counsel in response to some off-hand remarks, according to "information received" by Chairman Waxman,³⁹ made by the Administrator at an office luncheon. The Office of Special Counsel is charged with investigating and enforcing the Hatch Act, the laws that prohibit public officials from engaging in partisan politics. Chairman Waxman's letter states that the Administrator "asked the GSA officials participating in a [luncheon event for politically appointed agency personnel] how the agency could help 'our candidates' in the next elections."⁴⁰

³⁶ DCAA provides standardized contract audit services including accounting and financial advisory services regarding contracts and subcontracts to its client agencies responsible for acquisition and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts. DCAA, History, <http://www.dcaa.mil/> (last visited Mar. 22, 2007).

³⁷ Letter from Reps. Henry A. Waxman, James L. Oberstar, and Del. Eleanor Holmes Norton to Lurita A. Doan, Administrator, GSA (Dec. 5, 2006).

³⁸ FCW, Dec. 4, 2006.

³⁹ Waxman Letter, Mar. 6, 2007.

⁴⁰ *Id.* at 7.

V. Allegation Relating to GSA's Contemplated Engagement with Diversity Consulting Firm

FINDING: *The Majority has failed to establish that the Administrator engaged in any kind of elaborate scheme to enrich an acquaintance in her efforts to acquire a study regarding GSA's use of small businesses, particularly those owned by minorities and women. The evidence supports the conclusion that the Administrator was embarrassed and concerned that GSA received an "F" from the Small Business Administration regarding its use of disadvantaged small businesses, and the Administrator sought to engage the services of the well-known diversity consultant, Diversity Best Practices. The Administrator erroneously believed she had the authority to acquire these services on an expedited sole-source basis. When she discovered she did not have that authority, the arrangement was called off. No contract was awarded. No work was ever performed. No money changed hands.*

The claim that the Administrator awarded a "no-bid" \$20,000 contract to a company operated by a personal friend has been greatly overblown. According to newspaper accounts, the Administrator gave her friend \$20,000 to compile a 24-page report promoting GSA's use of minority- and woman-owned businesses.⁴¹ This did not happen.

Early in the Administrator's tenure, she was made aware of GSA's poor performance contracting with minority and women-owned small businesses. As an African-American woman, and former small business owner, the Administrator was particularly disappointed in GSA's performance in this critical area. To this end, she contemplated an arrangement with a prominent diversity consulting firm headed by a professional acquaintance to study GSA's performance in the area of contracting with minority and women-owned small businesses. As the Administrator soon realized, she did not have authority to enter into such an arrangement on a non-competitive basis. Accordingly, the arrangement was called off. No enforceable contract was awarded. No work was ever performed. No money ever changed hands. The Administrator summed up her misjudgment in a front page story in *The Washington Post*.⁴² "I made a mistake. They canceled it, life went on, no money exchanged hands, no contract exchanged hands." The Administrator's statements are correct. To the extent she agreed to any arrangement, she was merely approving the decision to move forward with the initiative.

⁴¹ Waxman Letter, Mar. 6, 2007 at 3.

⁴² Higham and O'Harrow, Jan. 19, 2007.

The Committee's investigation into this matter confirms the Administrator's public comments.

On June 9, 2006, Doan's sixth day at GSA, she met with Associate Administrator for the Office of Small and Disadvantaged Business Utilization Felipe Mendoza, to discuss GSA's performance in the area of Small Business activities. The Administrator's prior experience as an owner of a woman-owned small business motivated her to improve GSA's dismal "F" grade in the area of Small Business activities.⁴³ During the meeting with Mendoza, Doan made a note to "get a study" of GSA's utilization of small businesses.⁴⁴ The Administrator had a limited window to address this poor SBA score before the next report to Congress.⁴⁵

On June 14, Doan spoke with a professional associate, Edie Fraser, of the consulting firm Diversity Best Practices (DBP), a component of The Public Affairs Group, Inc. (PAG), concerning the creation of a report to profile successful practices in GSA contracting for minority and women owned business. The idea was to publish a data report with case studies.⁴⁶ Fraser and Doan had a successful business relationship in the private sector, owing to their common interest in promoting women and minority owned businesses.⁴⁷ Doan had used Fraser's services when Doan was the CEO of New Management Technology Inc.⁴⁸ Based on their previous relationship, Doan knew that Fraser was a "recognized leader in this field" and had the expertise needed to develop a report to promote GSA's use of small businesses.⁴⁹

Doan immediately put Mendoza and Fraser in touch, and Mendoza met with Fraser on June 20 to develop an outline of the study.⁵⁰ The only subsequent correspondence between Fraser and Doan before July 25 was a June 28 e-mail in which Doan said she would "take a look at the contract" and check with the Chief Financial Officer about how to handle payment.⁵¹

⁴³ U.S. Small Business Administration, 2005 National Ombudsman Report to Congress.

⁴⁴ Felipe Mendoza, GSA, Meeting Notes (June 20, 2006) (GSA 01-02-0007).

⁴⁵ *See e.g.*, Letter from Nicholas N. Owens, National Ombudsman and Assistant Administrator for Regulatory Enforcement Fairness, U.S. Small Business Administration, to Lurita A. Doan, GSA, Feb. 8, 2007.

⁴⁶ E-mail from Edie Fraser, Diversity Best Practices (June 14, 2006) (PAG 000156).

⁴⁷ GSA Letter, Feb. 2, 2007 at 3.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Felipe Mendoza, Calendar Entry Meeting (June 20, 2006) (GSA 01-06-0002.).

⁵¹ LD 000031.

The Administrator was not involved in any of these meetings. On July 21, Tauna Delmonico, assistant to the Chief of Staff, delivered a copy of the "Confirmation of Service Order" that had been faxed to GSA by DBP to Contracting Officer Donna Hughes.⁵² The \$20,000 order requested services to profile the best practices in GSA for promoting the use of small businesses, particularly those owned by members of disadvantaged groups, and publish a data report with case studies.⁵³ The project was to be completed by September 30, 2006, and delivered to the Office of Small Business Utilization.⁵⁴

This "service order" was finally shown to Doan on July 25, and she signed it.⁵⁵ Her assistant, Delmonico, faxed the signed order back to DBP and sent the order to the Contracting Officer Hughes, to be processed.⁵⁶

Hughes indicated that since the "service order" was valued at over \$2,500, the requirement encompassed in the "service order" should either be competed or awarded pursuant to a sole source justification under the simplified acquisition procedures.⁵⁷

Simplified acquisition procedures are utilized for procurements of aggregate value of more than the \$2,500 micro-purchase threshold⁵⁸ and less than \$100,000, the simplified acquisition threshold.⁵⁹ The simplified procedures are intended to reduce administrative costs, improve opportunities for small business, promote efficiency and economy in contracting, and avoid unnecessary burdens for agencies and contractors.⁶⁰

⁵² Donna Hughes, GSA, Memo for the File (Aug. 4, 2006) (GSA 01-08-0013) [hereinafter Hughes Statement].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Diversity Best Practices, Service Order (July 25, 2006) (GSA 01-08-0015 to 01-08-0017).

⁵⁶ *Id.*

⁵⁷ Hughes Statement.

⁵⁸ FAR § 2.101.

⁵⁹ FAR § 2.101; 41 U.S.C. § 403; and FAR § 13.

⁶⁰ FAR § 13.003.

Delmonico informed the Office of General Counsel (OGC) of the order. OGC staff worked with Hughes to gather facts and prepare briefing materials to determine whether the circumstances justified the use of sole source procedures.⁶¹

After a week of discussions among the OGC employees and Hughes, the General Counsel Alan Swendiman sent a memo to Chief of Staff John Phelps stating that Diversity Best Practices should be notified in writing of the termination of the "service order."⁶² At the same time, the contact person at Diversity Best Practices, Kevin Briscoe, requested clarification on the data and funding needed for the project.⁶³

On August 4, Phelps notified the Administrator that Hughes would terminate the order.⁶⁴ The Administrator's initial effort to award a contract for the project was appropriately ended. No money changed hands, no work was performed, and the government incurred no liability. On that same day, the Administrator, eager to ensure the underlying project not die because of the procedural missteps, sent an e-mail to Phelps asking whether Felipe Mendoza or Edie Fraser was drafting the Statement of Work for the project and requested that Felipe Mendoza, Tauna Delmonico, or David Bethel be the "point person to move this forward."⁶⁵

On August 14, Phelps spoke with Fraser and told her this project could not be performed by Diversity Best Practices as it was involved in the preparation of the statement of work, but GSA planned to follow through on the concept. GSA continued to develop a Statement of Work for this report after the termination for convenience on August 4. On September 14, Hughes contacted the new point person for this project, Cari Dominguez, with a draft statement of work, which was based on input from Dominguez.⁶⁶ Despite these efforts, on September 25 Dominguez concluded the project could not be completed by the end of the current fiscal year and the matter was dropped.⁶⁷

⁶¹ Hughes Statement (GSA 01-07-0013).

⁶² Hughes Statement (GSA 01-07-0014).

⁶³ Phone Message for John Phelps, GSA (Aug. 4, 2006) (GSA 01-07-0016).

⁶⁴ E-mail from John Phelps, GSA to Lurita Doan, GSA, "Termination of Diversity Contract" (Aug. 4, 2006) (GSA 01-07-0004).

⁶⁵ E-mail from John Phelps, GSA to Lurita Doan, GSA, "Termination of Diversity Contract" (GSA 01-07-0003).

⁶⁶ E-mail from Donna Hughes, GSA to Cari Dominguez, GSA, "Draft Statement of Work" with attachment, (Sept. 14, 2006) (GSA 01-08-0057 to 01-08-0066).

⁶⁷ E-mail from Cari Dominguez, GSA to Donna Hughes, GSA, "Follow-Up" (Sept. 25, 2006) (GSA 01-08-0056).

It is simply not reasonable to conclude from these events that the Administrator's effort to acquire a study of GSA's use of small businesses was really an elaborate scheme to enrich an acquaintance. First, as GSA has said to the Committee, the Public Affairs Group, Inc. and Diversity Best Practices "is a respected and successful company that conducts studies and produces reports on practices to encourage the use of minority and women-owned small businesses. The firm produced similar reports and studies for many Fortune 500 companies."⁶⁸ Doan's concept for a study of GSA's practices for encouraging the use of small and minority-owned businesses was a logical match for Diversity Best Practices, whose products and advice in this area enjoyed wide-spread acclaim in the commercial marketplace. Second, the proposed "service order" was for \$20,000. This is not a significant sum for a firm like Public Affairs Group, whose annual revenues are approximately \$3 million.⁶⁹ The value of the "service order" would have been roughly 0.7% of that firm's total revenue. This hardly seems to have been a *gold mine*.

Moreover, GSA manages tens of billions worth of contracts a year. A \$20,000 "service order" is miniscule in view of GSA's overall portfolio. It is odd that a Committee with jurisdiction over government-wide operations would choose to focus on such a minor incident, even though Doan has repeatedly admitted it was wrong procedurally and a mistake on her part.

Our review of thousands of documents related to this matter lead to the conclusion that Doan's motivations were clear: she was embarrassed and dismayed that GSA had received an "F" from the Small Business Administration for its small business utilization and she was determined to improve GSA's image and score. Fraser in her interview repeatedly spoke about the need for major federal agencies such as GSA to analyze their small businesses practices. Both Doan and Fraser are passionate about this issue. It is also worth noting that despite the termination of the "service order," Doan continued to seek a report and analysis of this matter that was so important to her.⁷⁰

The Majority and the IG have also mischaracterized the relationship between Swendiman and Doan.⁷¹ Swendiman met with Committee staff to discuss his role in the termination of the "service order." At no time did Swendiman state he had spoken

⁶⁸ Letter from Kevin Messner, Associate Administrator, Office of Congressional and Intergovernmental Affairs, GSA, to Rep. Henry A. Waxman, Chairman, Comm. on Gov't Reform (Feb. 2, 2007), at 3 [hereinafter GSA Letter, Feb. 2, 2007].

⁶⁹ iVillage Inc., Quarterly Report (Form 10Q) at 29 (May 10, 2006); *See also* Dun & Bradstreet, Inc., Comprehensive Report on Public Affairs Group, Inc. (subsidiary of iVillage, Inc., New York, NY), DUNS: 78-592-3871, (Mar. 22, 2007).

⁷⁰ E-mail from Donna Hughes, GSA to Cari Dominguez, GSA, "Draft Statement of Work" with attachment, (Sept. 14, 2006) (GSA 01-08-0057 to 01-08-0066).

⁷¹ Waxman Letter, March 6, 2007.

directly or had any other direct communication with Doan.⁷² Swendiman's communications about this matter were exclusively with John Phelps, Doan's Chief of Staff.

VI. Allegation Relating to the Sun Microsystems Contract

FINDING: *There is no evidence the Administrator acted improperly with respect to the Sun Microsystems contract option negotiations. At no time during the negotiation process did the Administrator speak to any of the contracting officers, nor did she pressure any of the contracting officers to exercise the Sun option.*

In the March 6 letter to the Administrator, Chairman Waxman advised that he had received information relating to the Sun Microsystems contract. The Chairman raised the following in his letter.⁷³

- "I have also received information that you intervened on behalf of Sun Microsystems in August 2006 in the midst of a lengthy contract renewal dispute with GSA."
- "I have been told that as a result of your intervention, federal taxpayers could pay millions more for Sun's products and services than necessary."
- "According to the information I received, the first contracting officer assigned to the case refused to extend the contract on the terms Sun proposed because the officer concluded that Sun was not offering sufficient discounts to government purchasers."
- "Subsequently, the Office of the Inspector General conducted a pre-award audit in January 2006. I understand that this audit supported the contracting officer's decision, finding that the discounts Sun offered to government purchasers were not as favorable as some that Sun granted to commercial purchasers, as required by federal procurement regulations."
- "Before you started at GSA, the contracting official responsible for the Sun contract was replaced with a second official who, I am told, also reached the same findings as his predecessor and the Inspector General."

⁷² Interview by Gov't Reform Comm. Staff with Alan Swendiman, former General Counsel, GSA, in Wash. D.C. (Feb. 2, 2007).

⁷³ Waxman Letter, Mar. 6, 2007, at 8.

- “I also understand that during this period, the second contracting official learned about discussions between the Inspector General and the Department of Justice regarding a possible False Claims Act referral concerning Sun overcharges.”
- “I have been told that on August 29, 2006, you requested a meeting on short notice with senior auditing staff from the Inspector General's office.”
- “According to the account I have received, you expressed the view that it was essential for GSA to complete the contract extension with Sun.”
- “I have been informed that when the officials from the Inspector General's office explained their concerns about Sun's inflated prices, you responded by criticizing the audit of Sun's pricing and the subsequent referral of overcharges to the Department of Justice.”
- “You apparently said that the contracting official was too "stressed" by these issues to continue with the contract negotiations, and you suggested that he might be removed.”
- “Within two days of the meeting, on August 31, 2006, the second contracting official had been relieved, and a third contracting officer was assigned to resume contract negotiations with Sun despite having no background in the prior discussions.”
- “This third contracting official completed the negotiations with Sun in only nine days, but the terms were not favorable.”
- “I have been told that the contracting officer accepted an offer that was inferior to a previous Sun proposal, with contract terms from Sun that the official's predecessors had rejected.”

The contract option negotiations with Sun Microsystems were examined by Committee staff. In lieu of subpoenas, “voluntary” transcribed interviews were conducted with four GSA officials, three of whom were Contracting Officers for GSA in talks with Sun.⁷⁴ Having the benefit of a careful examination, the facts of the Sun Microsystems contract negotiation do not raise any indicia of wrongdoing on the part of the Administrator. Rather, the facts tell a different story.

On August 23, 1999, GSA awarded Sun Microsystems a Federal Supply Schedule contract for items of equipment and support services for a five-year base period with

⁷⁴ Caldwell Interview; Butterfield Interview; Budd Interview; Williams Interview.

three option periods of five years each.⁷⁵ The initial performance period ran through late August 2004. In August 2004, Sun submitted a request to exercise the first option period of the contract. Around that time, the Office of the Inspector General initiated a post-award audit concerning allegations of improper pricing by Sun under the initial contract. The Inspector General also commenced a pre-award audit concerning allegations of improper pricing by Sun under the related contract as well as a pre-award audit to support negotiation for the exercise of the option. The support audit was not completed until late January 2006.⁷⁶ Since neither the audit work nor the negotiations were completed by the expiration date of the initial performance, the contract underwent a series of extensions until finalized on September 9, 2006.

Between August 2004 and September 2006, several contract extensions were issued by three contracting officers. The fourth contracting officer, Shana Budd, finally exercised the option based on her conclusion that the offer made by Sun was fair and reasonable.⁷⁷ Budd was able to successfully conclude the protracted negotiations by building on the work completed by the two preceding contracting officers and her exhaustive analysis of the facts and materials relating to the unresolved issues.

At no time during this process did Doan speak to any of the contracting officers nor did she pressure any of the contracting officers to exercise the Sun option.⁷⁸ GSA management was understandably concerned the negotiations had dragged on for so long. Jim Williams, Commissioner of the Federal Acquisition Service (FAS) indicated to the contracting officer that it was time to conclude a satisfactory deal with Sun or let the contract lapse.⁷⁹ Budd clearly stated she felt no pressure “to resolve this one way or the other.”

As negotiations started with Sun, the first and second contract extensions were executed by Robert Overbey over the period of seven months.⁸⁰ As the second contract extension was set to expire in February 2005, Overbey was reassigned to Herman Caldwell’s division as part of the Information Technology Acquisition Center

⁷⁵ Herman Caldwell, Chronology of Events in the Sun Renewal Process, (undated 10 page document produced to the Minority Staff on Mar. 15, 2007) at 1 [hereinafter Caldwell Timeline]; Budd Interview at 20.

⁷⁶ Pre-award audit, GSA Office of Inspector General.

⁷⁷ Budd Interview at 15.

⁷⁸ Interview by Gov’t Reform Minority Comm. Staff with James Williams, Commissioner, Federal Acquisition Service, GSA, in Wash., D.C. (Mar. 22, 2006) [hereinafter Williams Interview, Mar. 22, 2007]; Caldwell Interview at 9.

⁷⁹ Williams Interview, Mar. 22, 2007.

⁸⁰ Caldwell Interview at 2.

Reorganization.⁸¹ At that time, Caldwell assumed responsibility for the Sun contract and issued an extension until August 31, 2005.⁸² Caldwell entered into negotiations with Sun in February 2005 and issued an additional extension on August 14, 2005, which would continue the contract until February 15, 2006.⁸³ After intensive discussions and negotiations, Caldwell was not able to reach an agreement with Sun. The negotiations during Caldwell's period as contracting officer seemed to have been contentious and difficult. Caldwell advised his supervisor in May 2005 he believed the Sun contract ought to be allowed to lapse.⁸⁴ In fact, Caldwell, without knowledge of GSA management, actually sent an e-mail to the Chairman of Sun announcing that an agreement had not been reached and the Sun contract was about to lapse.⁸⁵ Soon after this extraordinary communication by Caldwell, the matter came to the attention of GSA management. At that point, the decision was made to further extend the contract in an attempt to work out the outstanding issues and reach an agreement if possible. Caldwell never was able to reach an agreement with Sun.⁸⁶ Eventually Caldwell was reassigned to work on Networx, GSA's government-wide telecommunications acquisition that is currently on-going.⁸⁷ As Caldwell acknowledged, Networx is GSA's most visible program.⁸⁸

Michael Butterfield assumed responsibility for the Sun contract on February 9, 2006.⁸⁹ Yet another contract extension was issued in February 2006, set to expire on September 11, 2006. It was now Butterfield's turn to negotiate with Sun.

Around this time, the Office of the Inspector General finally issued the long-awaited audit report on the Sun contract. As a part of that report, the auditors proposed a Corrective Action Plan (CAP), because Sun had not provided appropriate discounts under the initial contract's price reduction clause.⁹⁰ The CAP sets forth the method Sun is to use to track commercial sales, sales to the government, discounts, and orders, among

⁸¹ *Id.* at 2.

⁸² *Id.* at 3.

⁸³ *Id.* at 5.

⁸⁴ *Id.* at 25.

⁸⁵ *Id.* at 24.

⁸⁶ *Id.* at 36.

⁸⁷ *Id.* at 34.

⁸⁸ *Id.* at 38.

⁸⁹ Butterfield Interview at 14.

⁹⁰ *Id.* at 24.

other things. On May 15, Sun agreed to take corrective action and submitted a completed corrective plan that was accepted by Butterfield and the Office of Inspector General.

Face-to-face negotiations between Butterfield and Sun began in June 2006 and reached an impasse in August 2006.⁹¹ Throughout this period Butterfield was accompanied by IG auditors in his negotiation sessions with Sun. According to Butterfield, the auditors were “very passionate” about their position that Sun was not offering competitive discounts and not offering the appropriate product mix for the price reduction clause.⁹² Butterfield felt at the time that he was caught in the middle between the Sun people and the auditors, both of whom were quite “passionate” that they had the correct position during the negotiations.⁹³ It appears the auditors contributed to the strained relations between the government and Sun by laughing during a negotiation session and making a derisive reference to possible false claim actions against Sun.⁹⁴

In August 2006, the on-going Sun negotiations came to the attention of FAS Commissioner, Jim Williams. Williams met with Bill Vass, President and Chief Operating Officer for Sun Microsystems Federal to discuss the on-going negotiations.⁹⁵ Williams determined through his conversation with Vass that he needed to look into the Sun matter since negotiations had dragged on for two years and seemed to be at an impasse.

While a number of issues had been resolved during the preceding time period, three major issues remained.⁹⁶ The first concerned the wording and operation of the so-called price reductions clauses.⁹⁷ These provisions ensure the discounts provided by the contractor continue to track those given to comparable firms throughout the life of the contract. The second concerned the base discount Sun would provide for its support services.⁹⁸ The third concerned an arrangement whereby the government would be able to recover some of the past discounts it had not received under the initial contract.⁹⁹

⁹¹ *Id.* at 49.

⁹² *Id.* at 70

⁹³ *Id.* at 70-72.

⁹⁴ Butterfield Interview at 35-38.

⁹⁵ Williams Interview, Mar. 22, 2007.

⁹⁶ Budd Interview at 32.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*.

Williams subsequently asked Butterfield if he wished to continue with the Sun negotiations.¹⁰⁰ Butterfield recognized the negotiations were not moving forward, so he decided to let someone else take over.¹⁰¹ Williams believed the Sun matter had dragged on too long and must be resolved either with a satisfactory new contract period or with the final lapse of the Sun contract.

On August 31, 2006, Shana Budd was assigned as the new contracting officer for the Sun contract.¹⁰² With the extension deadline looming, Budd entered into intensive negotiations with the understanding she should award the five-year option or let it expire. On September 9, 2006, the negotiations were completed and the option was exercised.¹⁰³

After prolonged negotiations spanning over two years, the contract option was awarded. The Committee has interviewed all three of the most current contracting officers. While it is alleged this contract option was exercised precipitously under unfavorable terms due to the improper influence of upper management,¹⁰⁴ there is no evidence in support of these allegations.

To the contrary, interviews with the contracting officers revealed the Administrator had little if anything to do with the Sun negotiations. Butterfield states in his interview that he never had contact of any kind with the Administrator while working on this project.¹⁰⁵ Budd explains in her interview that she never felt any influence from her superiors to award the contract. In fact, she was advised "that upper management did not want to put into place another temporary extension. They either wanted this thing killed...or resolve it."¹⁰⁶

Budd's decision to exercise the option was not made under duress, nor was it a bad deal for the taxpayer, as has been alleged.¹⁰⁷ Budd states she worked day and night between her assignment to the contract and the award date. She understood all of the issues and was comfortable with her negotiations to obtain fair and reasonable prices for GSA.¹⁰⁸ These negotiations occurred over two years. Many of the issues had been

¹⁰⁰ Butterfield Interview at 61- 63.

¹⁰¹ *Id.*

¹⁰² Budd Interview at 10.

¹⁰³ *Id.* at 14.

¹⁰⁴ Waxman Letter, Mar. 6, 2007 at 8-9.

¹⁰⁵ Butterfield Interview at 58

¹⁰⁶ Budd Interview at 23.

¹⁰⁷ Waxman Letter, Mar. 6, 2007 at 8-9.

¹⁰⁸ Budd Interview at 81.

resolved under the previous contracting officers. To imply that the contract option could be awarded in the nine days that Budd had to work on it is ludicrous. The resolution of this matter was not accomplished in a mere nine days. It was a cumulative effort over the course of two years. The terms of the negotiated option were a bit less than the pre-negotiation goals established by Butterfield. Nevertheless, those ambitious goals do not appear to have been achievable.¹⁰⁹ Moreover the discounts ultimately received were a part of the entire agreement with Sun, which included a number of other elements as well.

Federal Supply Schedule contracts, like the one with Sun, are not awarded based upon a competition among various firms, but to commercial firms that are willing to offer the government the same discounts they offer to comparable classes of commercial customers. There is no obligation on the government's part to order anything off the Schedule contract. A government agency orders items off the Schedule after it reviews the prices of at least three schedule holders and determines that the chosen contractor represents the best value to the government. Throughout the process, ordering agencies are encouraged, and very often receive, significant price reductions above and apart from the discounts are encompassed in the schedule contract prices. The bottom line here is that, while important, the initial discounts that are offered to get on the schedule are often just the first step in determining the final price paid by an ordering agency.

Finally, the insinuation that the last Contracting Officer, Shana Budd, awarded this contract option in order to receive "a requested transfer from Washington, DC, to Denver, despite having been previously refused such a transfer" is unfounded.¹¹⁰ It is well documented that Budd petitioned for the transfer after the contract had been awarded and was initially denied the transfer. She was subsequently granted the transfer following the departure of an employee from the Denver office.¹¹¹ It is sad that we have been reduced to accusing an honest, hard-working civil servant of nefarious motives simply because of her superior accomplishment.

¹⁰⁹ Butterfield Interview at 85.

¹¹⁰ Waxman Letter, Mar. 7, 2007 at 9.

¹¹¹ GSA Vacancy Announcement #0780011 (Sept. 2006) (GSA G-06-0076 – 0087); Notification of Personnel Action, GSA Form S50 (Nov. 26, 2006) (GSA G-14-10565).

VII. Allegation Relating to Suspension and Debarment

FINDING: *There is no evidence that the Administrator intervened in the suspension and debarment process. The GSA debarment official had initiated preliminary proceedings against the major accounting firms (KPMG, PriceWaterhouseCooper, BearingPoint, Ernst & Young, and Booz Allen Hamilton). The Administrator merely contacted her Chief of Staff and asked that the matter be suspended until she could be briefed. In a written statement prepared by the debarment official and produced to the Committee, he stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." Further, he stated, "I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."*

The Administrator is alleged to have acted improperly by intervening in suspension and debarment proceedings.¹¹² Testimony by the Suspension and Debarment Official at GSA tells a vastly different story.

George Barclay, as Acting Suspension and Debarment Official for the General Services Administration (GSA), initiated suspension proceedings against the former "big five" accounting firms in August and September of 2006. Among Barclay's duties within GSA, he is delegated the authority from the Administrator to determine and carry out suspension and debarment actions.¹¹³ In his role, he also advises the Chief Acquisition Officer (CAO) and Administrator during suspension or debarment proceedings.¹¹⁴

The government will only award contracts to responsible firms. This means contracts will only be awarded to companies that, among other things, have adequate financial resources to perform the contract and a satisfactory record of integrity and business ethics. The suspension and debarment process enforces this policy. A suspended or debarred firm cannot be awarded a government contract. Suspensions and debarments require such due process protections as notice and the opportunity to present information and argument. The process is meant to protect the interests of the government, not to punish.¹¹⁵

¹¹² Waxman Letter, Jan. 19, 2007 at 1.

¹¹³ Barclay Interview at 8.

¹¹⁴ *Id.* at 15.

¹¹⁵ FAR § 9.4.

From July 26, 2006 through August, Barclay received reports from the Office of the Inspector General recommending debarment proceedings be initiated against the major accounting firms (KPMG, PriceWaterhouseCooper, BearingPoint, Ernst & Young, and Booz Allen Hamilton).¹¹⁶ These recommendations were made in light of allegations that these firms obtained various travel rebates in connection with government work and did not pass the benefits of these rebates on to the government.¹¹⁷ These companies eventually settled with the government without a determination of guilt.

Barclay initiated discussions with the five companies by issuing Show Cause letters between August 12 and September 6.¹¹⁸ The objective of these letters was to make sure the firms had instituted appropriate remedial measures against the recurrence of the rebate problems.¹¹⁹ Barclay would then decide whether he would need to initiate formal proceedings.¹²⁰

Attorneys from the firms responded to the Show Cause letters by providing detailed descriptions of the remedial measures put in place to prevent a recurrence of the rebate problem.¹²¹ Barclay reviewed these submissions and concluded the problems had been addressed.¹²² Closeout letters were issued to the five firms between October 20 and November 9, 2006.¹²³ The Inspector General's office was advised that no suspension and debarment actions would be taken.¹²⁴

At the time the Show Cause letters were issued, the Administrator's office was made aware of Barclay's actions. On September 7, Barclay e-mailed the Chief Acquisition Officer, Emily Murphy, regarding the action initiated against the major accounting firms.¹²⁵ This e-mail made its way up the chain to the Administrator's office.

¹¹⁶ George N. Barclay, Statement of George N. Barclay, Acting Suspension and Debarment Official, GSA, undated, (estimated date of preparation February 2007, produced to the Minority Staff in March 2007) [hereinafter Barclay Statement] at 1

¹¹⁷ Barclay Statement at 1.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ E-mail from George Barclay, GSA to Emily Murphy, GSA, "Fw: heads up," (Sept. 7, 2006) (GSA 03-01-0011).

Not surprisingly, since this was the first time she had heard about this matter, the Administrator suggested to her Chief of Staff that the matter be suspended until she could be briefed on September 11, 2006.¹²⁶

Subsequently, on September 14th, Alan Swendiman, GSA's then-General Counsel sent an e-mail to the Administrator explaining, "George Barclay advises me that everything seems to be fine."¹²⁷ This appears to be the end of the Administrator's "involvement" in the suspension and debarment matter.

The Committee has interviewed Barclay on this matter, and his statements corroborate the information provided to the Committee in his written statement and in the thousands of documents GSA has produced for the Committee. The Administrator's concern about the ramifications these potential suspensions could have throughout the government was reasonable and appropriate for any agency head. In fact, she did not have any effect upon Barclay's decision to issue the Show Cause letters or upon his subsequent conclusion that the firms had addressed the problems to the extent that he considered them to be currently responsible. Barclay states in a written statement produced to the Committee, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator."¹²⁸ Barclay goes on to note, "I did not consider such expression (Doan's interest in the matter) as interference and I processed and concluded the matter as directed by the factual record in accordance with the prescribed process."¹²⁹

This issue appears to have been pursued by the Majority solely due to *The Washington Post* article from January 19, 2006. Had *The Washington Post* interviewed Barclay, they would have realized that Barclay had provided briefings for prior Administrators in suspension actions, and there was nothing improper or unusual about the Administrator's interest in such matters that are conducted under her authority.

¹²⁶ E-mail from Lurita A. Doan, GSA to John F. Phelps, GSA, "Re: Pending Actions Against Accounting Firms," (Sept. 10, 2006) (GSA 03-01-0010A).

¹²⁷ E-mail from Alan Swendiman, GSA to Lurita A. Doan, GSA, "Re: Pending Actions Against Accounting Firms," (Sept. 14, 2006) (GSA 03-01-0013).

¹²⁸ Barclay Statement at 2.

¹²⁹ *Id.*

VIII. Alleged Hatch Act Violation

FINDING: *On January 26, 2007 at the conclusion of a staff luncheon attended by GSA political appointees, several witnesses reported that the Administrator made an offhand comment about “helping our candidates,” an alleged violation of the Hatch Act. Any concerns that this was inappropriate were addressed immediately, and the discussion was terminated. There is no evidence to support the additional allegations that follow-up discussions centered on efforts to exclude Speaker Pelosi from the ceremonial opening of a federal building in her congressional district. No evidence was found that any GSA officials improperly considered the prospect of inviting Senator Martinez to the opening of a federal courthouse in Miami, Florida.*

According to Chairman Waxman’s March 6, 2007 letter to the Administrator, officials from the GSA Office of Inspector General reported a potential Hatch Act violation by the Administrator to the U.S. Office of Special Counsel (OSC).¹³⁰ It has never been clear why the referral was not sufficient. In any event, the Committee wanted to investigate this matter, too.

The OSC is an independent federal investigative and prosecutorial agency charged with enforcing the Civil Service Reform Act, the Whistleblower Protection Act, and the Hatch Act.¹³¹ Under the Hatch Act,¹³² officers and employees of the executive branch, other than the President and Vice President, are restricted in the following ways:

- (1) They may not use their “official authority or influence for the purpose of interfering with or affecting the result of an election.”
- (2) They are generally restricted from soliciting, accepting or receiving political campaign contributions from any person.
- (3) They may not run for elective office in most “partisan” elections.

¹³⁰ Waxman Letter, March 6, 2007 at 7.

¹³¹ U.S. Office of Special Counsel website, <http://www.osc.gov/intro.htm> (last visited Mar. 22, 2007).

¹³² 5 U.S.C. § 7321 et seq. (2006).

(4) They are prohibited from soliciting or discouraging participation in any political activities by a person who has an application for a grant, contract or other funds pending before their agencies, or is the subject of an ongoing audit or investigation by their agencies.

(5) They are generally prohibited from engaging in partisan campaign activity on federal property, on official duty time, while wearing a uniform or insignia identifying them as federal officials or employees, or while using a government vehicle.¹³³

According to Chairman Waxman, Doan is alleged to have made comments that fall within the prohibitions of the Hatch Act. On March 6 the Chairman wrote:

Another area of concern involves allegations that you asked GSA officials in a January teleconference how the agency could be used to help Republican political candidates.

* * *

I understand that you convened a nationwide teleconference on January 26, 2007, from GSA headquarters with your senior staff and as many as 40 GSA political appointees across the country. The meeting was held in order to hear presentations by J. Scott Jennings, a Special Assistant to the President and the Deputy Director of Political Affairs in the White House, and John ("J.B.") Horton, GSA's liaison to the White House, about national polling data from the November 2006 elections. I have been told that you spoke after the presentations were finished. In your remarks, according to multiple sources, you asked the GSA officials participating in the teleconference how the agency could help "our candidates" in the next elections.

I have been told that one Regional Administrator responded to your inquiry by describing an effort to exclude House Speaker Nancy Pelosi from an upcoming opening of an environmentally efficient "green" courthouse in San Francisco. I have also been told that you then raised concerns about the upcoming opening of a courthouse in Florida. According to this account, you noted that former President Bill Clinton had expressed interest in attending, and you stated that an effort should be made to get Senator Mel Martinez, the General Chairman of the Republican National Committee, to attend.

¹³³ Jack Maskell, Congressional Research Service, "*Hatch Act*" and Other Restrictions in Federal Law on Political Activities of Gov't Employees, CRS no. 98-885 A, Oct. 23, 1998 [CRS Hatch Act Report].

So far, seven of the 14 interviews conducted by the Majority staff during the course of the investigation related to the Hatch Act allegation.¹³⁴ The Majority, under threat of subpoena, compelled the attendance of seven politically appointed GSA officials who were in attendance at the January 26, 2007 teleconference. Six of seven witnesses appeared “voluntarily,” and one, Emily Murphy, appeared pursuant to subpoena.

According to the Congressional Research Service, to violate the official authority provision of the Hatch Act, the official must use or attempt to use his or her authority or influence to affect the results of an election.¹³⁵ This provision has generally been directed at coercive activities, including the coercion by federal supervisory personnel of those employees whom they supervise to engage in partisan political activities.¹³⁶ The request or direction by a supervisor to an employee he or she supervises to engage in partisan political activity, or to use resources, time or supplies in such activity may, therefore, implicate this section of the Hatch Act, particularly because of the inherently coercive nature of the supervisor-supervisee relationship.¹³⁷

Examples of significant Hatch Act violations include:

- OSC also filed a complaint for disciplinary action against an employee with a federal agency, charging that he violated the Hatch Act by engaging in political activity on behalf of a Congressional candidate while on duty and in the federal workplace. **The employee sent an e-mail to over 300 agency employees inviting them to attend a "meet the candidate" event for Congressional candidate Tim Holden.** (emphasis supplied).¹³⁸
- One complaint was against a federal employee who sent an **e-mail message to about 22 coworkers.** The message contained a letter purporting to be written by John Eisenhower, son of former President Eisenhower that states, among other things: " ... **I intend to vote for the Democratic Presidential candidate, Sen. John Kerry**"; " ... the word 'Republican' has always been synonymous with the word 'responsibility' ... [t]oday's whopping deficit of some \$440 billion does not meet that criterion."; "**Sen. Kerry, in whom I am willing to place my trust, has demonstrated that he is courageous, sober, competent ... I will vote for him**

¹³⁴ Sisk Interview; Smith Interview; Berkholtz Interview, Monica Interview, Busch Interview, Millikin Interview, and Murphy Deposition.

¹³⁵ CRS Hatch Act Report at 6.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Office of Special Counsel, Successful Case Summaries (2004 and 2005), <http://www.osc.gov/successfulcase.htm#hatch06> (last visited Mar. 27, 2007).

enthusiastically" Prior to forwarding the above-referenced e-mail, she added the following statement: "Some things to ponder....." (emphasis supplied).¹³⁹

The facts of the brown bag lunches are largely not in dispute. Starting in September 2006, the White House liaison for GSA, John "J.B." Horton, convened a monthly brown bag lunch meeting for agency political appointees.¹⁴⁰ Horton arranges for speakers to make presentations monthly. Since September 2006, there have been six brown bag luncheons. At four of the six, members of the White House staff presented to the GSA group on the workings of their respective offices.

Chairman Waxman's letter to the Administrator alleges that the Administrator convened these meetings.¹⁴¹ There is, however, no evidence in support of this allegation. Six witnesses called by the Majority have testified unambiguously that Horton organized these luncheons.¹⁴²

A. Allegation Relating To Helping Our Candidates

Chairman Waxman alleges that at the conclusion of the January 26, 2007 presentation by White House Deputy Director of Political Affairs Scott Jennings, Doan violated the Hatch Act by asking "GSA officials participating in the teleconference how the agency could help 'our candidates' in the next election."¹⁴³ These comments are alleged to have occurred in January 2007, a time when there are no candidates for any election. The Majority's willingness to pursue this alleged offhand comment is puzzling at best.

This alleged violation of the Hatch Act was referred to the Office of Special Counsel for investigation by GSA Inspector General Miller.¹⁴⁴ Seven GSA officials were

¹³⁹ *Id.*

¹⁴⁰ There have been seven brown bag luncheons. The dates and topics have been as follows: 1) Sept. 13, 2006 – Hatch Act; 2) Oct. 23, 2006 – WH Presidential Personnel; 3) Nov. 16, 2006 – WH Legislative Affairs; 4) Dec. 18, 2006 – Holiday Lunch with the Administrator; 5) Jan. 26, 2007 – WH Political Affairs; and 6) Mar. 8, 2007 – WH Press Office.

¹⁴¹ Waxman Letter, Mar. 6, 2007 at 7.

¹⁴² Sisk Interview at 11; Smith Interview at 12-13; Berkholtz Interview at 13-14; Busch Interview at 13-14; Milliken Interview at 14; and Murphy Deposition at 14.

¹⁴³ Waxman Letter, Mar. 6, 2007 at 7.

¹⁴⁴ *Id.*

questioned about this allegation. Six of the seven officials have some recollection of the Administrator mentioning the phrase "our candidates."¹⁴⁵

Matthew Sisk was asked:

Q Several witnesses have told us that, following the presentation, Doan addressed the group; and she said something to the effect of how can we use GSA to help our candidates in the next election. Do you recall this?

He responded:

A I do.¹⁴⁶

Michael Berkholtz was asked:

Q At the end of the presentation, witnesses have told us that Administrator Doan addressed the group and said something to the effect of how can we use GSA to help our candidates in the next election. Do you recall words to that effect?

A The phrase of that -- I recall some phrase, but that was similar to is there anything we can do to help. I don't think -- I don't recall it being specific to elections.¹⁴⁷

Not all witnesses responded in the affirmative to the Majority's leading questions. Region 1 Administrator Dennis Smith did not recall any such discussion of helping candidates in the next election.

Q Do you recall -- other witnesses have told us that during this question and answer period Administrator Doan said something to the effect that how can we -- what can GSA do to help out candidates in the next election? Do you recall a comment like that, to that effect?

A No, I do not.¹⁴⁸

¹⁴⁵ Six witnesses concurred that the Administrator made a reference to our candidates. Sisk Interview at 16-17; Berkholtz Interview at 17-18; Monica Interview at 16; Busch Interview at 16; Milliken Interview at 18-19; Murphy Deposition at 22-23. Dennis Smith does not. Smith Interview at 21-22.

¹⁴⁶ Sisk Interview at 16-17.

¹⁴⁷ Berkholtz Interview at 17-18.

¹⁴⁸ Smith Interview at 21-22.

B. Allegation Relating to Speaker Pelosi

Chairman Waxman's March 6 letter alleged that the Administrator facilitated a conversation with GSA political appointees at the January 26 luncheon about ways in which Speaker Pelosi can be "excluded" from "an upcoming opening of an environmentally efficient 'green' courthouse (sic) in San Francisco."¹⁴⁹

Six GSA officials were "interviewed" on this topic, and five of the six did not recollect events in this manner. Matthew Sisk testified that Speaker Pelosi's name was mentioned. He recollects no effort to keep her away.¹⁵⁰ Dennis Smith testified that he recollects nothing about the discussion of Speaker Pelosi other than her name was mentioned.¹⁵¹ Michael Berkholtz recalled Speaker Pelosi's name being mentioned, but recalls no discussion of keeping her away from the grand opening.¹⁵² If anything, Berkholtz said there may have been some frustration in trying to schedule the Speaker's appearance.¹⁵³ Berkholtz's recollection of frustration is borne out in the correspondence within GSA. Because the federal building was in the Speaker's district, it was important to secure her participation in the ceremonial opening.¹⁵⁴ Scheduling difficulties between GSA and the Speaker's office did produce some frustrations. Christiane Monica testified that to her recollection the discussion about the Speaker was merely in relation to being invited. Monica stated, "I believe there was a comment about Speaker Pelosi receiving an invitation to the opening of the courthouse."¹⁵⁵ Justin Busch also did not recall events as the Majority had suggested. An excerpt from Busch's "interview" transcript reads as follows:

Q And that Mr. Stamison brought up the issue of Speaker Nancy Pelosi, that she was attending?

A Uh-huh.

¹⁴⁹ Waxman Letter, Mar. 6, 2007 at 7.

¹⁵⁰ Sisk Interview at 18-19.

¹⁵¹ Smith Interview at 20-21.

¹⁵² Berkholtz Interview at 18-19.

¹⁵³ *Id.*

¹⁵⁴ E-mail from Gene P. Gibson, GSA to Peter Stamison et al., GSA, "Word from Congresswoman Pelosi's Office," (Mar. 2, 2007) (GSA W-02-0496).

¹⁵⁵ Monica Interview at 17-18.

Q Do you recall that?

A I do recall that.

Q What was that conversation?

A I remember that he brought up the courthouse, and I do remember him bringing up Speaker Pelosi's name, and who else could we also get to attend that meeting? And other than that, it gets a little hazy for me, guys. I really spent a lot of time trying to think about what I remember, and to be honest with you, it was towards the end of the meeting, and I was eating a Subway sandwich -- that I can remember; I do that almost every day -- and I was hoping that things would wrap up.¹⁵⁶

Busch was not the only GSA staffer to testify that the discussion of Speaker Pelosi was unmemorable and not as the Majority has suggested. Jennifer Millikin testified similarly:

Q And so in your recollection there was some discussion of a green courthouse and Nancy Pelosi's name was mentioned?

A Correct.

Q Do you recall whether they mentioned wanting her to show up or not wanting her to show up?

A I don't recall that, no.¹⁵⁷

The suggestion that Doan desired to prevent Speaker Pelosi from attending the ceremonial opening of the San Francisco federal building does not square with the documentary record. On December 15, 2006, Doan wrote to the President inviting his attendance at the opening of the San Francisco federal building.¹⁵⁸ In this correspondence, Doan remarks, "as one of the most important federal buildings constructed in years, the grand opening ceremony and dedication is expected to draw officials from city, state, and federal levels of government, including Speaker-elect Nancy Pelosi."¹⁵⁹ On January 8, 2007 as the invitation list for the San Francisco federal

¹⁵⁶ Busch Interview at 17-18.

¹⁵⁷ Milliken Interview at 22-23.

¹⁵⁸ Letter from Lurita A. Doan, Administrator, GSA to George W. Bush, President, United States (Dec. 15, 2006) (GSA W-02-0503).

¹⁵⁹ *Id.*

building ceremonial opening were being drawn up, GSA officials recommended that the Regional Administrator personally invite Speaker Pelosi.¹⁶⁰ Communications and correspondence between GSA officials and the Speaker's office continued.¹⁶¹ On March 2 GSA officials inquired as to the Speaker's availability for June 7 or 8.¹⁶² The Speaker's office countered with a July 9 suggestion.¹⁶³

C. Allegation Relating to the Invitation to Florida Sen. Martinez to the Opening of a Florida Federal Building

Chairman Waxman's March 6 letter alleged that the Administrator acted improperly by noting at the January 26 luncheon that Senator Mel Martinez should be invited to attend the ceremonial opening of the Florida courthouse. Chairman Waxman wrote to the Administrator, "You noted former President Clinton had expressed interest in attending, and you stated an effort should be made to get Senator Mel Martinez, the General Chairman of the Republican National Committee to attend."¹⁶⁴ What Chairman Waxman fails to mention in this letter is that Mel Martinez is currently the junior Senator from the state of Florida.¹⁶⁵ To this end, it would be reasonable and appropriate for the GSA Administrator to suggest an invitation to Senator Martinez. The senior Senator from Florida, Bill Nelson, was also invited to the opening of the courthouse.¹⁶⁶

GSA has a longstanding practice to invite local, state, and federal officials to ceremonial openings of federal buildings. GSA official Jennifer Milliken testified to this:

In events that I have done my entire political career we always outreach to State and Federal public officials for obvious reasons.

¹⁶⁰ E-mail from Jeffrey E. Neely, GSA to Peter T. Glading, GSA, "Re: SF Fed Bldg Dedication" (Jan. 8, 2007) (GSA W-02-0487).

¹⁶¹ E-mail from Donna P. Shepard, GSA to Peter G. Stamison, GSA, "Call from Congresswoman Pelosi's Office" (Jan. 26, 2007 1:03 PM) (GSA W-02-0490); E-mail from Gene P. Gibson, GSA to Donna P. Shepard, GSA, "Re: Hold on Date" (Feb. 20, 2007) (W-02-0495).

¹⁶² E-mail from Gene P. Gibson, GSA to Peter Stamison et al., GSA, "Word from Congresswoman Pelosi's Office," (Mar. 2, 2007) (GSA W-02-0496).

¹⁶³ *Id.*

¹⁶⁴ Waxman Letter, March 6, 2007 at 7.

¹⁶⁵ Mel Martinez, U.S. Senator official website, <http://martinez.senate.gov/public/>.

¹⁶⁶ Invited Guests, Dedication of U.S. Courthouse, Miami, Florida (Jan. 26, 2007 and Feb. 8, 2007) (W-02-0515).

You are there, and you want them to be a part of the event.

Milliken was asked whether GSA makes a practice of tying invitations to public events to party affiliation. The testimony reads as follows:

Q And in the process of being courteous and inviting these officials, you don't draw a distinction between party affiliation?

A No.

Having testified clearly that GSA does not discriminate based on party affiliation when drawing up its invitation list, Majority Counsel was not satisfied. The follow-up produced an odd exchange.¹⁶⁷

Q When you are planning or staffing an event, is it your job or your office's job to see how you can keep an official away from that event?

A Not my job. No.

Q That is not your practice?

A Not my practice, even if it was my job. But, no, it is not my job either.

The invitation list for the courthouse opening in Miami followed GSA's practice of having a nonpartisan guest list. Both Republicans, such as, former Governor Jeb Bush, and Democrats, such as Miami Garden's Mayor Shirley Gibson were among the invitees. In fact, the entire Florida congressional delegation was among the invited guests. There is no basis to the allegation that the Administrator acted improperly with respect to the discussion of Senator Martinez's participation at the ceremonial opening of the Miami federal courthouse.

D. White House Official Scott Jennings Terminated Question and Answer Session

Several witnesses have provided testimony that the Question and Answer session following the luncheon was very short. The Administrator made some comments, there were some discussions about the ceremonial grand openings of federal buildings in San Francisco and Miami, and the meeting adjourned. The record is clear that when the

¹⁶⁷ Millikan Interview at 30.

discussion referenced public officials by name, such as Speaker Pelosi and Senator Martinez, Scott Jennings, the luncheon's presenter called the meeting to a close.¹⁶⁸

For example, Christiane Monica testified:

Q You said that Mr. Jennings said something along the lines of, "this is not a conversation we need to be having at this point"?

A Correct.

Q And immediately after he said that, the meeting adjourned; did it not?

A Correct.¹⁶⁹

Michael Berkholtz testified similarly:

Q And when somebody said it is not an appropriate time to have this conversation, did the conversation end?

A Yes. To the best of my recollection, yes.¹⁷⁰

Terminating a conversation that included partisan politics is to be commended. A prompt termination of this discussion should serve to mitigate the perception of an alleged Hatch Act violation.

IX. Conclusion

To date in this exercise, the Majority has failed to establish that the Administrator has engaged in any misconduct. Instead, there is no contract for a diversity study (but there are crippled efforts to improve diversity practices at GSA), no interference with the Sun Microsystems contract negotiations, no interference with the debarment and suspension process, and when possible Hatch act issues arose, they were appropriately addressed.

Importantly, this investigation has shown the Majority will pursue an investigation on the flimsiest of evidence and use its authority in ways never previously imagined. A public airing of all these matters will serve the public interest in exposing the serious flaws in this investigation.

¹⁶⁸ Berkholtz Interview at 20; Monica Interview at 18-19; Busch Interview at 18-19; and Murphy Interview 25-26.

¹⁶⁹ Monica Interview at 24.

¹⁷⁰ Berkholtz Interview at 24.

Mr. DAVIS OF VIRGINIA. Lurita Doan is a talented, motivated professional. Born in New Orleans, she was one of the first African American children to integrate the city's private schools. She was only 7. That first day, she was knocked down, kicked, and hit with a brick, but she persisted. She earned her undergraduate degree from Vassar and a master's degree in renaissance literature from the University of Tennessee Knoxville. A self-described unabashed entrepreneur, she started a successful technology business, which she sold before entering public service. She and her husband of 22 years have two daughters.

Perhaps the saddest, most reprehensible aspect of this defective oversight was the attempt to drag one of Ms. Doan's daughters into the web of circumstances being spun to ensnare her mother. That a business friend of Ms. Doan provided her daughter a reference for an unpaid Capital Hill internship application is offered as evidence to support alleged misconduct in dealings between two professional women years later. It is as implausible as it is inappropriate. Even the IG report refers to that. It is just sad, and it shows how low this has gone.

The breathlessly described no-bid contract hardly turned out to be the elaborate scheme to enrich an acquaintance, alleged by the majority. We found only that Administrator Doan wanted very much to acquire a study of GSA's use of small businesses, particularly those owned by minorities and women. It is a topic about which she knows much and cares deeply. She was understandably embarrassed and dismayed that the agency she just took over had received an F from the Small Business Administration for small and minority business utilization.

She was determined to improve GSA's image and score. The evidence supports the conclusion her motives were clear, if her methods a bit over-zealous. She wanted to engage the services of a well-regarded diversity consulting firm, Diversity Best Practices, to help fix the problem. The Administrator erroneously believed that she had the authority to acquire these services for \$20,000 on an expedited sole source basis. When she learned otherwise, the arrangement was called off. No work was ever performed. No money changed hands.

She has expressed regret that it happened, but continues, as is her way, to advocate forcefully to improve GSA outreach to small minority and women-owned businesses.

With regard to the contract extension to SUN Microsystems, there is simply no evidence to support the allegation that Ms. Doan acted improperly. Ms. Doan never spoke to or pressured any of the contracting officers to exercise the SUN option. In the end, the contract extension terms were judged by the contracting officer to be fair and reasonable.

Similarly, there is no evidence to support the allegation that she intervened in the suspension and debarment process. She merely asked her chief of staff for a briefing on a manner which could have resulted in a Government-wide prohibition against awarding any contracts to most of the major national accounting firms. Can you imagine debarring the big four accounting firms from doing business with the Government without the Administrator even knowing it? That is the alternative. Such an inquiry was ordinary and

appropriate. It would have been negligent not to be apprised about the ramifications of so significant an action.

I sat up here several months ago when we were going over security clearances and the Deputy of OMB said he wasn't informed about it and we gave him the devil for not being informed on what was going on underneath him. We expect people to at least know what is going on beneath them.

The agency's suspension debarment official stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." He said he processed and concluded the matter as directed by the factual record, in accordance with the prescribed process.

Then there is the alleged Hatch Act violations. It appears that on January 26, 2007—remember that date—at the conclusion of a staff luncheon—this is during lunch—attended by GSA political appointees called by the administration—this is not Ms. Doan's meeting, this was a meeting called by the administration, something they routinely do in Executive agencies. Ms. Doan didn't put out the White House political affairs order. She just simply attended the meeting. The Administrator made an off-hand comment about helping our candidates. That comment has somehow been connected to other conversations about inviting public officials to GSA building dedications, efforts to invite Speaker Pelosi to an event in her District, and to include Senator Mel Martinez in a similar event in his home State of Florida are anecdotally relayed, not that she said anything, relayed as evidence of prohibited partisan activity on Federal property. Such comments may be impolitic, but several factual realities defeat the effort to make them evidence of unlawful political activities.

What candidates? What election? In January of this year, neither Representative Pelosi nor Senator Martinez was a candidate for any public office. No other candidates are mentioned. Based on the evidence before us, the only politics at GSA appear to be intramural, and it is a tough sport.

Administrator Doan has had some disagreements with the GSA Inspector General. She thought him needlessly adversarial in assessing the inevitability of the subject of judgments of contract officers. That, it seems, is where her problems began. The IG, a former Federal prosecutor, takes issue, often publicly, with current GSA leadership on the reach and role of his office. That is his right. But the statement provided to the committee by the IG for today's hearing is an extraordinary narrative. Apparently, hell hath no fury like an IG scorned. Rather than audit results or investigative findings, he brings us anecdotes, conjecture, innuendo, and invective to impugn the judgment and character of the GSA Administrator.

His statement mischaracterizes information provided to this committee, and it appears his office provided information to the majority and others that was not made available to us. We will have more than a few questions for the IG today.

Finally, I want to bring the committee's attention to an e-mail that was sent last night by Ms. Shana Budd, the GSA contract officer who finalized the SUN Microsystems contract extension. She takes issue with the majority's attacks on her integrity and her work. It is important for Members and the public to understand

the demoralizing professional and personal toll of the investigative tactics being used by the majority in this instance.

This was an unsolicited e-mail. This wasn't under threat of subpoena from us. This is an unsolicited e-mail that came in last night from a GS-13 career civil servant doing her best for the Government. It is the kind of professionals we want to serve in Government. Here's what it says.

"Pat, have you seen this? My words and sentiments have been twisted so badly that it is at the point where they are making false statements about what I said. The author of this memorandum"—meaning the majority's memorandum—"is committing a crime by hand-picking small phrases and comments out of the broader context of the interview, which obviously destroys the reader's ability to comprehend the true meaning of my statements. The author is dramatically twisting my words for the purpose of meeting his ends.

I am astonished. I am dumbfounded. This is destroying my well-deserved good name and reputation. It is also attacking my ethics, procurement integrity, and business judgment, all of which are up-standing and highly regarded. It seems to me I would be well served in consulting with a private attorney in order to protect the previously mentioned assets which are priceless.

How very, very disturbing that something like this can happen in this country that I love and believe in. I am an honest citizen and hard-working, talented professional who has dedicated my life to civil service in dedication to the American people. I possess impeccable procurement integrity and excellent business judgment. I remain immensely proud of the work I did on the SUN Microsystems contract, because I know beyond a shadow of a doubt that every action I took was in the best interest of the Government and the American taxpayers, of which I am one.

To think that actual Congresspeople would level these charges against me brings tears to my eyes and a squeeze to my heart. It is shattering my image of the American electorate as people who stand up for what is right, do the right thing, and most certainly protect honest, conscientious public servants. I lived in northern Virginia for many years, and the U.S. Capital was always my favorite place to take visitors. I love what I thought I stood for. Now I don't know what I will think next time I see it. Who would have thought that doing my job, going the extra mile, and taking a stand for what is right would lead to this?

I am honored and proud to serve my Country in the capacity of contracting officer. I am proud of the warrant that hangs on my wall. And I am supremely confident that I perform my job with utmost integrity in an honorable, truthful, level-headed, sensible, quality oriented, professional manner that serves the public very well. This is unjust and unfair.

How ironic that the very people who are accusing me of having poor integrity are, themselves, the ones who possess poor integrity. I believe that there is a term for this very behavior used by mental health professionals. It is called psychology projection. The encyclopedia describes it as follows: psychology projection or projection bias is a defense mechanism in which one attributes, projects to

others, one's own unacceptable or unwanted thoughts and/or notions.

Projections reduce anxiety by allowing the expression of the unwanted subconscious impulses and desires without letting the ego recognize them, and it is time for the congressional committee to do its job right, and they can start by not attacking good people. I will not just sit back and accept these unjust and undeserved insults. I will fight this to the bitter end for myself and for every average, honest American citizen. Shana Budd, Contracting Officer, GSA Region 8, Denver Federal Center.”

And let me just add we got her permission to read this into the record. She is not a schedule C; she is a career professional.

I look forward to today's hearing and asking Administrator Doan to allow to clear her name and reputation, as well.

Thank you.

[The prepared statement of Hon. Tom Davis follows:]

Statement of Rep. Tom Davis
Ranking Republican Member
Committee on Oversight and Government Reform
Allegations of Misconduct at the General Services Administration
March 28, 2007

Mr. Chairman, you know how much I respect you and how much I value our work together. But your description of this “investigation” brings to mind what Mark Twain said about flawed science: “One gets such wholesale returns of conjecture out of such a trifling investment of fact.” For that’s what we’re dealing with today: accusatory conjecture based on the selective and biased interpretation of very few facts.

The title of today’s hearing pretty much says it all: “Allegations of Misconduct at the General Services Administration.” Not facts. Not findings. Not even credible complaints. Just allegations picked up from hostile media reports based on un-vetted sources. As we’ll see, at the end of the day these “allegations” will still be, as the dictionary defines the term, assertions “unsupported and by implication regarded as unsupportable.”

Sadly, this hearing represents the fullest expression yet of the *modus operandi* adopted by the Committee’s new majority: Citing yesterday’s news clips, release an accusatory, conclusory “inquiry” letter. Through amplification and repetition of mere allegations, seek a conviction in the court of political opinion. Call a hearing.

First the verdict, then the trial.

This process renders hollow the promise of collegiality and consultation with the minority. Only after the fact are we told witnesses have been threatened with subpoenas unless they submit to coercive “transcribed interviews” never anticipated by Committee rules. In these non-deposition depositions, the prior notice and other procedural protections otherwise due to witnesses and the minority can be ignored. Future witnesses be advised: When Chairman Waxman expresses his hope to proceed without a subpoena, volunteer immediately for a deposition. That way we’ll all have time to prepare and we’ll all know how and when the transcript can be used to support official Committee business.

In this case, the Committee has expended significant resources searching for anything to support their *a priori* conclusions, but have found virtually nothing. We received and reviewed 14,086 pages of documents from the General Services Administration (GSA). Without consultation with the minority staff or the Ranking Member, the majority staff, largely through the threat of subpoena, conducted 14 transcribed “interviews,” securing the “voluntary” attendance of current and former GSA officials from as far away as Boston and Denver. Two GSA officials flew from Boston to Washington, D.C. for “interviews” regarding the Hatch Act allegations. The Boston officials were questioned for as little as 30 minutes in one instance and 40 in another. No reason was supplied why these “interviews” could not take place telephonically. Agency counsel was not permitted to be present at those interviews. Personal counsel was said to be permitted. However, four witnesses stated, for the record, they were not told they were permitted to retain personal counsel for these transcribed interviews. Nevertheless, one “interviewee” did bring personal counsel.

Not surprisingly, this flawed process has produced an equally flawed product. As discussed at length in the staff report we are releasing today, the accusations leveled against the GSA Administrator, Mrs. Lurita Doan, are either flat-out wrong or based on a distorted and myopic view of the management responsibilities of the head of a major federal agency.

Lurita Doan is a talented, motivated professional. Born in New Orleans, she was one of the first African-American children to integrate that city's private schools. She was only seven. That first day, she was knocked down, kicked and hit with a brick. But she persisted. She earned her undergraduate degree from Vassar and a master's degree in Renaissance literature from the University of Tennessee-Knoxville. A self-described "unabashed entrepreneur" she started a successful technology business which she sold before entering public service. She and her husband of twenty-two years have two daughters.

Perhaps the saddest, most reprehensible aspect of this defective oversight was the attempt to drag one of Ms. Doan's daughters into the web of circumstance being spun to ensnare her mother. That a business friend of Ms. Doan provided her daughter a reference for a Capitol Hill internship application is offered as evidence to support alleged "misconduct" in dealings between two professional women years later. It's as implausible as it is inappropriate.

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The evidence supports the conclusion her motives were clear, if her methods a bit overzealous. She wanted to engage the services of a well-regarded diversity consulting firm, Diversity Best Practices, to help fix the problem. The Administrator erroneously believed she had the authority to acquire these services for \$20,000 on an expedited, sole-source basis. When she learned otherwise, the arrangement was called off. No contract was awarded. No work was ever performed. No money changed hands.

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Similarly, there is no evidence to support the allegation that she intervened in the suspension and debarment process. She merely asked her Chief of Staff for a briefing on a matter which could have resulted in a government-wide prohibition against awarding any contracts to most of the major national accounting firms. Such an inquiry was ordinary and appropriate. It would have been negligent not to be apprised about the ramification of so significant an action. The agency's suspension and debarment official stated, "At no time did I receive any direct or indirect instruction or comment from the Office of the Administrator." He said he, "processed

and concluded the matter as directed by the factual record in accordance with the prescribed process.”

Finally, there's the alleged Hatch Act violations. It appears that on January 26, 2007 (remember that date), at the conclusion of a staff luncheon attended by GSA political appointees, the Administrator made an offhand comment about “helping our candidates.” That comment has somehow been connected to other conversations about inviting public officials to GSA building dedications. Efforts to invite Speaker Nancy Pelosi to an event in her district, and to include Senator Mel Martinez in a similar event in Florida, are anecdotally relayed as evidence of prohibited partisan activity on federal property. Such comments may be impolitic, but several factual realities defeat the effort to make them evidence of unlawful political activity. What candidates? What election? In January of this year, neither Representative Pelosi nor Senator Martinez was a candidate for any public office. No other “candidates” are mentioned. Based on the evidence before us, the only politics at GSA appear to be intramural, and it's a tough sport.

Administrator Doan has had some disagreements with the GSA Inspector General. She thought him needlessly adversarial in assessing the inevitably subjective judgments of contract officers. That, it seems, is when her problems began. The IG, a former federal prosecutor, takes issue, often publicly, with current GSA leadership on the reach and role of his office. That is his right. But the statement provided to the Committee by the IG for today's hearing is an extraordinary narrative.

Apparently, hell hath no fury like an IG scorned. Rather than audit results or investigative findings, he brings us anecdotes, conjecture, innuendo and invective to impugn the judgment and character of the GSA Administrator. His statement mischaracterizes information provided to this Committee and it appears his office provided information to the majority and others that was not made available to us. We will have more than a few questions for the Inspector General today.

Finally, I want to bring to the Committee's attention an e-mail sent yesterday by Ms. Shana Budd, the GSA contract officer who finalized the Sun Microsystems contract extension. She takes issue with the majority's attacks on her integrity and her work. It's important for Members and the public to understand the demoralizing professional and personal toll of the investigative tactics being used by the majority in this instance.

Chairman WAXMAN. Thank you very much, Mr. Davis. We will let the facts speak for themselves.

I do want to point out that Shana Budd's testimony in her interview will be made public and people can see what she said in that interview and then judge whether her comments in the e-mail are justified.

Let me also just point out two other procedural things, without getting into the facts. One, we issued no subpoenas. If people came and volunteered to talk to us because they knew we might issue subpoenas, well, that is just the way it works, but we did not issue any subpoenas. Second, the Republican staffs were present at every interview, so keep that in mind, as well.

We are pleased now to have with us Senator Grassley.

We are delighted that you took the time to come from the other side of the Capitol because of your involvement in this issue, and we welcome you here today. We are eager to hear what you have to say about the matter, because I know you have been involved in this question far longer than any of us.

Mr. MICA. Mr. Chairman, just a point before we get to Senator Grassley, are we doing opening statements?

Chairman WAXMAN. No, we are not going to do opening statements. We have the witnesses, and then we will proceed right to the questions.

Mr. MICA. So there will be no opportunity for any of the Members to comment?

Chairman WAXMAN. That is correct, until they get to their 5 minutes.

Mr. MICA. Well, I would like an exception to that. I am the ranking member of Transportation and Infrastructure Committee, and we have responsibility, legislative responsibility, over GSA, and we have also worked on this particular issue, since you have raised the point, and I would like time for an opening statement. I would be glad to defer first to the Senator, but we have spent a lot of my personal time and staff time to investigate this matter.

Chairman WAXMAN. I certainly will want to—

Mr. DAVIS OF VIRGINIA. Mr. Chairman, the general rule of the committee, as I understand it, is that Members get opening statements. In this case, I would ask that we follow the rules of the committee and allow Mr. Mica to make an opening statement.

Chairman WAXMAN. Well, Senator Grassley does have a time schedule. Would you allow him to go first and then you make your statement?

Mr. MICA. Yes, I think that would be fine. Thank you.

Chairman WAXMAN. Senator, we are pleased to have you.

**STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
FROM THE STATE OF IOWA**

Senator GRASSLEY. I thank the members of this committee for their commitment to oversight, one of our most sacred responsibilities as a Congress. Today's hearing, focusing on a number of issues related to decisions of GSA and other senior officials, and ultimately their impact on the American taxpayer.

My concerns began last year, when I learned that the relationship between GSA Inspector General Mr. Brian Miller and GSA

Administrator Ms. Doan was strained and deteriorating. I hope you know that I had a long history of looking into wasteful Government spending and the very important role that is played by Inspectors General, and I hope that you understand that it doesn't matter to me whether we have a Republican or Democrat administration, I try to do the job of oversight equally the same.

I believe that the IG in any agency is our first and main line of defense against waste, fraud, and abuse of taxpayers' money and misconduct by Government officials. The IGs, quite simply, are watchdogs, and I have been and will continue to watch the watchdogs. It is incumbent on Congress to ensure that the IGs are doing their job, that they have the resources to do their job, and that there is no undue interference with an IG's ability to do his/her mission.

Currently, GSA holds contracts with thousands of contractors worth billions. Someone has to ensure that these contracts yield the best deal possible, and that contractors involved honor all terms of each contract. In the GSA, this is a team effort involving GSA contract officials and the IG. This is a delicate balance, but one that has proven to work, proven by millions and millions of dollars of savings.

When I learned that the relationship between GSA Administrator and the IG was becoming more and more strained, I decided to get to the bottom, and I am not pleased with what I found. I can certainly accept that agency heads and their IGs may not always see eye to eye; however, I cannot accept any move by an agency head to undermine the independence of the IG. That independence is the heart and soul of the IG Act. It is what allows the IG to present objective findings in their investigative reports.

When it was brought to my attention that the Administrator intended to remove the reimbursable fundings that the GSA IG depends on for audits of contracts in their pre-award phase, I immediately looked into the impact that it would have on the Inspector General's work. In the end, the money for the reimbursable audits was restored in fiscal year 2007, but the entire situation provided insight into the flawed budgeting concept that has the unintended effect of encroaching on the independence of the IG.

So on February 23, 2007, I asked the Senate Appropriations Committee to fix the problem by providing a direct appropriation for GSA IG's pre-award audits. The reimbursable audits cost the GSA only \$5 million per year, but have been responsible for saving more than \$2 billion in the last 2 years, alone. I think \$10 billion (sic) in and \$20 billion out sounds like a pretty good deal.

I have asked Administrator Doan about her relationship with the IG, and she has assured me that she understands and accepts the importance and necessity of the IG's independence. She says that she is trying to bring fiscal discipline to the entire agency, including the Office of IG. I accept that, because that is a worthy goal. But, despite her assurances to the contrary, though, her actions and words have not convinced me that she is committed to utilizing the GSA Office of the Inspector General to its maximum potential, as intended in the law.

She has indicated privately and publicly that the IG has been heavy handed in dealing with GSA employees. She has even sug-

gested that the IG officials have intimidated other GSA employees and contractors. These are very serious allegations against Federal law enforcement officers and accredited auditors, and if true they deserve the highest level of investigation by both Congress and the executive branch.

Despite numerous attempts to get details, though, on these allegations from the Administrator, I have received nothing but innuendos and unspecified allegations.

During the course of my investigation I discovered that there was one specific allegation relating to a contract involving Government vendor SUN Microsystems. The GSA IG conducted a very thorough investigation of the matter and could find no one in the GSA's regional office that felt intimidated by IG officials. However, during the course of that investigation I did learn some very interesting facts about this particular SUN Microsystems contract which may be the root cause of the dispute with the IG.

The first piece of information that caught my attention was this: in spite of repeated warnings by senior GSA officials since 2006 that SUN Microsystems had allegedly committed civil and/or criminal fraud on two of these contracts, GSA, with Administrator Doan's blessing, proceeded to re-award the contract to SUN on September 8, 2006, with no conditions, strings, or precautions regarding alleged fraud.

The IG began post-award audits of these contracts over 2 years ago. Those audits were finally completed yesterday. The scope of the alleged fraud has been established and verified. The allegations of fraud by SUN will now be referred to the Department of Justice for further consideration.

By August 2006, several GSA contracting officials, all the way up to the Administrator, were fully knowledgeable about the alleged fraud, yet none took appropriate corrective action to address alleged fraud. Why? Well, the alleged fraud on these contracts involving defective pricing, unauthorized charges, unpaid discounts is valued at \$10 million. Even SUN Microsystems had admitted to GSA that they had been negligent in providing proper pricing and discount information to GSA. SUN has provided a corrective action plan to prevent this from happening in the future. Whether this corrective action plan is effective remains to be seen, but that doesn't wipe out years of negligence by this Government contractor.

The second piece of information that concerned me was that this new SUN contract, which will go through 2009, was negotiated on terms that are extremely unfavorable to the Government. The terms were so unfavorable, in fact, that, immediately upon signing, taxpayers lost millions of dollars due to improper discounting and pricing calculations. The lost savings could be as high as \$20 to \$30 million, based upon IG investigation.

This was the very same issue that the GSA IG was investigating before the contract was renewed. It seems that everyone involved—the IG, the contracting officer, senior GSA officials—was aware that the new contract was bad for the GSA, bad for Government, and, of course, bad for the taxpayers.

GSA's first response to the allegations of fraud developed by the IG was to grant another in a long line of contract extensions to SUN on August 30, 2006. This brought a little time. Then a new

contracting officer was installed on August 31st, a contracting officer with no previous experience with this very complicated contract.

Finally, on September 8th, just 8 days later, GSA awarded the contract to SUN, this contract that is even worse for the Government than the one previously negotiated over the past year by the two previous contract officers, both of whom were replaced between February and August 2006.

To make matters worse, the Administrator told me in a letter dated March 13, 2007, that she was made aware of the potential criminal fraud by SUN on August 29, 2006, which was 2 days before the new contract officer was appointed and 9 days before the new contract was awarded.

After the IG informed her of the alleged fraud on SUN contract, she reportedly told the IG, "It is essential for GSA to sign the contract with SUN." That was on August 29th. Two days later, Federal Acquisition Service Commissioner Williams told the contract officer that he and Administrator Doan, "Considered the SUN contract strategically important and wanted it awarded."

What is even more shocking is that the FSA staff, the arm of the General Services Administration responsible for negotiating this contract, were made aware of SUN's alleged fraud as early as February 12, 2006, and possibly earlier, at least 7 months before the contract was awarded.

What was the rationale for going ahead with this contract? Was it GSA's fear of losing the contract to another agency like NASA? Was it the loss of income from the fees, or simply a desire to continue doing business with this contractor for some other still unknown reason?

Hopefully continued investigation such as this hearing today will eventually reveal what went wrong and answer these questions.

I want to close by making a very important point. It was teamwork of the IG and the contracting officials that uncovered both the potential fraud and the problems with the new contract, and it was the IG Brian Miller's outstanding leadership that created an environment where these good things could happen. Yet, despite their very best efforts, their warnings fell upon deaf ears at the highest levels of GSA. The message this sends to Government contractors is very clear: it doesn't matter how poorly you manage the Government's money or how badly you violate the Government's contract, the doors of the U.S. Treasury are wide open. Help yourself to what is in the coffers. Take what you need. GSA will do business with you on your terms.

So, Mr. Chairman, let me make one point crystal clear, including my duties. The Government coffers are not open. We are watching the activities of Government contractors, senior agency officials. The perpetuation of fraud and violation of law should not be tolerated, period.

There are systems in place to prevent this, like the IG Act and what you are doing here, congressional oversight. When money is lost due to a flawed contract, negligence, or fraud, we must remember that money is not the GSA's, it is not Congress' money, that it is money out of the pockets of hard-working American taxpayers,

and among our most important responsibilities is to ensure that it is spent responsibly, wisely, and according to law.

If fraud occurred on this contract and SUN owes the taxpayers money, as the IG reports, then the money must be recovered, those responsible must be held accountable.

Thank you.

Chairman WAXMAN. Thank you very much, Senator Grassley. I appreciate your being here. You have been legendary as an advocate, and also for your tenacity in looking out for the taxpayers of this country, and I appreciate your insights into this issue.

I know you have to go, so what we are going to do is Mr. Davis has a few questions, I have a few questions, and then we are going to excuse you.

Senator GRASSLEY. OK.

Chairman WAXMAN. Mr. Davis.

Mr. DAVIS OF VIRGINIA. Senator, I appreciate your being here. I, too, as the chairman of this committee, we would go where the facts took us, and Mr. Waxman and I together went after the administration when we thought they were wrong and defend them when we think they are right. We all want savings. And Ms. Doan is a big girl. She can take care of herself on the questions to follow to explain her role in this.

There is no evidence that she negotiated directly with SUN Microsystems that you can find, is there? You don't have any evidence that she negotiated directly with SUN Microsystems, do you, Senator?

Senator GRASSLEY. What I have evidence of is that there was questions raised about alleged fraud over a long period of time that should have been taken into consideration by anybody doing business with this company.

Mr. DAVIS OF VIRGINIA. Right, but you don't have any evidence that she negotiated with—

Senator GRASSLEY. At this point everything is alleged.

Mr. DAVIS OF VIRGINIA. Right. I think she can answer these questions.

I would just add that I spent my career before I came here as a Government contracts attorney. In most agencies the IG doesn't do the pre-audit report. This is done by the contracting auditors or the DCAA. This is kind of the exception to the rule where the IG does. But let me just say this. Let's assume that GSA allowed this SUN scheduled contract to lapse. Let's just assume for a second we have reached an impasse, they have been through three contracting officers. If the contract lapsed, what would happen then to agencies that require needs for SUN products to purchase them under individual acquisitions? If they are not on the GSA schedule and an agency needs it, how do they get it?

Senator GRASSLEY. I'm not doing the business of GSA, but it seems to me when there are questions about fraud that come up that if there was a necessity to go 1 more day or 2 more days or 10 more days to keep Government functioning, that you would do it with complete openness, that there is very much questions involved.

Mr. DAVIS OF VIRGINIA. I agree with you. Well, Senator, the only thing I would note here is this had gone on for weeks and months

with extensions that were far more costly to taxpayers than getting this resolved. And also, getting it on the schedule is just a license to hunt. Once you are on a schedule doesn't guarantee you one, correct. That is why it is so difficult to understand, for people to make these statements about it costing millions of dollars.

What happens, as I understand the process, is ordering agencies—in this case, it is a license to hunt. You are on the GSA schedule, but for an agency to then buy your product they have to compete it off the schedule against competing companies, who also have to negotiate their prices, and the price that was negotiated here is just kind of a starting place. They generally go down from there, and that makes it difficult to measure.

But I think you are right that we need to take a look at this, and when agencies negotiate these things it should be subject to congressional oversight. We look forward to, I think, a robust conversation about that today, and I'm sure the Administrator can tell you what her thought process was, as the policymaker. As you know, IGs' roles aren't to make policy, they are to make audit recommendations.

Senator GRASSLEY. You have to remember that in Government contracts it is a little bit different than in a commercial—

Mr. DAVIS OF VIRGINIA. Very different.

Senator GRASSLEY. The people who want to do business with the Federal Government have responsibility to make more information available to the Government.

Mr. DAVIS OF VIRGINIA. Absolutely.

Senator GRASSLEY. And you would expect that any deal that the American Government gets would be, if nothing more than reason because of quantity, we would get a better deal than they give to the commercial side.

Mr. DAVIS OF VIRGINIA. Senator, I am not sure that is always true. For example, in Medicare prescription drug prices I'm not sure that Government would get a better deal than you get off of some of these larger buying agencies. I think you would agree with me on that. But, aside from that, let's look at this. I appreciate your bringing it to our attention.

What I think the evidence will show today is that you had an impasse. It had been through three contracting officers, and if they went off the schedule, the Government was going to get its product somewhere. I think they can defend or not the merits of this, but I think the evidence will show that Ms. Doan didn't negotiate a thing in this case. She simply said we have an impasse, let's try to resolve it, and both sides at one point switched their contracting negotiators.

Thank you.

Senator GRASSLEY. Well, in regard to drugs, the Government might get a better deal, but our senior citizens only have the choice of 25 percent of the drugs that they otherwise have under the plan we have right now.

Mr. DAVIS OF VIRGINIA. Senator, it is the same problem here. If you don't get a deal here, and SUN Microsystems isn't on the GSA schedules, and the Government has a need for those products, you go out into the marketplace and you pay a lot more.

Senator GRASSLEY. Are you done with me?

Chairman WAXMAN. No, Senator, I want to ask you a few questions.

Senator GRASSLEY. Yes, I'm glad to answer your questions.

Chairman WAXMAN. It seems that what GSA is supposed to do is go out and negotiate fair and reasonable prices for other Government agencies to get the services or products that they might use in their Government activities. We are going to go into this issue more in detail, but, from my understanding, GSA had a contractor, SUN Microsystems. SUN Microsystems was giving a lower price to their commercial customers and then would turn around and charge the Government more for the same services, which was contrary to GSA rules.

So when they negotiated the contract and renegotiated the contract they said you can't do that, and they went through a long period of time of extensions. What they needed to do, if they couldn't get their contractor, SUN Microsystems, to give the best price to the Government, they needed to look for somebody else. But we will go into that more in detail.

What I want to ask you is you have been looking at this issue, and you asked Ms. Doan for her comments, and now you have seen what she had to say to you. You have looked at the documents and the e-mails from Ms. Doan. Do you think that this raises any question, after you reviewed all this matter, about the accuracy of the assertions that Ms. Doan made to you in the letter to you?

Senator GRASSLEY. I think it is typical of too many letters I get back from various agencies of Government, including this one, and this is an example of what I am talking about, so I am in agreement with you that we need more information and have not been entirely candid. But there is an institutional disease in bureaucracy under Republicans or Democrats that you have always got to pull teeth to get answers to your questions.

Chairman WAXMAN. That is true enough, and that is why I think Congress has to do its oversight responsibility. Do you think this is a worthwhile activity for an oversight committee?

Senator GRASSLEY. Listen, you wouldn't be doing your constitutional job upholding your oath if you weren't doing what you are doing today and do more of it.

Chairman WAXMAN. And let me ask you this question: who appointed Ms. Doan and who appointed the Inspector General for her agency?

Senator GRASSLEY. Listen, the buck stops at the Oval Office.

Chairman WAXMAN. So both were appointed by the same President?

Senator GRASSLEY. Yes. And I want you—

Chairman WAXMAN. And they are having a disagreement because the Inspector General, in pursuing his job of watching over this agency, has pointed out that he thinks they have given contracts where the taxpayers are paying more money than they should?

Senator GRASSLEY. Yes.

Chairman WAXMAN. Well, we will go into it with them, because we will have them both here, but it just strikes me that when the Republicans say this is partisan and unnecessary and unfair, I am pleased to have you here to say that this is the kind of thing that we ought to be doing, watching out for the taxpayers.

Senator GRASSLEY. I want you to know that Inspector Generals are in the first line. They should be very, very independent. They ought to probably have more independence than the present law gives them.

I have been involved in the firing and resignations of IGs that haven't been doing their job, at least five, and, you know, they help us to do our constitutional job of oversight. Your job, my job would be much more difficult if we didn't have Inspector Generals.

Chairman WAXMAN. Thank you. I certainly agree with you. Thank you very much for being here. We know you have a busy schedule.

I would like to ask the Members, by unanimous consent, even though we were going to have opening statements only by the ranking member and myself, that we allow Mr. Mica to give an opening statement, and then we will proceed to the witnesses. Does that meet everybody's agreement?

[No response.]

Chairman WAXMAN. If so, Mr. Mica, you are going to be treated with special courtesy today and we recognize you at this time for an opening statement.

Mr. MICA. Thank you. Having served with Mr. Waxman, for 15 years, I know he has been around a lot longer in Congress, I appreciate that.

As I did state, I took over the responsibility of ranking member of Transportation and Infrastructure. One of our subcommittees is Economic Development and Public Buildings, of which we have legislative responsibility for GSA. Quite frankly, I didn't know the GSA Administrator from Adam's house cat several months ago. I might say that, just by way of information about myself—and we just heard from Senator Grassley—I started out some of my career with the responsibility of reviewing local government and then some State government operations.

One of the first things I did was send a local Republican official, a county official, helped send him to jail for waste, fraud, and abuse, so I don't play those games. If someone is abusing their office, I will go after them. Mr. Waxman and I and Mr. Davis, we have been on the committee and we have done that over the years, and I think we have that responsibility in the future.

That being said, I have at least two times questioned the Administrator with some of my staff. When I first read some of the accounts in the Washington Post, I guess, that printed this story about a no-bid contract, I, too, became concerned. So I started looking at this and talked to her. I didn't know much about her. I found out she was a professional businesswoman who had great experience. I thought, my god, she is giving some kind of a favor and a bid to a company she dealt with in the private sector. This looks like some sort of a payback.

Then I was absolutely stunned when I found out that she had not received any money from the company, this diversity company, that, in fact, she had paid \$400,000 for contracts and this company, in fact, had a good reputation in looking at diversity issues, and she had conducted some of that in the private sector, so I was sort of stunned by what I found.

Then I found out that GSA, and not knowing much about GSA because I hadn't been responsible for oversight in this area, was actually about to get or had gotten an F grade in diversity. So here's an agency, and she is a minority Republican appointee who comes into an agency and finds an agency that is getting an F grade in its performance relating to racial diversity in the Department.

I think her biggest mistake at this point is trying to think she could do something like she did in the private sector, is move something forward to correct the situation. Having already contracted in the private sector with someone who did a good job on diversity questions, she tries to get a contract to avoid an upcoming again analysis and review of the agency's poor performance.

So I looked at that and I thought there is nothing here. I mean, in fact, she should probably be applauded for trying to come into an agency that has a horrible reputation on diversity and racial questions of employment in the agency, and as a minority appointee trying to do something about it.

So then I thought, well, I heard a little bit about the partisan politics, possible violation of the Hatch Act. I thought, well damn, me and Henry, we have her on this one. Then I find out that actually she didn't even initiate the conference. I thought, well, maybe she did this before the election. Then I went back to see when was she appointed. She was appointed in June of last year. July, August, September, October, November, December, January, February. Here we are in February, so she has been an 8-month appointee. Was she trying to influence the election in the fall? This actually took place January 28th, I think the date was, the end of January, in a conference call not initiated by her. So strike out No. 2.

Then we get to the SUN contract. Ohio, we have her this time because she was involved in knowing all about the SUN contract.

Here's the dates on the SUN contract. Negotiation with SUN started, the first and second contract extensions were executed by Robert Overly over a period of 7 months. A second contract extension was granted to expire February 2005. Well, where the hell is Ms. Doan? She didn't come in until June, and then the dates we just got even from Senator Grassley, she had been on the job for 45 days trying to get something done on something that had been pending, I understand, for 5 years.

I have been involved in investigations and reviews on this committee for 15 years, and I am telling you this unfortunately looks like it is a targeted attempt to go after a minority appointee. I find that very offensive in this process.

Chairman WAXMAN. The gentleman's time has expired.

Mr. MICA. Thank you for the time.

Chairman WAXMAN. Thank you very much, Mr. Mica. You can stay for the rest of the hearing if you want to hear the witnesses, but I know you have made up your mind.

We will now proceed to listen to the two witnesses that involve the issues that have been put before us.

I am very pleased to welcome the Honorable Lurita A. Doan. She is the 18th Administrator of the General Services Administration. Prior to becoming GSA Administrator in May 2006, Ms. Doan was

the president of New Technology Management, Inc., a company she founded in 1990.

Ms. Doan, we want to welcome you to our hearing today. I want to tell you that your prepared statement will be in the record in full. We would like to ask, if you would, to try to limit your oral presentation to around 5 minutes, but we will not be strict on that because it is important that we hear from you.

It is the practice of this committee to put all witnesses under oath, and I would like to ask you to stand and please raise your right hand to take the oath.

[Witness sworn.]

Chairman WAXMAN. The record will indicate the witness answered in the affirmative.

We are pleased that you are here, and I am going to now recognize you for your comments.

STATEMENTS OF LURITA A. DOAN, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION; AND BRIAN D. MILLER, INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION

STATEMENT OF LURITA A. DOAN

Ms. DOAN. Mr. Chairman, Ranking Member Davis, and members of the committee, I appreciate the invitation to appear before you today to address the matters raised in the March 6th invitation.

This is my first time testifying as Administrator of the General Services Administration.

Mr. Smith Goes to Washington is one of my favorite movies, but I have to admit that I never thought that I would be living the movie, and yet here I am.

Thank you for the opportunity to resolve a number of issues that have appeared in the media. I welcome this opportunity to set the record straight.

I have submitted a detailed written testimony, but let me highlight the key elements. They are: fiscal discipline, oversight, and results.

First, the cost of imposing fiscal discipline. Within hours of assuming office this past June, I initiated a line-by-line review of the entire GSA budget. We had over \$100 million deficit for fiscal year 2006. We had flunked our annual audit. The revenue from fiscal year 2005 to fiscal year 2006 had plunged by over \$4 billion. Morale was low, and there was talk of mandatory buy-outs.

I had three goals: eliminate sources of wasteful spending, apply oversight equally to all divisions within GSA, achieve results by encouraging GSA employees to innovate, improve GSA performance, and save taxpayer money. These were priorities I had identified in my confirmation hearing.

We identified and eliminated non-performing programs. We hacked unnecessary travel to places like Australia and Kuala Lumpur. GSA divisions cut spending by 9 percent, and we didn't even have to touch employee salaries. It was with great pride that we submitted a budget to OMB with retroactive cuts for fiscal year 2006, fiscal year 2007, and even proposed cuts in fiscal year 2008.

GSA employees knew the sources of wasteful spending, and they were elated to know that under me there were no sacred cows. Today, through the hard work of our GSA team, our morale has improved. GSA was recently ranked as one of the top 10 best places to work in Federal Government. We have a balanced budget. And we got a clean audit.

I am really proud of the transformational changes made to the GSA's schedule process, where we just awarded our first GSA schedule within 30 days of the application. Only 10 months ago the average time was 157 days.

The fast reorganization is successfully underway, and GSA has turned around and created a positive relationship with the Judiciary and the Department of Defense, and these are our two biggest customers.

We did all of this in 10 months. Bold, new leadership was what the President wanted, and that is exactly what he got at GSA.

The early fiscal discipline is now yielding improved performance, but I am going to tell you change is difficult, and not everyone wants to improve. Some cling to the old and refuse to cut spending and will do anything to protect bureaucratic turf, and this is what happened at GSA. I believe the Office of the Inspector General may have been angered by any suggestion that their operations could be improved or that any spending could be cut.

I probably should have predicted what followed: investigations intended to intimidate were launched, but never ended, and the old-fashioned squeeze was on. I refused to yield, and I still believe that my actions were right, but I am going to tell you I am not a perfect person. I make mistakes, and honestly I am probably going to make a few more, but there was no wrongdoing.

In Washington, it seems to me that budgets are fiercely protected, but that sometimes these legitimate policy disputes cross the line and become personal attacks, and I believe that this is what happened to me.

Mr. Chairman, you do not face the Administrator of GSA but the full fury of an absolutely angry Mom when someone from this committee alleges that 3 years ago there was some wrongdoing involving my then-14-year-old daughter who participated in a mandatory, school-wide community service program as an intern to Senator Debbie Stabenow 3 years ago, long before I entered public office. I am sure you know Senator Stabenow, and I am sure you know that she would never do anything that is wrong.

I know that this attack was probably inserted in the invitation by a too-eager staffer who thought that bloodsport involving children was acceptable. To that committee staffer who thought that attacking one of my kids would be fair game, let me tell you directly, shame on you. Shame on you for getting so caught up in the give-and-take of politics that you lost your sense of decency and fair play and let partisan passions overwhelm good judgment. Shame on you for not thinking through the terrible and unintended consequences on good people everywhere interested in public service.

You know, like Jimmy Stewart in *Mr. Smith I stand here*. I am going to be honest. I am facing a gazillion allegations, but the curious thing is that all of these allegations stem from a single source,

and all of them became public as a direct result of my attempts to impose fiscal discipline throughout GSA.

I knew that when I moved to restore fiscal discipline and bring some sunshine to poor managerial practices that I was going to be in for a lot of criticism, but I was surprised by the scandal-mongering involving attacks on children, that I now have hate mail sent to my home, and am vilified in the national media.

The time to focus on the facts has come and the political points that can be scored from trumped-up charges put away. When you examine my testimony—and I hope that you will take the time to read it. I know it is a little lengthy—I hope that you will see that each of these different allegations and attacks on my character are groundless, that I did not interfere, and that I was simply exercising my right as Administrator to know what was going on at the GSA.

But I think that this hearing is important for two other far more important reasons. The first regards wasteful spending. I think that what we say and what we do here today could set the tone for how other Federal agencies look at oversight and accountability and how aggressive they are to be in identifying and eliminating specific causes of wasteful spending.

GSA, as far as I know, was the only Federal agency that submitted a budget that voluntarily called for retroactive cuts to its budget. It took courage to do that, but I fear that if it becomes common practice for agency heads to face a never-ending barrage of personal attacks for doing so, that you can be sure that no such effort, it is never going to be made again.

Second, this hearing could possibly, it seems to me, set the atmosphere for how we approach the issue of oversight. Much of my testimony deals with my determination to extend oversight and accountability equally throughout GSA divisions, including the Office of the Inspector General. Those of us in Government, we have a great opportunity to begin an important dialog that has, at its core, two questions: first, is oversight something that applies equally to all spending decisions? Or should oversight and accountability only be applied to selected Government organizations or programs?

I thank you for this opportunity. I look forward to answering your questions. I hope that I will give you a chance to get to know me just a little bit better.

Thank you.

[The prepared statement of Ms. Doan follows:]

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STATEMENT OF

**LURITA A. DOAN
ADMINISTRATOR**

U.S. GENERAL SERVICES ADMINISTRATION

BEFORE THE

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM**

U.S. HOUSE OF REPRESENTATIVES

MARCH 28, 2007



**STATEMENT BY LURITA DOAN
ADMINISTRATOR OF GENERAL SERVICES
BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES**

MARCH 28, 2007

Mr. Chairman, Ranking Member Davis, and Members of the Committee, I appreciate the invitation to appear before you today to address the matters raised in your March 6, 2007 invitation. This is my first opportunity to testify since being confirmed as Administrator. I am quite proud of the progress we have made at the General Services Administration (GSA) over the past ten (10) months. We have worked very hard. We now have a balanced budget. The Federal Acquisition Service Reorganization is successfully underway. GSA is one of the top ten Federal agencies to work for, as determined by our employees. And, GSA has turned around and created a positive relationship with the Judiciary and the Department of Defense. With so much good news, in so many areas, I welcome this opportunity to set the record straight.

Based on your March 6th letter, as well as your January 19th letter, I understand that the Committee invitation sets out five areas of concern: First, my involvement in trying to get a low cost and quickly assembled report detailing GSA's work with minority and disadvantaged small businesses; second, the nature of a regularly scheduled team-building "brown bag" lunch with non-career employees on January 26, 2007; third, the successful contract extension negotiations between contract experts in our Federal Acquisition Service and Sun Microsystems; fourth, the request for a briefing about GSA actions affecting the accounting industry; and fifth, my continued insistence that the GSA Office of the Inspector General work with me to ensure that GSA avoids a hostile work environment and sustains a supportive and productive work environment. In this statement, I will address each of these matters.

With regard to the successful extension of the Sun Microsystems' contract, the Committee was provided with copies of documents related to the Federal Acquisition Service's work on this contract. Much of that documentation is proprietary and protected

by the Trade Secrets Act, and a statement was enclosed with the document submission stating this restriction. Other documents involve personnel files and actions that are protected under the Privacy Act. We ask that the Committee continue to treat these documents as confidential and that they not be made a part of the public hearing record.

There are two basic issues that have brought me here today: money – 1) the way federal funding is being spent and 2) the importance of proper oversight over this spending. I hope to provide a full and complete record on both of these issues and to provide the members of this Committee with information that you require in your efforts to provide the proper level of oversight into governmental affairs that taxpayers demand.

Within days of my confirmation as the Administrator of General Services in June 2006, I began efforts to restore fiscal discipline to GSA. Toward that goal, I directed that each GSA division take immediate steps to identify sources of wasteful spending. Non performing programs were cut, moribund projects that had lived beyond their useful life were terminated, and each GSA division carefully reviewed its own operations with the goal of finding sources of wasteful spending. I knew that every division within GSA could find ways to improve, and I was keenly interested in developing a culture of continuous improvement by igniting the entrepreneurial energies throughout the entire organization.

These efforts have been successful. During the past ten months, we have tightened all financial controls, instituted sound financial management, and inspired Federal employees to find better and more innovative ways to improve all of our operations. These efforts over the past ten months have resulted in a restoration of a clean audit, a balanced budget, and the identification of approximately \$1 billion of wasteful or unneeded spending. Equally important, at GSA, new ideas are being implemented, entrepreneurial energies are starting to emerge and GSA was recently judged to be one of the ten best places to work in the Federal Government.

The only division within GSA that has not participated in this process is the Office of the Inspector General (OIG).

The OIG was not comfortable with this first serious review of their internal spending decisions and budget review, a review that is common to all other Federal agencies and divisions. In particular, the OIG seemed to resist the notion that every division within GSA—including their own --- could find ways to improve operations and find sources of wasteful spending. Here it is important to note that my goal was not to intrude on the IG's authority and statutory independence to conduct investigations and oversight, which I fully support, rather, the IG was resistant to any notion that the IG's management of a \$47 million budget could be improved. This was about management of the office, not about oversight or the independence of the office. In fact, it can be said that an efficiently managed IG office would have more resources to devote to their important goals of investigation and oversight and to helping to promote economy, efficiency and effectiveness in the Agency's programs and operations.

When I learned that another GSA division, one which was in failing financial condition, was required to supplement the OIG with an additional \$5 million above and beyond the budget that Congress had approved and appropriated, I quickly moved to address this imbalance. The IG fiercely resisted this effort and many of the visits, information and reports that have been provided to you and other members of Congress over the past several months stem from this disagreement. This disagreement would continue to grow and fester as I attempted to bring a little sunshine to all GSA spending decisions. Moreover, it was my desire to strengthen the internal oversight of **all** spending in an effort to make sure all decisions were cost efficient and duplicative operations were eliminated.

As our process moved forward, I learned that the OIG had made spending decisions that seemed hard to justify, and in my view constituted a complete breakdown in any oversight or review. Regrettably, since there is little or no provision for oversight into

spending decisions made by the OIG, I still do not have an accurate accounting and a complete record. However, what I did discover caused me deep concern.

- Over the past several years, OIG spending on an information technology program to support approximately 300 employees seems excessive in comparison to GSA overall. Worse yet, OIG technology upgrades and improvements do not go through the normal oversight and scrutiny review that govern all other GSA technology programs, such as the Enterprise Architecture review or the System Life Cycle Development Review, as does every other division at GSA.
- The OIG maintains an unchecked and unaccountable human resource process responsible for promotions and the awarding of bonuses for SES employees. I am concerned that there is a perception of self-dealing rather than participating in the transparent process overseen by the GSA Performance Review Board. Free of any oversight or normal fiscal discipline, the OIG senior management authorized cash bonuses that appear both questionable and excessive.

It is my belief that all of the OIG's efforts, numerous reports to the media, and mischaracterization of the facts, stem from this fundamental resistance to any effective oversight or prudent review of spending decisions that seem hard to justify and that potentially cost taxpayers millions of dollars a year.

Let me now address each of the most recent accusations outlined in the Committee's letter of January 19th and in the Committee's March 6th invitation to testify.

Providing Minority and Disadvantaged Small Businesses Opportunities

During my first days at GSA I began championing the cause of minority and small businesses. This is a personal and professional passion for me, and I will continue the effort to help minorities start their own successful businesses in their communities. There are enough obstacles in the world for minorities, working with the Federal

Government should not be one of them. This is why I wanted the study. GSA needed to discover what it was doing well and what it was doing poorly so that it could do more of the one and less of the other.

Within days of my arrival at GSA, I was advised that, despite tremendous opportunities for small and disadvantaged businesses at GSA, the Agency was not meeting its goal of opening doors to minority and small business, and was getting an "F" from the Small Business Administration. My nature, and I believe one of the strengths supporting my appointment by the President to this position, is that I am a woman of action.

In my experience as a successful woman and minority entrepreneur, nobody knows better how to reach out to small minority and disadvantaged businesses than Diversity Best Practices, a company that I, and many Fortune 500 companies, have turned to in this area. Diversity Best Practices is a well known and respected leader in working with large organizations to improve the organization's ability to better employ the talents of small, minority and woman owned companies. We began discussions with this company to see if the industry-leading consulting firm could generate a low cost report quickly.

Ms. Fraser, President of Diversity Best Practices, and I have been business associates and professional friends for the past five years. I believe I met her in 2002 through a group comprised of some of the top women leaders in business. Her expertise was, and is, helping many of the Fortune 500 companies effectively deal with diversity issues. In the private sector, Diversity Best Practices is regarded as one of unparalleled success in this area.

I wanted to move quickly for it was, and is, a particular embarrassment to me, professionally and personally, to lead an organization with a failed grade in the utilization of small, disadvantaged, and woman-owned and service disabled veterans companies.

The Office of Small and Disadvantaged Businesses discussed their issues with Diversity Best Practices over the next few weeks, and arrived at a recommendation to develop a study on what GSA currently was doing to help disadvantaged and minority businesses and what GSA could do to improve its performance in this area.

I approved this proposal, which was in the form of a "Confirmation of Service Order" drafted by Diversity Best Practices, on July 25, 2006 and sent it into GSA's contracting process to develop a government contract.

Three business days later, on or around July 31, 2006, my Chief of Staff was informed that more work would have to be done to issue a contract for this work and that the circulated "Confirmation of Service Order," which I viewed as a draft outline of the work to be performed, would not be able to go forward as drafted. While I was on travel, the GSA contracting staff determined that the sole source award was not possible. So on August 3, 2006, the GSA General Counsel recommended to the Chief of Staff that GSA issue a termination notice as a clear indication to all that the Confirmation Order and the Diversity Best Practices' quote would not go further. The Chief of Staff agreed, and this notice was sent out the next day, on August 4, 2006, by the Contracting Officer assigned to develop the contract. The entire matter of the sole source award was begun and ended within ten calendar days. That was the end of my attempt to quickly sole source a diversity study; I continued to aggressively pursue GSA's assistance in helping small women and minority-owned businesses.

The process, and the document issued by Diversity Best Practices, that I signed in error, was nullified with my complete support. While I made a procedural mistake in my zealous efforts to promote small and disadvantaged businesses, let me be clear, the "Confirmation of Service Order" was terminated and not a penny of taxpayer dollars was spent. Regardless of this, and to be certain there were no misunderstandings, the General Counsel felt a written notice to terminate was necessary. So, no Government purchase orders were issued. No work was performed on the report and no Federal funds were spent.

To suggest there was any wrongdoing is inaccurate and misleading. Certainly, I made a mistake in my eagerness to move quickly to begin to solve an urgent problem of creating more opportunities for minority and small business owners. But there was no intentional wrongdoing.

In the Committee's March 6, 2006 invitation, you note that the Committee staff interviewed the GSA General Counsel, Alan Swendiman. The Committee staff has apparently concluded that Mr. Swendiman stated that he "had serious concerns about (the contract's) propriety and legality". Furthermore you note that "Mr. Swendiman immediately and repeatedly advised (me) to terminate the contract but was unable to convince (me) to do so."

This is completely untrue. Mr. Swendiman never expressed to me "serious concerns", at any time prior to the termination, and his memorandum dated August 3, 2006, to the Chief of Staff supports this.

Further, I completely and emphatically reject the suggestion that I attempted and continued efforts to use my position to direct a contract to a professional friend. I continue to believe that GSA must take a leadership role in promoting opportunities for small, women, minority and service disabled veteran owned businesses and I asked that we start from scratch on a competitively-awarded procurement for a report to help small minority and disadvantaged businesses. It is true that GSA still needs a review of best practices within GSA by an established expert, to find out what we do well and what we don't, so that we can do more of the one and less of the other. It is true that GSA must make a greater effort to fundamentally improve our ability to open doors to the small, minority and women-owned business community. It is not true, however, that I pressured staff behind the scenes.

There appears to be an unarticulated allegation that there was ulterior motivation in my recommendation of Diversity Best Practices. Ms. Fraser has a special passion for championing small minority and woman owned businesses, and it was this shared

passion which first brought us together a few years ago, prior to my arrival at GSA. Most people working on promoting small and minority businesses would call Ms. Fraser a friend and I am proud to do so as well.

I did appear at an event on July 12, 2006, organized by Diversity Best Practices, and held at the Russell Senate Office Building. Once more, I freely admit that I was pleased to attend. This was an occasion to promote the accomplishments of women, and in particular, women owned and minority businesses. This event was attended by a few hundred women, gathered to listen to Senators Clinton, Feinstein, Landrieu, Lincoln, Obama, Stabenow, Stevens, me and other association officials speak in support of the important role that women play in the United States.

The most outrageous claim, in the March 6, 2007 letter, has been a statement by Committee staff bringing my then 14 year old daughter into this hearing by accusing her of improperly obtaining an internship. Over three years ago, as a high school junior, my daughter participated in a mandatory, school sponsored community service program. School counselors worked directly with members of the House and Senate to arrange for entry level, non-paying positions. My innocent daughter was assigned to the staff of Senator Debbie Stabenow and participated for one day per week for six months in this mandatory, school program. To suggest otherwise and to imply impropriety is despicable. I would urge the Committee to leave my children out of this.

It seems rather obvious to me that my effort with Diversity Best Practices and Ms. Fraser is now being used to mischaracterize our relationship. In particular, I flatly deny the suggestion in the Committee's letter that implies that there is an ongoing business relationship between Diversity Best Practices, Ms. Fraser and me. There is none. None.

The sad, but true, irony of the "no bid contract" that never was, is that 10 months into my tenure, GSA still has no diversity report to show. It is my hope that we can put these inquiries behind us and move forward with the effort to enhance GSA's ability to reach

out to small business. GSA did not achieve all of its set aside goals, and recently received another "F" from the Small Business Administration for shortcomings in advancing small, women, minority, HubZone and service disabled veteran owned businesses. No one takes issue that we could be doing more to reach these small businesses, and I can only hope that some day soon we can contract for an objective and informed study on how we can best accomplish that goal.

Sadly, I believe that the real losers here are the small, women and minority business community. Small, minority and woman owned firms already face a daunting task to compete fairly for Federal business, and I think GSA has to do what it can to help.

January 26th Brown-Bag Lunch

The January 26, 2007 Agency-wide brown-bag lunch, involving the Agency's non-career employees, was one of a series of monthly meetings hosted by a member of my staff. These monthly meetings grew out of a recognized need to do some team-building with GSA's non-career employees. Typically, new employees are introduced, birthdays and special recognitions are announced, and a short presentation of interest from someone outside GSA is given. Further, I do not set or review the agendas for these meetings. I attend whenever I am able but these meetings go on in my absence.

We have provided the Committee's staff with a complete list of those persons invited to the January 26th meeting and those that participated. We have also tried to provide copies of all documents from all the participants at the meeting that might relate to that meeting.

I do not recall asking any participants to engage in any partisan activities at this January brown-bag lunch session. Contrary to the assertion in the Committee's letter requesting me to testify, I did not convene this gathering. Nor was I aware of any discussions of excluding Speaker Pelosi from any GSA event. In fact, GSA's regional office in San Francisco has been actively working to include Speaker Pelosi in a public opening of the most environmentally friendly Federal building ever built. We have been diligently

working with Speaker Pelosi's district office, including exploring many possible dates for the event, so that the Speaker can attend.

As the members of this Committee know, it has been GSA's traditional practice to alert or invite the members of a State's Congressional delegation, regardless of party affiliation, to a particular public GSA event or of a major contract award that would be occurring within their state or districts. As a Federal Agency, we are delighted when a member of Congress of Speaker Pelosi's status agrees to participate in one of our building dedications or other public events.

Curiously, and perhaps reflective of the inaccuracy of the Committee's source information, the Committee invitation mentions "an environmentally efficient 'green' courthouse in San Francisco" that does not exist. The building to which the Committee refers houses offices of the Departments of Homeland Security, Defense, Labor, Health and Human Services, and Agriculture.

There is also an allegation that I stated an effort should be made to get Senator Martinez to attend a building opening in Florida because former President Clinton expressed an interest in attending. As I stated earlier, GSA's custom is to invite all members of a State's Congressional delegation. As clearly shown in the documents submitted to the Committee, both Senator Martinez and Senator Nelson were invited, along with many other Congressmen and Federal, state and local dignitaries.

In fact, I would like to invite all the members of the Committee, not only to the dedication of our Federal building in San Francisco, but to all of our public events. Each of these events is an opportunity to show the American people that its Government is capable of creating environmentally clean and extraordinarily efficient, public buildings. And in the case of Federal courthouses, we demonstrate that all three branches of Government can work together to produce tangible benefits to its citizens, sometimes in breathtaking fashion.

I cannot be certain what statements may have been made by all of the persons that participate in these monthly brown-bag teleconferences. Nevertheless, as this Committee knows, the U.S. Office of Special Counsel (OSC) is looking into this matter and GSA is cooperating fully. While I do not know the status or focus of the OSC inquiry, at the time of this written submission, please be assured that we will keep this Committee informed of the outcome.

Successful Contract Extension Negotiations with Sun Microsystems

A third issue raised by the Committee surrounds my negligible role in the successful negotiations for the option to extend a contract between GSA and Sun Microsystems.

First, and foremost, let me say how immensely proud I am of our GSA team on the successful Sun Microsystems contract extension. The acquisition experts who worked incredibly long hours to negotiate a good deal for the American taxpayers should be given the credit they are due. While I had no involvement in the negotiation with Sun Microsystems, I have come to learn, in preparing for this hearing, of the truly remarkable persistence and expertise of our acquisition team.

I understand that the GSA Contracting Officer who completed the contract negotiations did a great job and negotiated a great deal for American taxpayers. Contrary to suggestions that her move to Denver was somehow connected to the Sun Microsystems contract, I am advised that her transfer request was denied after the completion of the Sun negotiations. Then, she later competed and was selected for a position in GSA's office there, for an advertised position vacancy for which she was qualified and for which she was eventually hired. Further, I had absolutely no knowledge regarding the matter of bonuses or other personnel actions for the Contracting Officers involved in the Sun Microsystems negotiations, other than that which I learned in preparing for this hearing.

If you require details on the Sun Microsystems negotiation, Commissioner Jim Williams is available and has been available for you to query. Commissioner Williams has

assured me that the Contracting Officers met their duty in negotiating a good deal for the taxpayers by receiving fair and reasonable pricing for Sun Microsystems products and services, and he, too, is proud of this accomplishment. Any assertion that this agreement between Sun and GSA has resulted in additional costs to taxpayers is wrong. Moreover, it is insulting to the capable people that worked hard to achieve a mutually beneficial agreement.

While the implication is not entirely clear in the Committee invitation, I wanted to clarify my position regarding the actions by the GSA Office of Inspector General relating to the Sun Microsystems contract. My concerns do not involve the IG's involvement in the Sun Microsystems contract extension *per se*. Rather, my concerns relate to the IG's referral of Sun Microsystems to the Justice Department for alleged, defective, pricing practices, without advising me, as the Administrator, of any aspect of this significant matter, as required by the Inspector General Act.

As this Committee knows, the Agency IG and I have been discussing other concerns that I have about the operation and tactics of the OIG. Unfortunately, some of these concerns have been leaked to, or mischaracterized in, the press. As I have stated previously, while I strongly support the role of all Inspectors General to ferret out waste, fraud and abuse in Government programs. I would hope that our IG and I can work more productively in the future. This, unfortunately, has been part of a larger, systemic pattern involving the failure of the GSA IG to keep me and key staff informed of significant Agency activities. In January 2007, I directed that the IG provide a written monthly report to me of significant activities, consistent with the IG Act. I have yet to receive a report.

My Role In Suspension And Debarment Decisions

It has also been implied in the letter dated January 19, 2007, that I improperly intervened in suspension and debarment proceedings involving the nation's leading accounting firms. I did not improperly intervene and any suggestion otherwise is incorrect. Instead, I was concerned that a very important decision had been reached

and was about to be made public without any previous attempt to alert or inform GSA's senior management. As has been explained to the Committee, I did not intervene or interfere in the suspension and debarment process. Rather I sought and received the necessary briefings, in an effort to provide administrative oversight and to understand what actions were being contemplated. Here are the details relating to this event:

On Sunday morning on September 10, 2006, I read an alarming email that my Chief of Staff forwarded to me from the Suspension and Debarment Official concerning a suspension referral by the OIG. The email declared: "GSA has initiated suspension actions against the entire accounting industry."

In fact, what the Suspension and Debarment Official was contemplating was the issuance of "Show Cause Letters" to the accounting firms that were affected (KPMG, Ernst and Young, Price Waterhouse, Booz Allen and Bearing Point). These firms were indeed among some of the largest and most experienced accounting firms in the nation and it was rather disturbing to learn on a Sunday that a decision may have been made to initiate suspension proceedings which could potentially prohibit these firms from competing on Government contracts.

To me, this decision represented a wider set of concerns, specifically: that a decision may have been made without proper notification of top Agency management; that there might have been some adverse impact on the Government's ability to complete its year-end accounting requirements; and that some type of punitive action may have been proposed against a significant part of a major Government industry. However, as the Agency's Suspension and Debarment Official has subsequently informed the Committee, there was never a final decision to suspend these contractors. Instead, and in accordance with established procedures, these firms received a Show Cause Letter asking that they appear before the Agency and explain why they should not be suspended or debarred. I understand that each of the firms appeared or responded in writing, presented their case, and suspension and debarment was avoided. I was not involved in these discussions or decisions which were handled by the Agency

Suspension and Debarment Official. As a result of my initial inquiry, the Suspension and Debarment Official, a career senior executive, briefed the Agency General Counsel and the issue was resolved.

The Committee's letter implies that the OIG has alleged that I interfered inappropriately in the decision cycle. I beg to differ. I believe, quite to the contrary, that my oversight, views and experience were properly engaged. More to the point, I believe I have a statutory responsibility to the President, and the nation, to provide this kind of oversight. While I did seek additional information on this important subject, it is a distortion to equate a desire to be informed promptly, when such important decisions are pending, with **interference** in this process. My efforts to seek a wider understanding and to ask directed questions before a final decision was announced were exactly what the Administrator is required to do. Moreover, the senior career official who handled this case has provided the Committee with a statement confirming that there was no interference.

The IG's Role In Creating A Hostile Work Place At GSA

I provided a full description to you earlier regarding my concerns that the OIG was contributing to a hostile work environment. I stand by those earlier statements. As I stated in my letter to you on February 13th, I did not compare IG employees to terrorist in an August 18th meeting, or any other meeting with the IG. I did address, and will continue to discuss, the challenges we face at GSA and the perception that the OIG fosters a hostile work environment. I will continue to insist that the IG ensure that OIG employees are not intimidating other GSA employees.

As I explained in response to questions from Senator Grassley, in my discussions with the IG, I had expressed our mutual responsibility to ensure that employees within GSA were not "terrorized." That statement, I believe, was taken out of context. Frankly, the entire debate over what form of the word I used misses the point, which is that we both have a responsibility to ensure that our employees are not abused or unfairly intimidated in the process.

I outlined my concerns about a hostile work force and specifically stated that I would not allow people in positions of authority and power to intimidate other GSA employees. Any contrary assertion is untrue.

There are actually two very distinct issues here that I believe need to be fully understood. First, my discussion on the hostile work environment was made in private and was the direct result of a specific incident that had just been reported. It is my firm belief that all Government employees deserve to work in a supportive and nurturing environment. The work that they do is important and, as it becomes harder and harder to attract the next generation into public service, we must strive to retain the employees we currently have.

Second, there is a much broader problem that deals with a hostile environment and undue intimidation that effectively impedes the work of GSA employees throughout the Agency. Let me explain: Federal Contract Officers have been reporting, for some time, that despite their efforts to "Get it Right," they believe they are increasingly working in a "gotcha" environment that is fundamentally eroding the ability of Federal Contracting Officers to operate effectively.

During my early discussions with a large number of GSA stakeholders (employees, Contracting Officers, other Federal agencies, Federal contractors, potential hires, etc.) I learned that there is widespread concern that OIG tactics were becoming so excessive and intrusive that it was inhibiting GSA from performing its mission. Various stakeholders urged me to find a way to restore a better balance between appropriate oversight and the ability of the organization to execute its mission.

Federal Contracting Officers are leaving the Federal service in unsustainable numbers. One of the primary reasons contributing to the early departure of some of the most experienced Federal Contracting Officers is the growing disconnect between the acquisition community and the oversight community.

My extensive discussions with GSA employees, and different stakeholders, have convinced me that, perhaps unknowingly, the OIG has created an acute problem at GSA with many long term negative consequences. Other industry experts agree.

- "Not only are we losing experienced Federal Contracting Officers in large numbers, but we are having considerable difficulty replacing them. I worry that in the current contracting environment it will be difficult to retain young employees in public service. I heard a torrent of complaints about workplace atmosphere and the unproductive workload created by Agency Inspector Generals." Steve Kelman. February 26, 2007 *Federal Computer Week*

The Inspector General Act has, as the third directive of the OIG, the requirement to propose and to be a part of the solution to any problem that they identify. I believe the OIG should do more to promote economy and efficiency in the administration of GSA programs. Ideally, even these audit and investigative functions should be crafted so as to help the Agency better perform, and not to create a "gotcha" mentality.

I am especially concerned that the OIG has created another profound problem because of an inability to properly safeguard confidential information, and about the impact the OIG's actions is now having on GSA's ability to properly administer and host the various hot lines for reporting waste, fraud and abuse. Hence, the confidence that our employees must have in this system has broken down, and it will take a concerted effort to repair. I have asked the IG to work with me to restore this confidence.

Conclusion

Mr. Chairman, Ranking Member Davis and Members of the Committee, I hope my appearance here today will answer any questions you might have and will set the record straight. GSA and this Committee have a long history of cooperation, and productivity. In the spirit of this cooperation, and as requested by the Committee, we have flown, at taxpayers expense, employees from around the country to Washington, DC and made

them freely available to the Committee staff for questioning, and have provided copies of all the documents that were requested. We intend to continue to cooperate to the fullest because we believe a full airing of the issues will help set the record straight.

I believe that our efforts at GSA over the past 10 months have been consistent with the goals of this Committee. This Committee has long championed efforts to expose and prevent wasteful spending and mismanagement in the federal government. As I hope you have now discovered, we have a wonderful and committed team at GSA that has been working very hard to do just that. We found areas of wasteful spending and made cuts. We found areas of mismanagement that had escaped proper oversight and confronted those problems as well. These were not easy actions, nor were they always popular, but they needed to be done, and I am quite proud of that fact that GSA is confronting these issues with skill and courage.

I hope the Committee also appreciates and is more fully aware of the fundamental changes that are now taking place at GSA. We are committed to lasting and fundamental reform of broken and inefficient processes. Moreover, I am quite proud of the transformation that has already taken place at GSA and the speed of our reforms and efforts to improve all areas of operation. We have already made great progress and I am supremely confident that thanks to a team of very talented and dedicated people, GSA is poised for even bigger success in the future.

It will be my firm intent to continue to push: to ask questions, to encourage new thinking and to urge continued fiscal discipline. Great progress has already been made to streamline processes and improve efficiencies of all GSA operations and American taxpayers have reaped the rewards.

Thank you and I look forward to working with this Committee to further enhance the services and products that GSA provides to the taxpayers. I look forward to answering any questions you might have.

Chairman WAXMAN. Thank you, Ms. Doan, for your statement to us.

Without objection, we will now proceed with the chairman and the ranking member controlling 15 minutes of time, and I yield 5 minutes to the gentleman from Iowa. I was only going to yield him 5 minutes, but I will yield 15 minutes to the gentleman from Iowa, Mr. Braley.

Mr. BRALEY. Thank you, Mr. Chairman and Ranking Member Davis.

Good morning.

Ms. DOAN. Good morning.

Mr. BRALEY. Let's begin by reviewing what GSA does and what its mission is. GSA is a Government agency that manages Federal buildings, buys equipment and supplies, and works with other agencies to purchase goods and services. As the chairman noted, the impact of this service is huge, because the GSA helps manage nearly \$500 billion in Federal assets.

According to GSA's Web site, its core mission is to help Federal agencies better serve the public by offering at best value superior workplaces, expert solutions, acquisition services, and management policies.

I assume you would agree with the mission statement that is posted on the Web site?

Ms. DOAN. I do, although I will tell you we are improving it, because we are just finishing our new strategic plan.

Mr. BRALEY. But I assume that you would agree with it as it is currently stated?

Ms. DOAN. Yes.

Mr. BRALEY. And do you also agree that the GSA's core mission does not include engaging in partisan political activity?

Ms. DOAN. I do not think that any Government agency should be engaging in partisan political activity.

Mr. BRALEY. Let's talk about the meeting that you referenced in your opening statement on January 26, 2007. I believe most people rightly assume that the GSA's mission is not political, just making sure that Government buildings are well-built and well-maintained and that Federal employees have the resources and supplies they need to do their job. But on January 26, 2007 you held a meeting at GSA headquarters that raised serious concerns about possible illegal political activity, and I want to ask you about that meeting.

It is our understanding that the meeting occurred at GSA headquarters on Government property. We have been told that you were there as the highest-ranking GSA official, and your chief of staff, John Phelps, was there, as well as dozens of other political appointees working at GSA. Overall, there were nearly 40 Republican political appointees who joined the meeting either in person or through a video conference.

The committee has been told that the reason for this meeting was to hear a presentation from Scott Jennings, Scott Jennings is Karl Rove's deputy at the White House. He is the deputy director of political affairs for President Bush. Is that correct so far?

Ms. DOAN. No it is not.

Mr. BRALEY. And what was not correct about that statement?

Ms. DOAN. John Phelps did not attend that meeting.

Mr. BRALEY. And did not participate by phone?

Ms. DOAN. And did not participate by phone.

Mr. BRALEY. And was not involved in any way in the meeting?

Ms. DOAN. To my knowledge, he was not in any way involved in the meeting.

Mr. BRALEY. The committee has been informed that Mr. Jennings gave a PowerPoint presentation at the meeting. Were you aware of that?

Ms. DOAN. Yes.

Mr. BRALEY. And we have been told that he discussed the 2006 elections during that presentation. Would you characterize his presentation as a purely factual presentation about the results of the 2006 election?

Ms. DOAN. I am a little bit embarrassed to admit this, but I can say that I honestly don't have a recollection of the presentation at all.

Mr. BRALEY. Well, I assume that, given your past experience, you have sat through PowerPoint presentations before?

Ms. DOAN. I have sat through—

Mr. BRALEY. And that during PowerPoint presentations, information is projected in slides, and usually those slides are reviewed by the person making the presentation to reinforce verbally the visual images that are displayed on the slides?

Ms. DOAN. Oftentimes they are.

Mr. BRALEY. Is that your general understanding of what took place on this date?

Ms. DOAN. Yes. I believe that is true. I believe there were PowerPoint slides, and I believe Scott Jennings did speak.

Mr. BRALEY. The committee has obtained a copy of the presentation that Mr. Jennings gave at your office, and I would like to ask you about the topics that he discussed with the staff. At this time I would ask the staff to put up slide 555, which is the first cover slide for the PowerPoint presentation, showing that this was prepared by the White House Political Office headed by Karl Rove.

That is what the cover slide says; is that correct?

Ms. DOAN. Yes. I am looking at the one you gave me.

Mr. BRALEY. And then let's look at slide 578. This is a slide that has at the top 2008 House Targets, Top 20. Do you see that?

Ms. DOAN. I do.

Mr. BRALEY. And there can be no dispute, from the content of this slide, that this slide is depicting Republican targets that identify Democratic seats that are vulnerable in 2006. Isn't that what it says?

Ms. DOAN. I'm reading. It says House Targets, Top 20.

Chairman WAXMAN. It shows 2008.

Mr. BRALEY. Yes. And it shows, District by District, the individuals, what the percentage of that District was in the 2004 election and what percentage that particular Democratic candidate received in the 2006 election; correct?

Ms. DOAN. Yes. Honestly, I have not seen this chart until yesterday. I don't remember. I mean, I really, truly don't remember seeing this chart until yesterday, when I tried to dig it up, and I have to say I don't know what the explanation was that accompanied this. I truly do not remember this part of the presentation.

Mr. BRALEY. Well, you are familiar with what the word target means, right?

Ms. DOAN. I think we could say that I am one right now, yes.

Mr. BRALEY. Yes. And what this means is that the Republicans are trying to target these seats to win them back in 2008. That was what was discussed at the presentation.

Ms. DOAN. I appreciate your interpretation of that.

Chairman WAXMAN. If the gentleman would yield for 1 minute, I just want to verify, did you know that your office supplied this chart to us?

Ms. DOAN. Yes, I did, but I did not review the actual data. There was different groups that were involved in this, since this was not my meeting. I did not convene it. I didn't run the agenda of it. I didn't invite Speaker Jennings, Scott Jennings, to the meeting. I actually didn't have any involvement in it. The group that was involved in that, they prepared that submission for you.

Chairman WAXMAN. You were just there, though?

Ms. DOAN. I attended the meeting. Yes, I was there.

Chairman WAXMAN. OK. Well, I am going to let Mr. Braley continue.

Ms. DOAN. Yes.

Mr. BRALEY. You would agree that a reasonable interpretation of this slide is that it was a political attempt to try to target the top 20 Democratic candidates for defeat in 2008?

Ms. DOAN. No, I would not say that. I would say that this is a slide that says 2008 House Targets, Top 20. I do not want to try to speculate on what was intended by Mr. Jennings on the slide. I really think you have to ask him.

Mr. BRALEY. Well, I think reasonable people interpreting and viewing this material can probably get a pretty good understanding of what Mr. Jennings was doing there.

The next slide I would like to talk about is slide 579. This is a slide that has as a heading, 2008 House GOP Defense. Have you seen this slide before?

Ms. DOAN. I saw it yesterday is when I remember. I'm sure I probably, possibly saw it during the meeting. I don't remember it during our meeting, but honestly, as I said before, I don't really remember the PowerPoint presentation very clearly during that meeting.

Mr. BRALEY. And this slide lists a number of vulnerable Republican House seats that are being targeted for protection in the 2008 congressional elections; isn't that a reasonable conclusion that you can draw from this slide?

Ms. DOAN. Congressman, I will accept your explanation of it.

Mr. BRALEY. And then, if we look at slide 581, this slide has the caption, Battle for the Senate, 2008, and identifies potential pickup opportunities, one category described as Republican offense listing six States, one category described as Republican defense listing eight States, and then listing other noncompetitive States. Do you agree that a reasonable person interpreting what is contained on this slide could conclude that these are targeted Senate seats that the Republican White House is trying to protect or pick up?

Ms. DOAN. Senator, I will accept your interpretation of this slide. I mean, I'm sorry, Congressman. A promotion.

Mr. BRALEY. I am very proud of my title as Congressman, so thank you.

Ms. DOAN. Demotion. I'm sorry. I'm not even going to get into that, guys.

Mr. BRALEY. Can you tell us what, if anything, these slides have to do with the GSA's core purpose of procuring supplies and managing Federal buildings?

Ms. DOAN. This brown bag luncheon I believe has been mischaracterized. This is a meeting that is a team-building meeting that is hosted by our White House liaison, a GSA employee, a non-career employee, and it is hosted every month. I try to attend whenever I can. Occasionally I realize I am late either coming in or leaving early, but I do try to be supportive. We look upon this as team-building. We have had a variety of speakers who speak in whatever their particular area of expertise is. That is what we do in these luncheons. I am trying to build a superior management team at GSA, and any kind of team-building activities that I can do, I—

Mr. BRALEY. With all due respect, Ms. Doan, I don't believe you answered my question, which was—

Ms. DOAN. I'm sorry.

Mr. BRALEY [continuing]. To ask what these slides had to do with the GSA's mission.

Ms. DOAN. I'm sorry.

Mr. BRALEY. I think the answer to my question is clear. This was a partisan political briefing. It occurred on GSA property during work hours and had nothing to do with the GSA mission. You identified team-building as one of the purposes of this meeting. Can you explain to the taxpayers of this country how holding this partisan political briefing helped with team building?

Ms. DOAN. As I had said a little bit earlier, this is a brown bag lunch. It occurs on the lunch hour of our non-career employees. This is not my slide presentation. And I really do ask you, if you need to have an accurate interpretation of what that PowerPoint slide presentation means, please, you know, I would ask you to ask Mr. Jennings. This is his product and he was a guest at our meeting.

Mr. BRALEY. Well, when the presentation begins with the White House Office of Political Affairs on the cover slide and the slide presentation has multiple references to the Republican's wanted, 72 hour get out the vote effort, and its impact on a host of different congressional races, which is what is contained on the other slides that are in this presentation, I think the American taxpayers have a very good reason to wonder whether the only team that was being helped during this briefing was the Republican party team. The Federal Hatch Act says you can't use the workplace to engage in team building for any political party.

You have suggested that this wasn't intended to have a partisan purpose in your presentations, and yet the committee has been informed by multiple sources that after Mr. Jennings finished his presentation, you took the floor, thanked him, and then posed a question to the entire group of participants. And, according to those sources, you stated, "How can we use GSA to help our candidates in the next election?"

Now, reminding you that you are under oath, can you tell the committee whether, in fact, you did make that statement?

Ms. DOAN. I do know that I am under oath, and I will tell you that honestly and absolutely I do not have a recollection of actually saying that.

Mr. BRALEY. The committee has interviewed and deposed witnesses who participated in the briefing, and these were not the type of off-the-record discussions the White House is currently recommending in the Attorney Generals investigation. One of those, Justin Bush, is a Republican political appointee at GSA, and he is quoted as saying that your comment was, "How can we use different GSA projects, building openings, and the like to further aid other Republicans." Do you have any reason to doubt Mr. Bush's memory?

Ms. DOAN. Honestly, I have told you I do not have any recollection of saying that, but I do know, I have been brought to understand that there is actually a difference of opinion among the attendees about what exactly was said.

Mr. BRALEY. Well, another attendee, Jennifer Millikan, is the Deputy Director of Communications at GSA and also a Republican appointee. She stated that you said, "How we could help candidates." Do you remember saying that?

Ms. DOAN. I have no recollection of saying that.

Mr. BRALEY. Do you disagree with your own press person that comment was made by you?

Ms. DOAN. Congressman—

Mr. BRALEY. A comment about helping candidates, our candidates?

Ms. DOAN. Congressman, I don't know how many times I have said this, fourth or fifth time, but I will repeat again that I cannot, I do not recollect this. I honestly and absolutely have no recollection. But I will tell you that the IG has requested an investigation from the Office of the Special Counsel into this matter. That investigation, to my knowledge, is still open. It is currently running. We at GSA, I, in particular, we are cooperating fully, and I would actually ask you to please allow the investigation to run its course.

Mr. BRALEY. Well, part of our function here is to perform congressional oversight, which by its very nature includes investigation. That is the purpose we are here today.

Another attendee, the Chief Acquisition Officer of your agency, Emily Murphy, also a Republican political appointee, said that at the meeting you stated, "How can GSA help our candidates or help position our candidates."

Her assistant, Kristyann Monica, backs up her account and says that you said, "How can we help our candidates in the next election."

We also have a statement from Matthew Sisk, the Special Assistant to the Regional Administrator for Massachusetts, likewise a Republican political appointee, as well as Michael Burkholtz, a Senior Advisor to the Chief Acquisition Officer at GSA. These are not partisan Democrats attacking you, as you have alleged. These are statements from six different Republican appointees who work at GSA, and they all told us the same thing about your making express reference to political comments during this meeting.

Do you think all of these people are lying?

Ms. DOAN. I cannot answer for them. I can only answer for myself, and I will tell you that I honestly have no recollection of making that statement.

Mr. BRALEY. Giving you one last chance to clarify the record, I am going to ask: did you ever make the statement, "How can we use GSA to help our candidates in the next election," or words to that effect?

Ms. DOAN. Congressman, I cannot recollect making that statement.

Mr. BRALEY. The reason this is so important to me is because you directed comments to staff of this committee and you said, "Shame on you for getting so caught up in the game of politics that you let partisan politics affect your judgment." Turning that mirror around, Ms. Doan, I think there are people on this committee who wonder whether the same statement could apply to you, in light of what these Republican political appointees have testified you said during this meeting on GSA property with GSA employees in attendance. Can you understand that concern?

Ms. DOAN. I do not believe that there were any 14 year olds at that meeting.

Mr. BRALEY. You don't believe that you could be perceived as having participated in a meeting where partisan political politics was the main subject with GSA employees in attendance on GSA property and asking a question which you cannot recall where you talk about helping our candidates, how that could be perceived as maybe being possibly clouded by partisan political judgment?

Ms. DOAN. I do not believe that this was an inappropriate meeting. I believe that all around Government there are non-career employees who meet to discuss different ways to advance policies and programs of the administration. But that is not the same as asking Federal employees to engage in partisan political activities in the workplace. I simply do not have any recollection of ever saying that.

Chairman WAXMAN. The gentleman's time has expired.

Mr. BRALEY. Thank you.

Chairman WAXMAN. I am now going to yield to Mr. Davis, but one quick question on this whole thing.

It was a brown bag lunch for those who were there, but this was a teleconference, and even people as far away as California were participating in this meeting; isn't that correct?

Ms. DOAN. That is true.

Chairman WAXMAN. Thank you.

And Mr. Davis?

Mr. DAVIS OF VIRGINIA. And the White House called this, right? This is what they do on a regular basis, where they like to get together with their Schedule C's?

Ms. DOAN. Yes, it is.

Mr. DAVIS OF VIRGINIA. How often do these occur at GSA?

Ms. DOAN. Usually they occur monthly.

Mr. DAVIS OF VIRGINIA. OK.

Ms. DOAN. And they are convened and arranged by our White House liaison.

Mr. DAVIS OF VIRGINIA. So the White House liaison, basically, the White House says we want to talk to our Schedule C's. These are employees who serve at the pleasure of the President?

Ms. DOAN. Right. We have a requirement to try to advance the policies of the administration and execute them and make these initiatives successful.

Mr. DAVIS OF VIRGINIA. Now, you didn't see these slides ahead of time, did you?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. You didn't help prepare these slides, did you?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. You had no idea what they were going to say, did you?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. In fact, you weren't even paying attention, it sounds like.

Ms. DOAN. It is embarrassing to admit it, but it is true. If I could just say, it was a very busy week for me. I had received a letter from the committee. We were in the middle of preparing all of the document requests.

Mr. DAVIS OF VIRGINIA. But when the White House does these, they like the agency heads to be there?

Ms. DOAN. I try. I think it is important for my employees to see that I am engaged in all aspects of GSA and I do try, even if I have to leave early or come late.

Mr. DAVIS OF VIRGINIA. Now, we are told by some witnesses, there are some witnesses that say you said something, some that say you didn't, and it was a long time ago, but did anybody at any point say these were inappropriate subjects, or somebody said we should move away from this? Do you remember any of that?

Ms. DOAN. I really do not remember anything about this meeting.

Mr. DAVIS OF VIRGINIA. OK. But you don't deny what people are saying? You are not denying—

Ms. DOAN. No, I'm not denying what they are saying; I'm simply saying there were cookies on the table, I remember coming in late, I remember we had, it seemed like, quite a few people who were actually missing.

Mr. DAVIS OF VIRGINIA. Well, let me just ask you this: when there are building openings and the like, it is the policy, and is it your policy and the GSA policy that incumbent Members of Congress from both parties be invited to those events?

Ms. DOAN. Absolutely. GSA has an incredible record on this. We have Federal buildings, we have courthouses, and we have traditionally and consistently invited all members of State congressional delegations.

Mr. DAVIS OF VIRGINIA. There was no conversation about excluding Democrats or excluding one party from any of these openings, was there?

Ms. DOAN. Absolutely not. In fact, we try to get everyone to come, and if any of you have not been to a building opening—I see, Congressman Higgins, you will have an opportunity certainly at the Buffalo Courthouse in a few years—but if you have an oppor-

tunity to come to one of our building openings, they are incredible things. You can see the truly splendid work that we do at GSA. I think we are really proud of that, so we invite everyone.

I think, if you look at my actions, you will find that I have spent an enormous amount of time in outreach activities and responding to Democrats in the last——

Mr. DAVIS OF VIRGINIA. Ms. Doan, what I gather is this is a presentation that the White House was giving to Schedule C employees. You obviously had a lot of other things on your mind. You didn't call the meeting. You didn't approve the slides. You didn't even know what they would talk about——

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA [continuing]. In a general sense. And you said, "Well, what can we do?" Is that basically the gist of what I understand the majority is saying? You look and they are saying this is somehow illegal violation, they want to run you out of town.

Ms. DOAN. Honestly, I don't even remember that.

Mr. DAVIS OF VIRGINIA. I understand.

Ms. DOAN. I know you are trying——

Mr. DAVIS OF VIRGINIA. I think this goes on every day. It happens in Republican and Democratic administrations. This was during the people's lunch hours?

Ms. DOAN. Yes, it is.

Mr. DAVIS OF VIRGINIA. And generally their lunch hours are free for people to do—you don't regulate what people do during their lunch hours?

Ms. DOAN. Well, we don't even regulate what time your lunch hour is. Usually you can take your lunch hour whenever you want.

Mr. DAVIS OF VIRGINIA. Some Members came during their lunch hour to do this, and the allegation, I think, from the other side is that somehow, because there was a video conference to listen to the White House, that somehow you are to blame. You didn't arrange this? This came at the request of the White House?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. Thank you. Thank you very much.

Chairman WAXMAN. For the record, in California it is not lunch hour, so somebody is videoconferencing this in California. While it is a lunch hour here, it is early morning there.

Mr. DAVIS OF VIRGINIA. They might be having an early lunch, Mr. Waxman.

Ms. DOAN. That is true. In fact, you could take your lunch whenever you choose, so if you wanted to arrange your day differently or if you were on——

Mr. DAVIS OF VIRGINIA. Well, I guess if they really want to pursue this they can go back to the time slips——

Ms. DOAN. Yes.

Mr. DAVIS OF VIRGINIA [continuing]. And they could just see if somebody took an 8 a.m. lunch and a 12 lunch, and maybe they can find some act of genocide there that they can hang some Schedule C on, as well.

Let me go ahead to SUN Microsystems, because there have been a lot of allegations on it. I mean, this has happened. I have been in this town a long time. I worked in the Nixon White House. You know, this is a political town, and these are political appointees,

and there is no allegation here that there were any actions taken by GSA to retaliate against anybody. We just finished one election there weren't even candidates in these races. So it has to be put in perspective, and it just shows how desperate they get to focus on some meeting that was called by the White House that you attended and some statement. There are variations, if everyone will read the record, in terms of what people recollect you saying and other people saying at that point.

Now, on the SUN Microsystems issue, a lot was made of that from Senator Grassley over here, and he clearly wasn't that familiar with the fact that this is basically a license to hunt, that all SUN Microsystems was trying to do or you were trying to do is keep them on the GSA schedule; is that correct?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. Now, because you were on the GSA schedule with certain prices, that isn't necessarily the price the Government pays, is it?

Ms. DOAN. No. In fact, we ask that any Government agency also attempt to negotiate a lower price, and, of course, then they would compete it probably with maybe two other or three other contractors.

Mr. DAVIS OF VIRGINIA. So that is a ceiling?

Ms. DOAN. Yes, that is the high end, and then you are trying to drive the price down from there.

Mr. DAVIS OF VIRGINIA. And, in fact, often the prices that are negotiated, because once the SUN Microsystems or any company is on the schedule, they have to compete with that ceiling price against other companies to get the business; is that correct?

Ms. DOAN. Yes. This is all about competition.

Mr. DAVIS OF VIRGINIA. And SUN Microsystems is a big company, isn't it?

Ms. DOAN. They are quite large.

Mr. DAVIS OF VIRGINIA. I mean, less than 10 percent of their business is Federal, as I understand it.

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. So in the scheme of things, their numbers don't rise or fall when they are doing business with the Government, unlike a lot of Government contractors; is that fair to say?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. So they could, in theory, just walk away from this. And who wins then? Give us your perspective about why you felt it was important to try to keep SUN Microsystems within the Government. And I just add, we have already heard Senator Grassley testify that on Medicare Part D maybe the Government can negotiate low prices in some areas, but there are other areas where people walk, where pharmaceuticals walk and don't offer their products and don't give the Government the opportunity. That is similar to what could happen in this case. Just walk us through your thought process of why you wanted to bring this to a resolution one way or the other.

Ms. DOAN. SUN is a major IT vendor of really mammoth proportions. They are very important, especially connected to the Internet. Obviously, at least at GSA we use the Internet quite a bit.

GSA is the premier procurement agency for the Federal Government. Our job is to make sure that all different types of technologies, the most innovative, the most leading edge types of products and services are available to our Government community to purchase. And so I feel that, as the Administrator of GSA, and certainly the Commissioner, I believe, of Federal Acquisition Service would say, it is our obligation to make sure that we have the widest array of products and services available to our Federal Government customers. And for that reason, if nothing else, it is really important that we try to work with all of our many vendors to get them on the schedule.

Mr. DAVIS OF VIRGINIA. Let's assume for a minute that we had gone the way of the IG and you just knocked them off the schedule, so you are not getting on the schedule. And you had a Government agency that wanted to buy a SUN Microsystems product, either for continuity of operations or for some other reason, that they had the product that met the Government's particular need and they weren't on the schedule. How would that agency then go about buying the product, and what is the likely cost in that case vis-a-vis buying off the schedule?

Ms. DOAN. Well, I probably would have to ask you to have Jim Williams give you a lot more clarification on that, but I will tell you that I think that the Government agency would probably, just in a general way, be scrambling a little bit, because one of the neat things about the GSA schedule is it is very easy to use. It is very easy to get something immediately.

Mr. DAVIS OF VIRGINIA. But they could go out for a procurement to try to—

Ms. DOAN. They could, but that would take a lot longer probably.

Mr. DAVIS OF VIRGINIA. Would it cost more, probably?

Ms. DOAN. It would certainly cost more, because you would also have to then add into the cost the procurement officials who would have to be involved, the statement of works, the source selection committee.

Mr. DAVIS OF VIRGINIA. So there are good policy reasons for trying to keep them within the Government ambit on the schedules?

Ms. DOAN. Absolutely.

Mr. DAVIS OF VIRGINIA. Now, the IG has made a lot of the fact that you mentioned that they might go to NASA soup. Could you explain to us what NASA soup is—I'm familiar with it, but I'm not sure other Members are—and what this would mean, not only to GSA but to the costs to the American taxpayers?

Ms. DOAN. NASA soup is another Government-wide acquisition contract. It is called a GWAC. This is a contract vehicle where other—

Mr. DAVIS OF VIRGINIA. Similar to a schedule?

Ms. DOAN. It is similar to a schedule. They can provide goods and services; however, usually the fee is quite a bit more than the Government agency would pay on top of the cost of the product.

Mr. DAVIS OF VIRGINIA. So, as a general rule, it is your belief that NASA soup is a more expensive vehicle for these than the—

Ms. DOAN. That has always been my belief, and I think I am pretty well documented in the press for saying that.

Mr. DAVIS OF VIRGINIA. OK. And also there was a fee involved, correct?

Ms. DOAN. Yes, there is.

Mr. DAVIS OF VIRGINIA. If an agency were to buy off NASA soup instead of the GSA schedules, that fee would then go to NASA as opposed to your agency, which was suffering budgetary constraints; is that correct?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. That is an additional reason to try to keep them within the ambit, if you could?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. Now let me ask you this. Did you personally appoint the contracting officers in this case to negotiate this?

Ms. DOAN. No. I did not even know who they were until I read their name in Congressman Waxman's invitation letter.

Mr. DAVIS OF VIRGINIA. Well, what was your role? Was your role here just to try to get a decision, that this had been bubbling for years, we were on extensions, which are generally more expensive than negotiating a new contract, and you just wanted to get a resolution? What were your instructions to Mr. Williams, or whomever you delegated this to?

Ms. DOAN. Well, it was Commissioner Williams, and it was very simple. I think I was actually at a much higher level, Congressman Davis. My job is simply to provide some managerial oversight into the different processes at GSA. What I was interested in was making sure that we were getting the very best value for the American taxpayer. I believe that having SUN Microsystems on the GSA schedule is an important aspect of that. I simply turned to Commissioner Williams and I said, Could you look into this. He then took it from there.

And we have some very, very competent and incredibly qualified contracting personnel.

Mr. DAVIS OF VIRGINIA. But there had been an impasse before. I mean, we had been looking into this for months.

Ms. DOAN. They were at a total impasse, and I think our contracting folks did just an extraordinary job of bringing this to conclusion.

We are very proud of the work that they have done. I am proud of my employees.

Mr. DAVIS OF VIRGINIA. I understand that, and we can get into it later. Obviously, IG has a different perspective on this.

Did you say cut a deal no matter what? Or did you just say let's bring it to a conclusion? That is important for us to know.

Ms. DOAN. I don't remember saying cut a deal no matter what. I do remember saying let us look into this and see what can be done, something along those lines.

Mr. DAVIS OF VIRGINIA. So you were just trying to resolve a problem that had been ongoing for some time?

Ms. DOAN. Yes. I'm more about options. I am more about saying what are our options, what can we do to try to make things better.

Mr. DAVIS OF VIRGINIA. I understand that the Federal Acquisition Service Commissioner, Jim Williams, informed Mr. Miller, the IG, that a contracting officer was being intimidated by an IG em-

ployee and asked him to look into it. Did you followup with the IG about this complaint?

Ms. DOAN. Yes, I did. At one of our monthly meetings—this was about a month after Commissioner Williams had brought that to the Inspector General’s attention—I asked him in the meeting, I said, “So, you know, whatever happened. I was hoping I would hear from you on that.” And then I was told, in what seemed to me a sort of lackadaisical manner, well, you know, I looked into it. Nothing was there, or something along those lines. I don’t want to try to do a direct quote because I don’t remember.

Mr. DAVIS OF VIRGINIA. You don’t have a good relationship with the IG, do you, in your agency?

Ms. DOAN. Not in the agency, but I think that it has been wildly mischaracterized in the press. I think we have a budget dispute that has now spiraled into other areas. I believe that the Inspector General believes strongly in independence and oversight, and I think the challenge there is that I do, too; it is just that I believe all, even oversight, needs to have oversight.

Mr. DAVIS OF VIRGINIA. OK. Let’s go to another issue that has been raised here, and that is on the Diversity Best Practices and the contract with Ms. Fraser. Can you contract your relationship with Ms. Fraser? She was a vendor. I mean, she bought from you; isn’t that correct? Isn’t that how you knew her?

Ms. DOAN. Yes, that is true.

Mr. DAVIS OF VIRGINIA. And for diversity practices did you feel that the services her company offered were some of the best in the field?

Ms. DOAN. The work that Diversity Best Practices does is almost unparalleled in the area of opening doors and providing opportunities for small, minority, women-owned, service disabled veteran businesses. They have done extraordinary work over many, many years.

Mr. DAVIS OF VIRGINIA. And you had used them in your own company, right?

Ms. DOAN. Yes, I did.

Mr. DAVIS OF VIRGINIA. She never hired you for anything, did she?

Ms. DOAN. No, she did not.

Mr. DAVIS OF VIRGINIA. You hired her?

Ms. DOAN. Yes.

Mr. DAVIS OF VIRGINIA. OK. Now, walk me through your thought process in terms of this \$20,000 purchase order that has been alleged. Was this purchase order, did any money change hands?

Ms. DOAN. There was no money that changed hands, no Government contract was issued, no deliverables.

Mr. DAVIS OF VIRGINIA. That may be a technical term whether a contract was issued, but nothing was ever—as I understand it, no money changed hands, no performance. This was nixed pretty early on; is that correct?

Ms. DOAN. Yes.

Mr. DAVIS OF VIRGINIA. What was your thought process in moving forward with this? The IG in his report says you should have known the thresholds. It intimates that you were trying to give a

sweetheart deal to a friend. Why don't you give us an explanation of that, from your perspective and your thought process?

Ms. DOAN. GSA was failing in opening doors to small and minority businesses. We got an F on our score card from the SBA. Sadly, it seems like there is a possibility it might have been well deserved.

I thought that doing a study of what we were doing with our outreach to small, minority, women-owned, and service disabled veteran businesses would reveal what are the things that we are doing well, what are the things that we are doing poorly. And the idea there is that, once you understand this from an objective source, then you can make a decision to try to do more of one and less of the other.

As I said in my statement, this is both a personal and a professional embarrassment to me.

Mr. DAVIS OF VIRGINIA. My time is running out.

Ms. DOAN. I'm sorry.

Mr. DAVIS OF VIRGINIA. The question is: why didn't you compete this out and go to a number of firms? What was your thought process in just giving it to this one company that you knew could do the job?

Ms. DOAN. It is because they are the unparalleled expert in the field of diversity studies. I signed what I thought was a draft outline, a service confirmation order. I moved it on. I thought I was putting it through the processes. I thought it was going to be turned into a purchase order, or whatever. What my job was to do was to try to take action to show that I wanted to turn this around and to move it forward. This is what I was trying to do.

The minute it was brought to my attention that this was done in error, and that was when my chief of staff called me and said it was not going to be able to happen, I said fine. They said they issued a termination. They did. The whole timeframe from start to finish was about 10 days.

Chairman WAXMAN. Thank you, Mr. Davis.

Mr. ISSA. Mr. Chairman, a point of parliamentary inquiry. What time will our official lunch be and when will it begin, 11:30 or 12?

Chairman WAXMAN. Well, we are going to continue on with our hearing.

I will now proceed in regular order with each Member being called in order under the rules for 5 minutes. I want to recognize the gentleman from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Ms. Doan, welcome to our committee. I must tell you that when I heard your opening statement I was very impressed, but as I listened to your answers to Mr. Braley I became very concerned.

One of the things I am concerned about is your memory. You just, in answer to Mr. Davis' question, went back to the Edie Fraser contract. You were able to tell us all kinds of things about that. That happened back in July 2006. Mr. Braley methodically and excellently asked you about an incident that happened 2 months ago, and it is interesting to me that you don't remember certain things during that time. As a matter of fact, you seemed like you didn't remember much of anything, but yet and still you remembered quite well the Edie Fraser contract situation. That concerns me.

I must tell you that, you know, this committee has serious questions about whether you violated the Hatch Act, which prohibits Federal employees from engaging in partisan politics at the office. You received training on the Hatch Act several months before the January 26, 2007, meeting, did you not?

Ms. DOAN. Yes, I did.

Mr. CUMMINGS. And under your understanding of the Hatch Act, are you permitted to ask staff to help a particular candidate or particular party?

Ms. DOAN. No, I am not.

Mr. CUMMINGS. Ms. Doan, we asked the Congressional Research Service, which is independent, about the incident at GSA headquarters on January 26th, and CRS told us that—well, CRS is a nonpartisan research arm of the Congress, so you will be very clear. We asked CRS about both the White House presentation and about your alleged comments afterwards. You said you didn't remember that 2 months ago. I know that.

In response, CRS issued a report which I would like to make a part of the official hearing record.

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

Mr. CUMMINGS. Thank you very much.

[The information referred to follows:]



Memorandum

March 26, 2007

TO: House Committee on Oversight and Government Reform
Attention: Susanne Sachsman

FROM: Jack Maskell
Legislative Attorney
American Law Division

SUBJECT: Meetings, Conferences as "Political Activities" in a Federal Office, and
"Hatch Act" Considerations

This memorandum responds to the Committee's request for an analysis of whether there may have been "Hatch Act" violations in a scenario, presented by the Committee, where a Department head in the executive branch and a White House assistant to the President conduct a meeting within the offices of the federal Department building, attended by a number of schedule C federal employees in that Department, involving an analysis and discussion of the previous mid-term congressional elections, the next (2008) congressional elections, and a particular political party's chances and opportunities for holding certain seats and picking up other "targeted" seats. According to information provided by the Committee, the White House staffer made a PowerPoint presentation on the congressional races, the meeting was video-conferenced to other staffers by a contractor of the Department (paid for by the Department), and the Department head, after noting that their Department is responsible for facilities in every congressional district, inquired of the assembled federal employees as to how they could "help our candidates in the next election." According to information provided by the Committee, a discussion then ensued concerning discouraging or preventing certain elected officials of one political party from attending the opening of buildings or facilities in a district, while encouraging other officials/candidates of the other party to attend.

Summary

1. The Hatch Act Amendments of 1993 apply to all employees in the executive branch of the Federal Government, other than the President and Vice President.
2. Certain federal officials, such as assistants to the President paid from appropriations of the Executive Office of the White House, and officials appointed by the President with the advice and consent of the Senate [PAS officials] who determine national policy, while still covered by the Hatch Act Amendments, are exempt from the specific prohibition on engaging in "political activities" while on duty or in a federal office space.

3. “Schedule C” employees in the executive branch are *not* exempt from the on-duty and on-federal-premises restrictions on political activities in the Hatch Act Amendments, since they are not PAS officials, and may thus not be involved in “political activities” while on duty or in a federal building.

4. Federal officials, such as heads of Federal Departments, are expressly forbidden to use their federal position or influence to affect the results of a federal election, which would, under current interpretations, prohibit them from inviting, requesting, asking or suggesting subordinate federal employees, such as schedule C employees, to attend and participate in meetings or strategy or “informational” sessions in a federal building which involve partisan “political activities.”

5. “Political activities” are defined as activities that are “directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group,” and include even “behind-the-scenes” political strategy sessions intended to promote the success of party candidates in the next election.

6. If a meeting or conference in a federal building were held or designed for the purpose of advancing the partisan political interests of a particular political party or group of candidates, and included discussions of strategies or ideas to best use official influences, activities, or resources of an agency for the benefit of a particular party or candidate, then a superior inviting or even accepting voluntary participation from a subordinate schedule C employee in such a session would appear to violate the specific prohibition of the Hatch Act Amendments on use of official authority and influence.

7. A “PowerPoint” or other presentation which might arguably be merely “informational” in certain contexts, may raise concerns under Hatch Act interpretations when the sponsor and presenter is closely affiliated/identified with a partisan political campaign, invitations are directed only to “political” employees of a department, and the objectives and agenda of the program appear to have partisan slant, such that questions may be raised concerning the propriety of (1) funding such conference with federal appropriated funds, as well as (2) the participation of non-PAS, non-exempt federal employees in such conference held in federal workspace.

Hatch Act Coverage and Restrictions.

The current provisions of the so-called “Hatch Act” derive from the Hatch Act Amendments of 1993,¹ and generally apply to, among other specified employees, “any individual, other than the President and the Vice President, employed or holding office in – (A) an Executive agency”² There is no broad or *general* exemption from the more limited Hatch Act prohibitions in the 1993 Amendments for certain presidential appointees as there had been under the former Hatch Act provisions.³ Rather than a broad or general exemption,

¹ P.L. 103-94, October 6, 1993, see now 5 U.S.C. §§ 7321 - 7326.

² 5 U.S.C. § 7322(1)(A). An “Executive agency” is defined for purposes of title 5 of the United States Code at 5 U.S.C. § 105 to include an “Executive department, a Government corporation, and an independent establishment” in the executive branch.

³ Officials appointed by the President with the advice and consent of the Senate who were in policy (continued...)

the Hatch Act Amendments of 1993 apply generally to all persons in the executive branch, other than the President and Vice President, but allow certain presidential assistants and certain presidential appointees who are confirmed by the Senate [“PAS” employees] and who determine national policy, to be exempt from the restriction on political activities within a federal building, federal office, or while in “on-duty” status.⁴

Most of the provisions of the Hatch Act Amendments thus now apply to all officers in the executive branch of the Federal Government, including PAS employees (that is, those who are appointed by the President and who require Senate confirmation). Although federal personnel in the executive branch may now generally engage in most partisan political activities on their own “free time” or “off-duty” hours,⁵ all federal officers and employees in the executive branch of the Federal Government, other than the President and Vice President, are still prohibited from:

- (1) using their “official authority or influence for the purpose of interfering with or affecting the result of an election;”⁶
- (2) soliciting, accepting or receiving a political campaign contribution from any person, other than fellow members of federal employee organizations;⁷
- (3) running for office in a partisan election;⁸
- (4) soliciting or discouraging participation in any political activities by a person who has an application for a grant, contract or other funds pending before their agencies, or is the subject of an ongoing audit or investigation by their agencies;⁹ and
- (5) (other than for certain PAS employees and White House staff), engaging in partisan political activity on federal property, on official duty time, or while wearing a uniform or insignia identifying them as federal officials or employees.¹⁰

The Office of Personnel Management [OPM], in a discussion preceding the promulgation of its current Hatch Act regulations, notes that those officials, such as PAS employees, who had been covered under the general prohibitions of the old Hatch Act on

³ (...continued)

determining positions, and certain presidential aides, were exempt from the strict “no politics” portion of Section 9(a) of the original Hatch Act; but the former Hatch Act in 1939 applied its *general* coverage to “any person employed in the executive branch of the Federal Government, or any agency of department thereof” Public law No. 252, , 53 Stat. 1147, 1148, August 2, 1939.

⁴ 5 U.S.C. § 7324(b); 5 C.F.R. § 734.502.

⁵ 5 U.S.C. § 7323. Some employees of designated agencies and departments are still restricted in participating in even voluntary, off duty political activities. See 5 U.S.C. § 7323(b) for such list. Such employees generally are in law enforcement or national security agencies, but the more restrictive provisions do not apply to the heads of such agencies.

⁶ 5 U.S.C. § 7323(a)(1).

⁷ 5 U.S.C. §§ 7323(a)(2), note exceptions to solicitation prohibition at § 7323(a)(2)(A)-(C).

⁸ 5 U.S.C. § 7323(a)(3).

⁹ 5 U.S.C. § 7323(a)(4).

¹⁰ 5 U.S.C. § 7324(a). Note specific exemptions to the “on duty” restriction for certain presidential appointees requiring Senate confirmation, and for certain White House personnel, as discussed in more detail, below. 5 U.S.C. § 7324(b).

misuse of authority but were exempt from the strict “no politics” provisions, will now *still* be covered under the general misuse of authority language in the Hatch Act Amendments, and will be *additionally* covered by those new provisions from which they are not expressly exempt, such as the prohibitions on solicitations of political campaign contributions, running for office in a partisan election, and the encouragement of political activity by those with matters pending before one’s agency:

Subpart E applies to certain employees who are paid from the appropriation for the Executive Office of the President. It also applies to an employee who is appointed by the President by and with the advice and consent of the Senate, whose position is located within the United States, and who determines policies to be pursued by the United States in relations with foreign powers or in the nationwide administration of Federal laws. ...

Under the Hatch Act, these employees were covered by the prohibition against misusing their official authority to interfere with or affect the result of an election, but they specifically were excluded from all aspects of the prohibition against active partisan political participation. Under the Amendments, these employees continue to be covered under the prohibition against misuse of official authority. In contrast to the Hatch Act, the Amendments subject these employees to additional prohibitions. Thus, the Amendments prohibit these employees from running for partisan political office. They also prohibit these employees from soliciting, accepting, and receiving political contributions, except under the conditions specified in the Amendments and these interim regulations. However, the Amendments specifically exclude these employees from the prohibition against political participation while on duty, in uniform, in a room or building occupied in the discharge of official duties, or in a Government-owned or leased vehicle.¹¹

Exemption For PAS Employees From “On-Duty” and On-Premises Limitations.

As noted above, certain officials in the executive branch of Government are exempt from the specific prohibitions of 5 U.S.C. § 7324(a) on conducting political activities while in a federal building or while in “on-duty” status. These employees exempt from this specific prohibition are those (1) for whom “duties and responsibilities continue outside normal duty hours and while away from the normal duty post”; and (2) who are paid from an appropriation for the Executive Office of the President; or are appointed by the President, by and with advice and consent of the Senate, whose position is located in the United States and who “determine[] policies to be pursued by the United States in relation with foreign powers or in the nationwide administration of Federal laws.”¹²

This provision and definition would likely exempt from the “on-duty” or “on-federal-premises” political activities restriction both the White House assistant to the President, as well as the Department head in question who is appointed by the President with the advice and consent of the Senate and who appears to be involved in the nation-wide administration of federal laws. However, the “schedule C” employees in the Department who allegedly attended the meeting in question would *not* be so exempt, as their appointments do not require Senate confirmation, and they are thus not “PAS employees.”¹³ Such Schedule C

¹¹ 59 *Federal Register* 48769, September 23, 1994, referring to regulations now at 5 C.F.R. §§ 734.501 - 734.504 (Subpart E of 5 C.F.R. Part 734).

¹² 5 U.S.C. § 7324(b)(2).

¹³ This analysis is not intended to address the question of whether or not the mere attendance by
(continued...)

employees are clearly subject to the full panoply of the restrictions of the Hatch Act Amendments of 1993, in a similar manner as the majority of executive branch employees.¹⁴

It should be noted that while the exempt officials, that is, certain presidential assistants and PAS officials, are permitted to engage in political activities while on-duty or on federal premises, "the costs associated with that political activity" may *not* be "paid for by money derived from the Treasury of the United States."¹⁵ Thus, if the conference and meeting in question were considered a "political activity" (see discussion below on the meaning of the term "political activity"), then the cost, above what would be considered *de minimis* or "incidental," could not be paid from appropriated funds, but must be reimbursed "within a reasonable period of time."¹⁶ Costs which the Government would have incurred in any event, regardless of whether such activities were political or not, such as employee salaries, the value of federal office space, and security, would generally not be included in costs that must be reimbursed;¹⁷ and those costs which are additional but which are considered *de minimis*, such as for "local calls" do not have to be reimbursed.¹⁸

Use of Official Authority or Influence to Affect the Result of an Election.

Under the current provisions of the Hatch Act Amendments, White House personnel paid from the appropriation for the Executive Office of the President, as well as federal

¹³ (...continued)

schedule C employees, at the request or invitation of superiors, at a meeting which turns out to involve a political strategy session is a violation of the Hatch Act Amendments by such schedule C employees, but rather is intended to examine the issue of whether inviting, requesting or suggesting the attendance of subordinates at such a meeting on federal premises may implicate a Hatch Act violation.

¹⁴ See, for example, mention of schedule C political activity in opinion of the United States Office of Special Counsel, Federal Hatch Act Advisory: FHA-06, "Solicitation of Services From Subordinate Employees," October 16, 1996. Note that some federal employees in the executive branch are subject to even greater restrictions on political activities, similar in nature to the "old" Hatch Act "no-politics" restrictions even off-duty, including generally those employees in agencies and bureaus dealing with criminal law enforcement, national security and national defense. 5 U.S.C. § 7323(b)(1)-(3).

¹⁵ 5 U.S.C. § 7324(b)(1).

¹⁶ 5 C.F.R. § 734.503(a).

¹⁷ 5 C.F.R. § 734.503(b)(1)-(4). "Example 1: The Secretary, an employee described by section 7324(b)(2) of title 5 of the United States Code, holds a catered political activity (other than a fundraiser) in her office. Her security detail attends the reception as part of their duty to provide security for her. The Secretary will not be in violation of the Hatch Act Reform Amendments if the costs of her office, her compensation, and her security detail are not reimbursed to the Treasury. A violation of the Hatch Act Amendments occurs if Government funds, including reception or discretionary funds, are used to cater the political activity, unless the Treasury is reimbursed for the cost of the catering within a reasonable time."

¹⁸ U.S. Office of Special Counsel, Federal Hatch Act Advisory: FHA-24, "Reimbursement of *de minimis* Expenses for PAS Employees," February 25, 2000: "[W]e have concluded that there is a *de minimis* rule concerning expenses incurred when a PAS employee makes local telephone calls (or faxes), or uses a copy machine or printer in connection with political activity. A good rule of thumb for applying this principle would be to consider agency policies regarding the use of such resources on an incidental basis for personal reasons."

officials appointed by the President and confirmed by the Senate and who determine national policies may certainly hold and engage in political “informational” meetings, as well as political “strategy” sessions in a federal building, on federal premises, even when “on-duty” status, as long as there is no additional cost (other than *de minimis*, and incidental costs) to the Government. However, it is also apparent from the Hatch Act Amendments, and from previous interpretations of similar restrictions under the “old” Hatch Act, that such “exempt” personnel are prohibited from inviting, requesting, asking or suggesting to other federal employees, who are below those officials in rank and who are *not* exempt from the on-duty or on-premises restriction of the “Hatch Act,” to attend and to participate in meetings, or strategy or “informational” sessions, which are “directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.”¹⁹

A provision of the current Hatch Act, in a fashion similar to the former law, prohibits any officer or employee in the executive branch of the Federal Government from using his or her official position, authority or influence for the purpose of “interfering with or affecting the result of an election.” This provision of law states, in relevant part, specifically as follows:

[A]n employee may not – (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election²⁰

The operative language of the current Hatch Act Amendments restriction, at 5 U.S.C. § 7323(a)(1), is identical to the former Hatch Act restriction on all employees and officers of the executive branch (PAS officials and White house personnel were not exempt under the old “Hatch Act” from this particular restriction), which had also expressly provided that a federal officer may not “use his official authority or influence for the purpose of interfering with or affecting the result of an election.”²¹

The Office of Personnel Management regulations promulgated under the Hatch Act Amendments provide the following with respect to this statutory restriction:

Sec. 734.302 Use of official authority; prohibition.

(a) An employee may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(b) Activities prohibited by paragraph (a) of this section include, but are not limited to:

- (1) Using his or her official title while participating in political activity;
- (2) Using his or her authority to coerce any person to participate in political activity; and
- (3) Soliciting, accepting, or receiving uncompensated individual volunteer services from a subordinate for any political purpose.

The language of this provision of federal law has thus generally been directed at conduct that would entail activities that may be deemed coercive in nature with respect to the federal workforce, including the more subtle coercion by way of suggestion, request or requirement by a superior federal officer of subordinate employees to engage in partisan political

¹⁹ See definition of “political activity” at 5 C.F.R. § 734.101, and restriction at 5 U.S.C. § 7323(a)(1).

²⁰ 5 U.S.C. § 7323(a)(1).

²¹ Under former Hatch Act, see 5 U.S.C. § 7324(a)(1) (1988 ed.).

activities. As noted by the former Civil Service Commission under the identical language of the former "Hatch Act":

In pursuance of this section, Civil Service Rule IV, section 4.1 provides, in part, that "Persons in the executive branch ... shall not use their official authority or influence for the purpose of interfering with an election or affecting the results thereof." This provision applies to all persons in the executive civil service, and is held to prohibit a superior officer from requesting or requiring the rendition of any political service or the performance of political work of any sort by subordinates.²²

The request, invitation or direction by a superior to a subordinate officer or employee in the federal service to engage in partisan "political activity," or to use official resources, official time or supplies in such activity would, therefore, implicate this section of the Hatch Act on use of official authority. However, because of what has been recognized as the inherently coercive nature of the superior-subordinate relationship, the interpretations of this language make it clear that a violation of this provision would occur even if the superior official did *not* request the participation in political activities or the political services from a subordinate employee, but merely *accepted* from a subordinate employee services or activities, even *voluntary* in nature, when such services or activities are of a partisan political character.²³ In a more recent Federal Hatch Act Advisory, the U.S. Office of Special Counsel (the office charged with Hatch Act enforcement) explained that "while a Schedule C employee may write a policy speech to be given at a political event," if the speech contained partisan political advocacy, the Secretary of the employee's agency "would not be able to accept the speech from the schedule C employee."²⁴ Thus, because of the inherent nature of the superior-subordinate official relationship, the acceptance by a superior of partisan political activities or services even voluntarily offered from a subordinate employee is prohibited.²⁵ Clearly, if a meeting or conference were held or designed for the purpose of advancing the partisan political interests of a particular political party or group of partisan candidates, and included discussions of strategies or ideas to best use official influences, activities, or resources of an agency for the benefit of a particular party or candidate, then a superior inviting subordinate schedule C employees to attend and participate in such a session would implicate this specific prohibition of the Hatch Act Amendments.

Definition of the Term "Political Activities."

The Hatch Act restrictions concerning on-duty or on-premises conduct, as well as the prohibition on use of official authority to affect the results of an election, both reference

²² *Political Activity of Federal Officers and Employees*, U.S. Civil Service Commission, Pamphlet 20, at p. 23 (March 1964).

²³ See cases under identical language on use of official authority in the former Hatch Act, for example, *In the Matter of McLeod*, CSC No. S-19-43 (1943), 2 P.A.R. 42; *In the Matter of Fleming*, CSC No. S-2-43 (1943), 2 P.A.R. 1.

²⁴ U.S. Office of Special Counsel, Federal Hatch Act Advisory: FHA-06, "Solicitation of Services From Subordinate Employees," October 16, 1996.

²⁵ If conduct by a supervisor is more *overtly* "coercive," it should be noted that the Hatch Act Amendments have added an explicit criminal provision which prohibits any person from intimidating, threatening or coercing or attempting to coerce any covered federal employee to engage in or refrain from political activity, to support or oppose a candidate, or to make or not to make a political contribution. 18 U.S.C. § 610, P.L. 103-94, Section 4(c), 107 Stat. 1005.

conduct that would involve “political activity,” either while on duty, or when such activities engaged in by subordinate employees are requested or accepted by a superior. For the purposes of these restrictions and the statutory restrictions of the Hatch Act Amendments, the term “political activity” is defined in regulations of the Office of Personnel Management as follows:

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.²⁶

It is clear that the term “political activity” would extend to encompass more than merely overt solicitations of political support or political contributions from others, such as canvassing or phone calls to the public, or public speeches or writings advocating a partisan political position or result, and would reach, as well, so-called “behind-the-scenes” activities of political management, drafting of partisan advocacy positions or papers, and other political strategy or planning sessions when directed at the success of a political party or partisan candidates. The United States Office of Special Counsel [OSC] has noted that it successfully prosecuted “Hatch Act” cases involving a Small Business Administration official who had, among other activity, used his federal office “to draft documents ... in support of a political party and its candidates.”²⁷ Similarly, OSC has explained that federal buildings may generally not be used by candidates for partisan “political activity,” and has explained:

Examples of activities prohibited by the preceding restrictions include the following: authorizing the use of a federal building or office as described above for campaign activities, such as town hall meetings, rallies, parades, speeches, fundraisers, press conferences, “photo ops” or meet and greets; attending *or planning* such campaign events while on duty or in a federal building or office; or distributing campaign literature or wearing campaign-related items while on duty or in a federal building or office.²⁸

These more recent examples and explanations of what would constitute “political activity” under the Hatch Act Amendments of 1993 are consonant with the concept of partisan “political activities” under the interpretations of the former “Hatch Act” provisions. Those rulings and interpretations indicate that behind-the-scenes activity and assistance (*e.g.*, preparation of political material, research or analysis intended for the benefit or use of a partisan candidate or political party in a campaign or an election, or assisting in organizing political campaign events), even though not overt electioneering, soliciting or canvassing for a candidate, are nevertheless the type of activity that has traditionally constituted partisan “political activity.”²⁹

²⁶ 5 C.F.R. § 734.101. Definitions.

²⁷ U.S. Office of Special Counsel, Successful Case Summaries, Hatch Act Case summaries, 2006, at www.osc.gov/Successfulcase.htm.

²⁸ U.S. Office of Special Counsel, Federal Hatch Act Advisory: “Candidate Visits to Federal Agencies,” OSC File No. AD-xx-xxxx, August 9, 2004. Emphasis added. In another matter Special Counsel Scott Bloch noted: “Our federal system depends upon the public knowing that partisanship on the job is not permitted. No employee may use his or her federal office as a staging ground for partisan political activity.” U.S. Office of Special Counsel, Press Release, “U.S. Office of Special Counsel seeks Disciplinary Action against Federal Employee for Hatch Act Violation,” 3/21/05.

²⁹ See, for example, “Political Activity and the Federal Employee,” Office of Special Counsel, at 7, which notes that activity is covered even if the employee does not come in contact with the public:

(continued..)

Meeting/Tele-conference in Question

In consideration of the meeting or conference that is the subject of the Committee's inquiry, it is possible to conceive of a type of meeting or conference of this nature which could be merely or purely an "informational" or "educational" activity, where a political or elections expert would explain to and analyze for agency personnel the results and demographics of the preceding mid-term election, and the possible make-up of the next Congress following the 2008 elections, based on various demographics, trends, and predictions. It might be contended that such an "informational" meeting or conference, although discussing partisan political elections, results and trends, might not necessarily be considered "political activity" where nothing inherent in the material presented at the program, nor in the manner of presentation or in the discussion accompanying the presentation, would be intended or designed to assist or to hinder a political party or partisan political candidate.

If, however, such a meeting were conducted, and elections analyzed, with the purpose and intent to promote the success of the Administration's party and its candidates, then that conference or meeting would be considered "political activity" in a federal building. Certainly, if in such a conference or meeting there were indications that the meeting was used to brainstorm ideas, strategies, or possible directions or other actions to "help our candidates in the next election," then participating in such a meeting or conference would appear to involve "political activities" (as defined and interpreted in the Hatch Act), such that a superior inviting subordinate employees to participate would implicate the Hatch Act restriction on using one's official office or influence to affect the results of an election (5 U.S.C. § 7324(a)(1); 5 C.F.R. § 734.302).

It should be noted that gleaning the *intent* of an activity (that is, if the activity "is directed at the success or failure" of partisan candidates or parties) might often be central to the determination of whether any given activity is "political activity" under the Hatch Act. Advisory rulings of the Office of Special Counsel have found that activities concerning elections and campaigns, even while seemingly "nonpartisan" activity, may be considered as "political activity" in the federal workplace because of various factors surrounding the conduct and sponsorship of such activities that might indicate a political intent or a partisan "agenda." For example, even an apparent "nonpartisan" voter registration drive in a federal building may be prohibited as partisan "political activity," merely when the sponsor of such activity is an organization which has in the past endorsed a federal candidate for office,³⁰ that is, when the sponsor "has become identified with the success or failure of candidates in

²⁹ (...continued)

"The law prohibits direct action to assist partisan candidates or political parties in campaigns. Thus, covered employees are not permitted to do clerical work at campaign headquarters, write campaign speeches;" see also "Federal Employees Political Participation," United States Civil Service Commission, GC-46, at 2 (1972) ("work for a partisan candidate ... is prohibited, whether the work involves contact with the public or not"); *In the Matter of Jordan*, CSC No. F-1369-52, 1 P.A.R. 648, (drafting or printing of a political cartoon); *Special Counsel v. West*, 18 M.S.P.R. 519, 521 (1984) ("assisted [friend's] campaign by doing research and running various errands.")

³⁰ United States Office of Special Counsel, advisory opinion 2006, OSC File No. AD-06-xxxx, [available at www.osc.gov/documents/hatchact/federal/fha34014.pdf].

partisan elections.”³¹ In these opinions, the Office of Special Counsel noted that “in determining whether a voter registration drive is partisan, OSC considers all of the circumstances surrounding the drive.” The OSC then noted the factors that are included in such a consideration:

Some of the factors relevant to this inquiry ... include: 1) the political activities of the sponsoring organization; 2) the degree to which that organization has become identified with the success or failure of a partisan political candidate, issue or party (e.g., whether it has endorsed a candidate); 3) the nexus, if any, between the decision to undertake a voter registration drive and the other political objectives of the sponsor; 4) whether particular groups are targeted for registration on the basis of their perceived political preference; and 5) the nature of publicity circulated to targets of the drive immediately prior to or during the drive.³²

Thus, under these Hatch Act interpretations, (1) if the sponsor/presenter of a meeting in a federal building (when the meeting concerns specifically one party’s prospects and strategies for upcoming elections) is “identified with the success or failure of a partisan political candidate ... or party”; (2) when there may be a perceived “nexus” between this activity and “other political objectives of the sponsor,” that is, the election success of particular candidates; and (3) when employees in the agency have been “targeted” for such meeting (where the information presented is to be considered a “close hold” and confidential), that is, where employees have been included and invited “on the basis of their perceived political preference”,³³ may all be factors to consider whether this particular meeting, conference and program is to be considered “political activity” taking place in a federal building. With respect to the alleged partisan nature of the program and the identification of its sponsor/presenter with the success of partisan candidates, it should be noted that according to information received from the Committee the e-mails from the sponsor/presenter of the conference to agency personnel, that is, from the White House political director concerning this program came not from the White House, or from another Government e-mail account, but rather apparently from an e-mail account owned and controlled by the campaign committee of a national political party.³⁴ This might arguably give further indication of the nature, intent and agenda of the intended presentation as “political activity.”

If these types of meetings and teleconferences are considered by their nature to be “political activities,” then certain PAS officials and White House staff may attend, even on federal premises and during “on duty” time. However, the additional costs to the Government of such conferences, over and above typical overhead or *de minimis* expenses,

³¹ U.S. Office of Special Counsel, advisory opinion May 25, 2004, OSC File No. AD-04-xxx, at 1, [available at www.osc.gov/documents/hatchact/federal/fha-32.pdf]; U.S. Office of Special Counsel, Federal Hatch Act Advisory, “Voter Registration Drives in the Workplace,” April 14, 2004, at 2 [available at www.osc.gov/documents/hatchact/federal/fha-31.pdf].

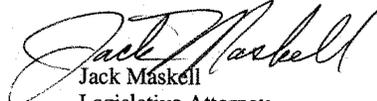
³² U.S. Office of Special Counsel, advisory opinion 2006, OSC File No. AD-06-xxxx; advisory opinion May 25, 2004, OSC File No. AD-04-xxx; Federal Hatch Act Advisory, “Voter Registration Drives in the Workplace,” April 14, 2004, at 2.

³³ Correspondences between the sponsor/presenter of the meeting and agency personnel indicate that the briefing was only for the “political team” in the Department.

³⁴ From information provided by the Committee, the e-mail account in question was “gwb43.com,” which e-mail domain is apparently owned by a national political party.

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must be reimbursed to the Government in a reasonable amount of time. Furthermore, if such meetings and briefings are considered in the nature of "political activities" under the Hatch Act Amendments, then subordinate employees may not be invited to attend, and should not be allowed to participate in such meetings on federal premises and during "on-duty" time.


Jack Maskell
Legislative Attorney

Mr. CUMMINGS. This is what CRS said. First, on the White House slides that Mr. Braley referred to, CRS said that this presentation raises concerns “the sponsor or presenter is closely affiliated, identified with a partisan political campaign, invitations are directed only to political employees of a Department, and the objectives and agenda of the program appear to have a partisan slant.” Doesn’t that describe what Mr. Jennings did to a T, as best you can recall?

Ms. DOAN. Could you do each one of those? Do I have to answer them all at one time?

Mr. CUMMINGS. Well, first of all, you said—let me go back.

Ms. DOAN. OK.

Mr. CUMMINGS. You said something very interesting. You said that these meetings, these brown bag lunches, were for the purpose of team building, and I assume that you want your entire team to be built.

Ms. DOAN. Yes.

Mr. CUMMINGS. But these team-building lunches were only Republican appointees. So help me with that. On the other hand, you then seem to take a position that, oh, you just kind of mosed in late and didn’t remember the very essence of the presentation. So it is sort of hard for me to ask you questions when you don’t have a memory from 2 months ago. I am trying to refresh your recollection.

Ms. DOAN. Thank you, Congressman, and I appreciate your giving me the opportunity. I do want to try to make this clear to you.

First, as far as what you are considering my memory lapse, I have to tell you diversity opportunities for small and women-owned business, this is a passion for me. This is something I have dedicated years to. I love this. It is important. Of course I am going to remember it.

I have to tell you polls and stuff like that, this isn’t my thing. This isn’t what really motivates me or energizes me.

I had an incredible day on the 26th. I had the article in the paper. I had the letter from the committee. I had just gathered together the group of folks who were going to assemble. And you guys got some of these documents. It was a huge submission that we gave to you all. This was our first time we had ever done it as a team, you know, made a submission for Congress. There was a lot going on.

I came in just a little bit late at the beginning of the meeting. I apologized for coming in late. I didn’t need to. But, frankly, I had a lot on my mind that day.

Mr. CUMMINGS. Well, the question is: isn’t team building important to you?

Ms. DOAN. Team building is important to me, but this was not my meeting, and happily I didn’t—this was one meeting where I did not have to take the lead. I could just sit back and coast on that.

Mr. CUMMINGS. Do you believe from what you have seen so far and heard so far that this was a violation of the Hatch Act based upon what you learned from your lessons about the Hatch Act?

Ms. DOAN. Congressman Cummings, I am not trying to be, you know, snappy or something with you, but I will tell you I am a

businesswoman who is now in a Government job for her first time, and I will tell you that I cannot make a judgment on this, but I do know that the Office of Special Counsel is looking into this. I know that they are experts on it. I know they are going to make a decision, and I am going to live with it.

Mr. CUMMINGS. Knowing what you know now, would you do it again?

Ms. DOAN. I think I would have to——

Mr. CUMMINGS. Would you invite a White House——

Ms. DOAN. Absolutely. A White House liaison invites all sorts of people. We get people from personnel——

Mr. CUMMINGS. And have charts that talk about targeting? You would do that, too?

Ms. DOAN. I think that we will probably review charts in the future. There is no doubt about that. I think everything that you do you try to be better every time you do it. Certainly, especially given the concerns of this committee, I do not want this committee to be focused on these issues. We have important things we have to do at GSA.

Mr. CUMMINGS. That is our job. That is our job.

Ms. DOAN. I know. That is why, as I said, we will do what we have to to make sure that we have the confidence of this committee in the future because we do have important things we are trying to do at GSA. And I want you all to be working with me on it to try to make things better.

Chairman WAXMAN. The gentleman's time has expired.

Ms. DOAN. Thank you, Congressman Cummings.

Chairman WAXMAN. Did you need——

Mr. CUMMINGS. Just one question. Did you give \$200,000 to the GOP?

Ms. DOAN. I'm sorry? What?

Mr. CUMMINGS. Did you give \$200,000 in contributions to the GOP?

Ms. DOAN. Yes. I am happy to say that I——

Mr. DAVIS OF VIRGINIA. Mr. Chairman, are we going to have regular order?

Ms. DOAN [continuing]. Am a Republican and a supporter of the party. I am proud of it. I am happy that we have President Bush as our President. I think he is a great man in very troubled times. I am not ashamed of this.

Chairman WAXMAN. Thank you very much.

The Chair would now recognize for 5 minutes Mr. Mica.

Mr. MICA. Let me yield just a moment.

Mr. DAVIS OF VIRGINIA. News flash. The President appointed a Republican to head GSA. I mean, this shouldn't surprise anybody.

And let me just say I assumed that this chart was given all over town. It wasn't given to me, but they probably gave this to all the different agencies, and that may or may not be a good thing and this committee is welcome to look at it, but I think to lay it on Ms. Doan when you have every Federal agency holding meetings with Schedule C, some of them weekly, monthly, she didn't call this meeting. I think we need to put it in perspective. What it tells me is that they are bankrupt. They are going after personal items.

They are bankrupt, so now they are going after a White House political presentation.

Mr. MICA. Thank you.

That is kind of interesting, to follow what the ranking member said, that originally they went after her for this contract. When she came in, didn't you say that they were getting an F grade, or about to get another one?

Ms. DOAN. That is true.

Mr. MICA. This is on diversity. This is some of the diversity of racial employment practices at GSA?

Ms. DOAN. Philippe Mendosa, who is our Office of Small and Disadvantaged Business Utilization Administrator, came to me. It was probably my sixth—I don't want to give exact dates—5th or 6th day on the job, and he told me that GSA was getting a failing score from the SBA and what could we do. We were failing in our opportunities to provide outreach to small minority owned business, you know, service disabled veteran businesses, HUD zone businesses, just—

Mr. MICA. So that is the reason—

Ms. DOAN. You know it. I jumped on it. I was on it.

Mr. MICA. OK. As a Republican minority appointee, this was something important to you, and that is why the \$20,000 contract—how much does GSA let in contracts, \$66 billion?

Ms. DOAN. Between \$56 and \$60.

Mr. MICA. And this is interesting, because I am going to follow the IG, because I don't like his performance. Grassley talked about getting five fired. I may want to work with him on six, because I am not liking the picture that I see in some of the leaks and things that came out of the IG's office to go after you, and they targeted you. They targeted you because you just told us, in fact, that the day that this occurred was the day you got the so-called political action that was taken, and this conference call was taken the same day that you got the inquiry from the committee?

Ms. DOAN. No, no. It wasn't the same day. It was in the same timeframe.

Mr. MICA. In the same timeframe?

Ms. DOAN. We were in the process of—yes, we were preparing the submission.

Mr. MICA. That is the point I am making. And this was a fishing expedition to get you, and what they are doing to you they are going to do to other appointees, so this is a good warning for folks. Someone who came out as a successful minority business person and took on GSA, she has been there 8 months, and they have made this 8 months hell for her. Wouldn't you agree with that?

Ms. DOAN. It has been challenging.

Mr. MICA. So look at the timeframe. Every part of the violations under the SUN contract, all of that took place before you ever got there. You came when? June?

Ms. DOAN. June 2006. June 1st was my 1st day on the job.

Mr. MICA. We have the record of when that took place, and you were trying to—SUN, you said, was a very important component to Government services throughout the Government.

Ms. DOAN. We have 27,000 vendors, and I want to say, in case it is on TV or something, all of my vendors are important and I am grateful for your business.

Mr. MICA. All right. Again, on the video conference, which they are trying to make a big deal out of, that was the Political Office of the White House. Schedule C's are what? Political appointees, serve at the pleasure; is that correct?

Ms. DOAN. That is true.

Mr. MICA. And what are you?

Ms. DOAN. I am a proud political appointee.

Mr. MICA. OK. Approved by—

Ms. DOAN. By the President of the United States. Yes.

Mr. MICA. And the Senate?

Ms. DOAN. And I am Senate confirmed. Yes.

Mr. MICA. Now, again, this is a fishing expedition. I have never seen anything like it, and targeting. So they couldn't find anything on the \$20,000, and it wasn't a contract. It was never a contract. Was it a contract?

Ms. DOAN. There is a lot of debate back and forth as to whether it was.

Mr. MICA. Was a contract let? Was a contract let? Answer me.

Ms. DOAN. No, it was not. And I will tell you—

Mr. MICA. OK. There was no contract let?

Ms. DOAN. Could I say one thing, Congressman? People always say, you know, you did a lot of business with the Government. How come you really couldn't tell the difference? And one of the things I would like to show you, if you don't mind, is this is what I signed. It was a service order. Attached to it was a draft outline of the study, what we were going to do, trying to open doors and opportunities. This is what I am used to seeing as a Government contract. This is a standard form 33 that usually is the Section A, the front page of every Government contract. It requires the signature of a contracting officer. This is what I am used to seeing. This is what I call a Government contract. The service order to me, I am trying to move this study forward.

Mr. MICA. And some of this appears that this is where you initially rubbed the wrong way with the Inspector General's Office. Is this where the edict came down?

Ms. DOAN. No. Actually, I think it started pretty much in my first week or second week in the job where he asked me for—

Mr. MICA. You added to the—

Ms. DOAN. No, no. It was a totally different thing. He asked me for basically additional SES slots, which would have taken all the ones that we had, and at the time we were trying to hold them for the fast reorganization, so I think we got off to a little bit of a bad start there.

Chairman WAXMAN. The gentleman's time has expired.

I recognize Ms. Watson for 5 minutes.

Ms. WATSON. Ms. Doan—

Ms. WATSON. I have one additional question. Can I ask that, or does the minority—

Mr. DAVIS OF VIRGINIA. Do it on our time.

Ms. WATSON. Retrieving my time, Ms. Doan, the political activities of GSA seem to be part of a much broader and more troubling

trend throughout the entire Federal Government under this administration. We have learned, for example, how the White House and the Attorney General politicized the hiring and firing of U.S. Attorneys—that is going on right now, that debate—and our Nation's top law enforcement officers. In fact, we now know that Karl Rove's deputy, Scott Jennings, was involved in both scandals.

This is not the only example. There have been civil rights enforcement at the Justice Department, and they have been undermined by political appointees; drug approvals at the Food and Drug Administration have been based on political calculations, not the best science; intelligence was twisted by White House officials to build a political case for war in Iraq; and not many people realize this, but there are now more political appointees working in this administration than in any time in our Nation's history.

Now, Ms. Doan, I know of your political activities, and I know of your donations, and it is fine to be politically active. It is your right and your obligation as a citizen, and we understand that. But we have to maintain the rule of law. When you become a Government employee and when you become responsible for thousands of Government employees, then you have a heavy new responsibility.

You can't turn that agency into a political tool. When this was held up and you said that you did not remember hardly anything in it, that you came late and you had to leave, you have a heavy week, it is like turning your head away from political activities under your responsibility.

My concern is that what has happened at the GSA may be happening at other agencies throughout this Government, and we surely see signs of that. So, Ms. Doan, do you know whether Mr. Jennings gave this presentation at any other Federal agencies?

Ms. DOAN. I don't know anything about that.

Ms. WATSON. OK. But he did give it at yours?

Ms. DOAN. Yes.

Ms. WATSON. OK. Do you think he prepared this just for the GSA? Or is it more likely that he adapted something he already had?

Ms. DOAN. Congresswoman, I have no idea. I think you really would have to ask Mr. Jennings that question.

Ms. WATSON. OK.

Chairman WAXMAN. Would the gentlelady yield to me?

Ms. WATSON. I will yield, Mr. Chairman.

Chairman WAXMAN. It sounds like it is not just GSA, because the way the Republicans on our committee say it is just routine practice, it is done everywhere, well, I think we ought to find out if that is the case, because it is a violation of the Hatch Act. Thank you.

Ms. WATSON. Yes. I hope that he didn't just target your agency to hold you responsible for politicizing whatever goes on at GSA in your agency, and why did he choose you, so I have some suspicions there.

Ms. DOAN. I cannot possibly speculate.

Ms. WATSON. I know. I am not asking you to. I am stating an opinion for what I heard.

Ms. DOAN. OK. I'm sorry.

Ms. WATSON. And I don't think that this presentation is just tailored to GSA. Instead, it reads like a presentation that might have

been given to other agencies across the Government, and I think that this committee has the authority and the right to have oversight. Why did they choose your agency to make this presentation? This is clearly targeting Democrats to take their seats. Clearly, that is the purpose of this.

Chairman WAXMAN. Would the gentlelady yield?

Ms. WATSON. I will yield, Mr. Chairman.

Chairman WAXMAN. The last few seconds she has.

You said politics is not your passion.

Ms. DOAN. No, no. I did not say that.

Chairman WAXMAN. But you gave \$200,000—

Ms. DOAN. I said polls, polls.

Chairman WAXMAN. I see. But politics is one of your passions. You gave—

Ms. DOAN. Politics should be the passion of every American citizen.

Chairman WAXMAN. Yes.

Ms. DOAN. This is what makes our country run.

Chairman WAXMAN. Great. You gave \$200,000 to the Republican Party and you spoke at the Republican National Convention; isn't that accurate?

Ms. DOAN. If I could just—

Ms. WATSON. I am going to reclaim my time.

Chairman WAXMAN. Regular order. You don't have any.

Ms. WATSON. Sorry. I am going to reclaim my time.

Chairman WAXMAN. You don't have any time.

Ms. WATSON. You cannot tell me that, and would you please let me reclaim my time.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, can we have regular order.

Ms. WATSON. How much time do I have?

Chairman WAXMAN. Without objection, we will extend a courtesy to the gentlelady for 1 additional minute, and we will do the same for other Members.

Ms. WATSON. Thank you very much. I am trying to make a point here. I think, Ms. Doan, your agency has been targeted and you have been used to spread White House politicizing in your Department. I am so pleased that we are doing what we should do, and that is to have these oversight hearings to hear where there are violations of our laws, rules, and regulations.

Thank you so much, Mr. Chairman.

Chairman WAXMAN. Thank you, Ms. Watson.

Mr. MICA. Mr. Chairman, just an inquiry. Parliamentary inquiry.

Chairman WAXMAN. What is your parliamentary inquiry? Yes, please?

Mr. MICA. Parliamentary inquiry is you just granted 1 additional minute to the majority side. Is this a new change in policy, and can I obtain 1 additional minute on the minority side?

Chairman WAXMAN. Well, you had 5 additional minutes that other Members didn't have, and I asked without objection she be given another minute, and I would hope if a Member—

Mr. MICA. Well, if it wouldn't be granted to me could it be granted to another—

Chairman WAXMAN. I will now recognize—

Mr. MICA. If we could have——

Chairman WAXMAN. The regular order is Mr. Issa, who is now recognized.

Mr. MICA. The committee is responsible for investigations and oversight. Are we going to be equal in conducting investigations and oversight or are we going to give the majority——

Chairman WAXMAN. Your point is——

Mr. MICA [continuing]. Additional time and not the minority? I want that question answered.

Chairman WAXMAN. Oh, please.

Mr. MICA. I want the question answered.

Chairman WAXMAN. Oh, please. If someone asks for additional——

Mr. MICA. This is one of the most important committees in the Congress, and——

Chairman WAXMAN. Do you want the question answered or do you want to speak?

Mr. MICA. Investigations and oversight, and are you going to grant special consideration to their side of the aisle and not to this side of the aisle? Now, I chaired for 10 years——

Chairman WAXMAN. Does the gentleman wish an answer, or does he wish to talk?

Mr. MICA. And I chaired two of the subcommittees in this committee, Civil Service and——

Chairman WAXMAN. The Chair will now recognize——

Mr. MICA [continuing]. And also Criminal Justice——

Chairman WAXMAN. The gentleman is using his time.

Mr. MICA. I never, never denied the opportunity for a minority Member or cut them off in questioning, and I expect the same courtesy for my Members. What is the policy? This is a parliamentary inquiry in procedures, the conduct of one of the most important investigative committees of the U.S. Congress that dates back its function to the early 1800's.

Chairman WAXMAN. The gentleman stated a parliamentary inquiry and the Chair is prepared to answer his parliamentary inquiry. Under the rules, Members are given 5 minutes for questioning. By unanimous consent an additional minute may be given. Under the rules, we ask that only opening statements today be given by Mr. Davis and myself. We asked unanimous consent for the gentleman that is complaining to have 5 minutes that other Members didn't get.

If a Member on the Republican side or the Democratic side asks for additional time, it will be up to the Members, and I would hope that Members would be generous enough not to cut people off. So the time now is to Mr. Issa, and I will start the 5-minutes for him so he will have his complete time.

Mr. Issa, you are recognized.

Mr. ISSA. Thank you, Mr. Chairman.

On my 5 minutes, I would like to ask that regular order be strictly adhered to unless there is unanimous consent, and I trust in the future we can eliminate this problem by doing so. I think if we are going to ask the GSA and other organizations to strictly adhere to the rules, regulations, and laws, we should do no less.

Administrator Doan, I am frustrated because I came out of the business world, too, and I came to this committee to fight the bureaucracy that sits around us and behind us throughout all of Government, the people who are there when you arrive and will be there when you are gone.

Now, I just want to concentrate on one simple thing. Your team, your team building, these are people chosen, some confirmed and some just straight appointments, but, like yourself, many are confirmed by the Senate. They are chosen by the elected President of the United States to oversee and to provide policy guidance and control over the largest body of human beings that exist on the face of the Earth working for a government, our U.S. bureaucracy; isn't that right?

Ms. DOAN. That is true.

Mr. ISSA. And in your 8 months I think you probably found what I found in my nearly 7 years now: that this is a bureaucracy that will resist you at every point, isn't it?

Ms. DOAN. You are absolutely right.

Mr. ISSA. So when you talk about team building, including a reminder that you worked at the pleasure of the President, it is not inappropriate for you to understand, as the slides, the one they don't tend to show you, show that this President was right in the middle in his last mid-term of how many seats he lost in the House. That is informational, isn't it?

Ms. DOAN. Yes, it is public domain.

Mr. ISSA. And when you are looking at the presentation by the President and how the President views his working relationship and how he views his—you are receiving a briefing from the man who appointed you and for whom the Senate confirmed you?

Ms. DOAN. That is true.

Mr. ISSA. So, you know, the amazing thing here—and I don't want to take a lot of time talking about the Body up here—but would it shock you to find out that members of perhaps this committee's majority staff, and certainly personal staff members of some of the people on that side and some of the people on this side, they go to either the Republican committee or the Democrat committee and they make fundraising calls on their lunch hour for Members of Congress, these Federal employees? Would that shock you to find out?

Ms. DOAN. Thank you for telling me.

Mr. ISSA. Would you be shocked to find out that, well, chiefs of staff, chiefs of mission, if you will, to our Districts come back here to be briefed on Federal expense, Federal expense. We bring them back here, we put them up in housing, and guess what, they go to evening events either at the Democrat committee or the Republican committee's expense to find out how they can do a better job of keeping their Member in office. Would that surprise you?

Ms. DOAN. I didn't know that before, but thank you.

Mr. ISSA. Well, the American people probably are surprised. And yet, in fact, that is a system that the chairman is well aware, chairwoman, and so on, are all well aware of.

But I want to go back to the team building. You have been building a team to take this incredibly large bureaucracy, one that was receiving F's for how it dealt with disabled vets that had busi-

nesses, veterans that had businesses, African Americans that had businesses, women that had businesses, and, for that matter, small businesses, in general. It had an F for reaching out and providing opportunities for those contracts. That is one of the major things you are working on, isn't it?

Ms. DOAN. That is one of many initiatives, but it is a passion of mine, yes.

Mr. ISSA. And it is something that this Congress and this Oversight Committee has wanted you to do, isn't it?

Ms. DOAN. That is very true, because, you know, it is hard enough as it is if you are a small or minority or woman-owned business or a service disabled veteran. You know, I don't want working with the Federal Government to be yet another barrier or challenge for them.

Mr. ISSA. Well, I tell you, I was recently given a small award by my university, and I was honored with Ronny Harris, the Golden Gloves champion of Mexico City. He is an African American, small businessman in Ohio, and he finds it very frustrating, with a successful business, doing business with the Government. And you know what? It has nothing to do with the fact that he happens to be minority owned. It is just hard to do business with agencies, including the GSA. So I, for one, commend you for concentrating on what is important, which is building a team that will break through the bureaucracy and will meet the objectives that the American people care about, and one of the most important is making your organization responsive to small and emerging businesses and giving them opportunities.

I would like you just to tell us for a minute in the remaining time how you are doing that and how this committee should be helping you do more of that.

Ms. DOAN. At least we are trying as hard as we can to do a much, much better job. The first thing we have done is we have finally been able to start awarding schedules in 30 days. This is the best and first opportunity for small and minority businesses to be a prime contractor, and that helps them with cash-flow.

The second thing we have done is we have just made the largest award of actual work, not just a hunting license, but the get-go contract for IT infrastructure support to a service disabled 8A company. We are really proud of that. It is the largest award of its kind. We have alliance small business. We have a lot of small business opportunities that are going to be out there. Even our satcom, our satellite procurement that is ongoing, very unusual, it is going to have a professional services component that will be for small and minority businesses. We are trying really hard to carve out opportunities because, you know, everybody can talk a good story, but when you are in the small business community you want efforts that have real meat to them. You want actual funding to go to your business. You don't want it to just be an open vehicle that has nothing behind it. This is what we are trying to change.

Chairman WAXMAN. The gentleman's time has expired.

Ms. DOAN. Sorry. I didn't mean to talk so long.

Chairman WAXMAN. We allow full answer to the questions, but the question period is limited.

I want to recognize Mr. Higgins, and as I do I want to inform all the Members that it would be a violation of the law for them to make phone calls from their office soliciting contributions. We have to go elsewhere to do it. We don't use our offices, nor many of us think Government offices should be used.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, let me note, but the rules pertaining to fundraising are different than other items. Members politic in this building all the time. Democratic conferences, Republican, talk about politics within this building and within the Capitol, the conferences. You can't raise money. No one solicited money in this case.

Chairman WAXMAN. All right. I accept your point.

Mr. Higgins.

Mr. HIGGINS. Yes, thank you, Mr. Chairman.

Let me, before I ask Ms. Doan several questions, let me just clarify this issue of lunch hour and whenever this had occurred. It doesn't matter under the Hatch Act whether it was during the lunch or whether she invited employees. Under the Hatch Act, the Administrator is not allowed to be present at a political event on or off Federal property in which these activities happened, if her subordinates were at the event, even if they came voluntarily, because it is considered inherently coercive.

Ms. Doan, the committee has obtained internal e-mails between the White House and GSA regarding political presentation of Scott Jennings that he gave at GSA. I want to ask you about those. They will appear up on screen here.

Ms. DOAN. Is that what this is?

Mr. HIGGINS. Yes. It is in your packet. I'm sorry.

Let me first direct your attention to the e-mail dated January 19, 2007, which is on page 1 of your documents. This e-mail is from Jocelyn Webster, who works for Mr. Jennings at the White House, and she is writing to Tessa Truesdale. I understand that Ms. Truesdale is your confidential assistant?

Ms. DOAN. Yes. She works in the Administrator's office for me.

Mr. HIGGINS. In this e-mail Mr. Jennings' assistant is sending a copy of Mr. Jennings' slides to GSA. This is what Mr. Jennings' assistant says. "Please do not e-mail this out or let people see it. It is a close hold and we are not supposed to be e-mailing it around." My question is, can you tell me why Mr. Jennings' assistant says this is close hold and why you are not supposed to be e-mailing this around?

Ms. DOAN. I can't imagine, since I am not actually on this e-mail. I think probably either Jocelyn or Joycelyn—I'm not sure what her name is—Joycelyn Webster or maybe Tessa Truesdale could answer that. But this isn't my e-mail.

Mr. HIGGINS. I would like you to look closely at the e-mail from Mr. Jennings' assistant.

Ms. DOAN. Is that the same one?

Mr. HIGGINS. Yes.

Ms. DOAN. OK.

Mr. HIGGINS. An image of the e-mail is up on the screen. If you look at the e-mail address, you can see that Mr. Jennings' assistant is sending this from GWB43.com account. The GWB43.com domain is owned by the Republican National Committee. Do you know why

Mr. Jennings' assistant e-mailed this from a Republican National Committee account instead of a White House account?

Ms. DOAN. No, I do not. This is not my e-mail and it was not addressed to me.

Mr. HIGGINS. Do you know of any reason why Mr. Jennings' assistant would try to hide that she was communicating from the White House?

Ms. DOAN. No. I don't. I am not familiar with her and this is not my e-mail or—

Mr. HIGGINS. Let me put up another e-mail on the screen that is document 2-432. This is on page 2 of your packet.

Ms. DOAN. Yes. I have it.

Mr. HIGGINS. This one is from Mr. Jennings, himself. He is using the Republican National Committee e-mail account, too. In this e-mail Mr. Jennings is using his GWB43.com account to communicate with GSA's White House liaison, J.B. Horton. My question is: were you aware that your staff was communicating with the White House officials who used e-mail accounts controlled by the Republican National Committee?

Ms. DOAN. No, I was not.

Mr. HIGGINS. Let me show you another e-mail on page 3 of your packet. This one is from your confidential assistant, Ms. Truesdale. She had apparently been contacted by GSA staff who wanted to do a trial run with a copy of the presentation on GSA's audio-visual equipment. Ms. Truesdale says that she can't share the document for use in a pre-meeting walk-through. Here is what she says, "I just heard back from the presenter, and, as much as the information is highly sensitive, he would prefer not to e-mail it."

Ms. Doan, the e-mails show that Mr. Jennings regarded the briefing as "highly sensitive." His assistant also called them close hold, that other people should not see. Do you know why he would regard the briefing as highly sensitive?

Ms. DOAN. No, I don't. I think you would have to speak to the person whose e-mail and all this attachments that it was.

Mr. HIGGINS. I think the answer, Mr. Chairman, is obvious. The briefing is highly secretive because it contains partisan political analysis and strategy. The White House didn't want to share their target list with Democrats and they didn't want Democrats to know whom they regarded as most vulnerable Republican Members.

It is perfectly appropriate for party leaders to compose these kinds of political hit lists and to hold discussions about political strategy among party officials. It is not appropriate to use Government agencies to advance partisan political agendas, yet that is exactly what happened here.

GSA's top officials were assembled to hear a presentation about targeting Democratic Members in the upcoming elections, and then they discussed how GSA could help Republican candidates. They did this in a Government building during a week day where these officials should have been doing business of the American people.

Mr. Chairman, I would like to make one other observation. Mr. Jennings and other White House officials appear to be using their Republican National Committee e-mail accounts on a routine basis to discuss politically sensitive topics. We know from documents obtained by the Judiciary Committee, for example, that Mr. Jennings

used the identical Republican National Committee account to discuss the U.S. Attorney firings that he was involved with, and we know this from the committee's work that the Abramoff investigation, that the White House used Republican National Committee e-mail accounts to communicate with Mr. Abramoff and his staff.

I think this is a subject the committee should investigate, and it would be a serious abuse if White House officials were using these political e-mail accounts to subvert the requirements of the Presidential Records Act.

Chairman WAXMAN. The gentleman's time has expired. Thank you, Mr. Higgins.

Mr. Burton.

Mr. BURTON. I used to be the chairman of this committee. My picture is here some place.

Ms. DOAN. I know. You look just like it.

Mr. BURTON. I want to tell you, Ms. Doan, I really appreciate you coming here and being very open, and I want to thank you for the \$200,000 for the Republican Party. I wish more people would do that.

Now, I have great respect for my colleagues on the other side of the aisle. I have worked with them on a lot of legislation, and Henry and I, the chairman, he was my ranking Democrat for 6 years. I want to give you a little bit of a history lesson, because this is pretty interesting.

We had over 100, maybe 150 people that we had as witnesses that were dealing with the Clinton administration that either took the fifth amendment or left the country. They wouldn't even talk to us. We had to issue over 1,200 subpoenas to get people to come up from the White House to talk to us. And every time we did that Henry would say, "This is a witch hunt. This is a witch hunt." So I just want to say to my good friend, Henry, you know, there is nothing as self righteous as a reformed lady of the evening.

Now, let me go into a few things that happened during my tenure as chairman. We had two guys that were downloading FBI confidential files into home computers, which is illegal. These are top secret things. Two guys, Marceca and Livingston. You know, when we had them before the committee they could not remember who hired them at the White House. Now, Mr. Aldridge who was the FBI agent who worked down there, said that he was told by the chief of staff that Hillary Clinton hired them. But, of course, when we brought that up in the committee, my god, this is a witch hunt, you can't talk about that. But they were downloading FBI files into home computers so they could get stuff on Republicans to give us a hard time.

We had a guy named Johnny Chung come before the committee who told us he got \$300,000 from the head of the Communist Intelligence Agency in Hong Kong in a restaurant saying that he wanted to give it to the Clinton administration because he said he thought President Clinton was doing a good job and he wanted him re-elected. This was illegal. But, once again, this was just a witch hunt.

We had a guy named John Whong—that was Johnny Chung, the first one. John Whong, who was a member of the Lippo Group, said that the Lippo Group of Indonesia gave the Clinton administration

millions of dollars in illegal campaign funds. But, once again, this was a witch hunt.

We had people come from the White House. I had the chief of staff at the White House, his assistant, the chief counsel at the White House, person after person at the White House come down here and testify about all these things, and they couldn't remember a thing.

We had what we called an epidemic of selective memory loss. It was really a difficult time. And all the while that this was going on my good friend, Mr. Waxman, kept saying in the media and all over the country, "Burton is on a witch hunt. This is terrible. These are horrible things that were going on."

So I just want to tell you, Ms. Doan, you are here. You have not taken the fifth amendment. You have not fled the country. You are a patriotic American. I appreciate what you are doing by testifying here today. And don't let these guys intimidate you. And you haven't and I really appreciate that.

Now, I have high regard for my Democrat colleagues, and I see a lot of new Members over there, but before you start pointing fingers about something that really can't be proven—this is all spurious arguments that are being made. But before you start pointing fingers please do me a favor. Do me a favor. Go back and look at 6 years of investigations that we conducted when I was chairman of this committee and find out how many people in the administration couldn't remember things, how many people wouldn't talk, how many fled the country or took the fifth amendment, and then come back and say to me, "Well, we want to be fair."

I yield the balance of my time to Mr. Davis.

Mr. DAVIS OF VIRGINIA. On the e-mail—

Chairman WAXMAN. Before you yield to Mr. Davis, I just want to point out—make sure this time doesn't count. Stop the clock. You have 1 minute left. I just want to say to Mr. Burton his characterizations today are inaccurate, wrong.

Mr. BURTON. This is my time. Let me just say let's go and get all the newspapers and the reports from the committee and look at them. We will find out how inaccurate they are. Look at the papers and look at the records. You did that for 6 years, and now you are going to have to eat it.

Chairman WAXMAN. If I might just conclude very, very briefly—

Mr. DAVIS OF VIRGINIA. I just want to get—

Chairman WAXMAN. I would like to put in the record a report that we did on Mr. Burton's investigation so people can see what we thought was going on, and we also heard what you had to say that you thought was going on. Without objection, that report will be made part of the record.

Mr. BURTON. As long as mine is in there, I don't object.

Chairman WAXMAN. Mr. Davis has the last minute.

Mr. DAVIS OF VIRGINIA. Thank you.

You know, officials appointed by the President with the advice and the consent of the Senate who are in policy-determining positions and certain Presidential aides have restrictions, I mean are exempt from restrictions, the no politics portion, so I don't think a

lot of this applies to you, but, anyway, the Office of Special Counsel is looking at this.

Ms. DOAN. They are.

Mr. DAVIS OF VIRGINIA. Despite Members' individual opinions on this, I think what will be there will be. What I think is clear here is that this is now turning into an assault, less on you—I think you have acquitted yourself well today—than on the administration, and raises other issues I suspect the committee will be looking at over time.

I just want to ask for the record, the e-mails that came to your aide that were put up on the board a couple of minutes ago, did you ever see those? Do you recall seeing them?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. So a lot of e-mails go to aides and stuff that never gets on your desk; is that correct?

Ms. DOAN. That is very true.

Mr. DAVIS OF VIRGINIA. OK. I wanted to clarify that for the record.

Once again, this is nothing that she did. This is something the White House evidently does on a fairly routine basis, and as far as you go, the initial allegations against you have now turned into just a lot of political mud fighting, unfortunately.

Thank you.

Ms. DOAN. Thank you.

Chairman WAXMAN. The gentleman's time has expired.

We will now go to Ms. McCollum.

Ms. MCCOLLUM. Thank you, Mr. Chair.

Looking at the GSA mission statement again, it talks about respect for fellow associations, professionals—

Ms. DOAN. Excuse me, Congresswoman, could you talk just a tad louder.

Ms. MCCOLLUM. Well, there has been so much yelling going on I thought maybe a softer voice might be appreciated.

Under the GSA general missions, your values are listed: ethics—

Chairman WAXMAN. Ms. McCollum, would you speak right into the mic? I'm even having trouble hearing you.

Ms. MCCOLLUM. I couldn't get much closer to it, Mr. Chair. Maybe I don't have a good mic.

Ethics and integrity in everything we do, respect for fellow associates, teamwork. When you received the briefing on the Hatch Act, did you sign off any information? Did they give you any booklets to get home?

I worked in the private sector for a long time and on our ethics in retail to make sure that my employees were doing things, they were handed a booklet. They signed off on something, and once you signed off on it you became responsible for it. It was your responsibility to read it all. Do you recall if you were given anything?

Ms. DOAN. Congresswoman, I know I am under oath, so I have to tell you I can't remember, but what I can do is we can check and then I can come back to you with this after the hearing with exactly. I do know that I had an ethics letter that I had signed when I became a Presidential appointee, and that was done by the General Counsel's office, you know, and I signed off on that. I know

I did that. I did attend a Hatch Act briefing, but what I am having a little trouble remembering is whether there was actually a document that at the time of the briefing I had to sign off. But I can check and followup with you on that. Would you like me to do that?

Ms. MCCOLLUM. Well, once any one of us signs off on those things we assume a responsibility, a very serious responsibility, especially when we are supervising individuals. Class C employees are not exempt from the Hatch Act. They are not exempt. So I want to go back, very seriously, to a letter on March 13th that you sent to this committee, in which you stated there were no improper political actions that occurred during or as a result of the January 26th teleconference. But your statement doesn't square with the facts, because Class C employees are not exempt from the Hatch Act.

You also today—and I believe you read it, so you might want to find it, because I don't want to misquote you or misrepresent anything you have said—you talked about advancing the policy of the administration. Well, what happened at this lunch is you were advancing the policy of Karl Rove and Mr. Jennings, either with the best of intentions or with no intentions, by what happened.

So let's go back to the slides. These slides are clearly partisan. They are from the point of view of Republican. They are not saying team, Democrats, Independents, and Republicans. They say us versus them, in fact. Slide 2-566 is called Lost Ground with Swing Voters.

Ms. DOAN. Which one? Do you have a page number or something?

Ms. MCCOLLUM. It is 566. It is upside down. It is up there, but right side up. Lost Ground with Swing Voters, Republicans or Democrats. This is the Republicans losing ground, is it not?

Ms. DOAN. Can I check with somebody?

Ms. MCCOLLUM. Well, we will go to another slide.

Ms. DOAN. Honestly, I am happy to give an official opinion, and if you say that it is we can just assume it is and let's go on.

Ms. MCCOLLUM. Slide 2-567, Bigger Losses Among Men. Who had the bigger losses, Republicans or Democrats? It is Republicans.

The next slide, 568, Long-Term Problems Among Latinos and Youth Vote. Who has the long-term problem? Democrats? It is not. The us in all of these slides are referring to the Republicans.

Here is the last one I am going to show, 576. This one shows the Republicans' 72-Hour Get Off the Vote Effort made a difference in several races.

You concede that this slide refers to our strategy, meaning the Republican strategy? They are not talking about the Independent strategy or the Democratic strategy in 2008. So I am asking you, your statement in writing, you regarded this briefing as team building among GSA appointees. What kind of team do you think this presentation was building? An Independent, a Democrat, or a Republican team?

Chairman WAXMAN. The gentlelady's time is expired, but the witness will be permitted to answer.

Ms. DOAN. I think she was just really probably trying to make a statement, so that is fine.

Chairman WAXMAN. It sounded like a question to me. You don't want to respond?

Ms. DOAN. Was it a question?

Chairman WAXMAN. What kind of team were you building?

Ms. MCCOLLUM. What kind of team were you building?

Ms. DOAN. I am building the most incredible team in all of Government with incredible managers. Honestly, you guys, if you get past this and everything let me send you their bios. You have to look at these people. You have never seen anyone like these managers that I brought in. I have brought in people. These are not your regular Government people. These are people from the outside. This is new blood. It is a great team. You have to give them a chance. You really do.

Chairman WAXMAN. OK. The gentlelady's time is expired.

Mr. SHAYS, you are next for questioning.

Mr. SHAYS. May I ask how many Members on the other side are still waiting to ask questions?

Chairman WAXMAN. We have a lot of them over here.

Mr. SHAYS. This is my time and I would like to reserve it.

Chairman WAXMAN. OK. The gentleman will be called on later. Next in order in the committee is Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman.

My questions are really trying to go to the process inside of GSA, and so I am particularly concerned about the questions that have been raised on the SUN Microsystems contract. It appears that for 2 years the career contracting officials inside of GSA were refusing to renew the contract because SUN wasn't giving the kind of pricing that it was giving to its commercial customers, as I understand it. And then the Government, which really means taxpayers, paid tens of millions of dollars more than we should have paid because SUN concealed larger discounts that the company was giving to the private sector. I am curious as to your role in this.

The committee interviewed one of the career contracting officials on the SUN negotiation, a fellow named Mike Butterfield, and he was opposed to signing the contract, as I understand, and he told the committee that he had warned that signing a deal with SUN "would mean getting discounts that would be inferior." But after he made his recommendation to end the negotiations, Jim Williams, who is your Commissioner of the Federal Acquisitions Service, told him that you wanted the SUN contract done anyway. I believe his exact words to Mr. Butterfield were, "Lurita wants this contract awarded."

So my question is: did you tell Mr. Williams that you wanted the SUN contract to be done in spite of all of these reservations that had been brought forward?

Ms. DOAN. I cannot give you an exact, verbatim quote, but what I can tell you is the sense of it, and that is that I spoke with Commissioner Williams and told him that I needed him to use his best judgment, put his best people on the effort, and try to understand what is the sense of it.

I think, if you could just possibly allow me to give you just a little bit of the context of all of this, it only came to my attention because I was sort of abruptly told that SUN Microsystems had been referred for some kind of criminal judgment—that is probably not

the legal word—to the Department of Justice, and I was absolutely astounded, because this was the first I had ever heard of this, and yet I had had, you know, multiple meetings with my Inspector General. It had somehow never come up. So that was sort of the entry point where I became engaged.

But at no time in either event have I ever intervened. I do not believe that I have been intrusive in any way. I do believe that, as the head of the agency, I have not just a right but also an obligation to be informed, to understand what is going on, and to make some actions transparent to everyone within our community. So obviously SUN Microsystems is a technology vendor that falls under our Federal Acquisition Service. Our Commissioner, Jim Williams, we were all, all of senior management, totally, totally in the dark. We did not know any of these challenges were going on connected to the Department of Justice, because we had not been apprised. We had not been kept informed. We had not been briefed. This was just completely mind boggling to me that something of this scope could have happened, with repercussions across the entire Federal Government, and that nobody, not anybody, would have seen fit from the IG's office or, you know, nowhere, they never came to me, they have come to my chief of staff, they never came to the Commissioner, who is directly affected and oftentimes meets with these people every day. They never did that.

Mr. SARBANES. Thank you. Actually, I am not as interested in that particular—

Ms. DOAN. This is not my time? I'm sorry. I thought that was my time to talk.

Mr. SARBANES. I'm not as interested in—

Ms. DOAN. Sorry. This is my first hearing.

Mr. SARBANES [continuing]. That particular issue. What I am going to is the people that were most familiar with the contract who were bringing forth their concerns, it is interesting, because you said the context you wanted to give me was that your message back was exercise your best judgment, but that directly contradicts the message that Mr. Butterfield feels he was receiving, which was, despite your concerns about this contract, we want this to be done. And when Mr. Butterfield held his ground and refused to sign the contract, what happened to him?

Ms. DOAN. I have never met Mr. Butterfield and I didn't realize that he was a contracting officer. I do not know what happened to him. But I will tell you that what you are saying, I truly believe what you are implying, rather, seems untrue. What I know is that Jim Williams is a great Commissioner for the Federal Acquisition Service. He has stellar judgment, and we have great contracting officers. I don't know what Mike Butterfield said. I don't really know what Jim Williams says. But what I do know is that—

Mr. SARBANES. Well, Mr. Butterfield—

Ms. DOAN [continuing]. I have said that—

Mr. SARBANES. What he told the committee was that he was replaced by another contracting officer named Shana Budd, who then signed the contract. And the Inspector General—

Ms. DOAN. No, excuse me, who negotiated a great deal for the American people, and in the process of doing that signed a contract.

Mr. SARBANES. Yes. Well, our information is that it wasn't a great deal for the—

Ms. DOAN. We must beg to differ on this.

Mr. SARBANES. Mr. Chairman, just 30 seconds.

Chairman WAXMAN. Without objection, the gentleman will be given 1 additional minute.

Mr. SARBANES. Thank you very much.

What I am concerned about is the message that gets sent down from high levels to professionals in these agencies, and this is adding sort of the third leg to a three-legged stool I see in terms of an assault on Federal employees.

The first piece that we have seen in your hearings, Mr. Chairman, is cutting resources to people that are trying to do their job. The second piece is contracting services out without the oversight that ought to be with them. And the third piece, which is evidenced here, is that when people try to do their job and they bring their best judgment to the table they are overruled from above in a way that I think is demoralizing for people in that agency.

Thank you.

Chairman WAXMAN. Thank you, Mr. Sarbanes.

Mr. Shays.

Mr. SHAYS. Thank you, Mr. Chairman. I appreciate your recognizing me.

I want to say to you, Ms. Doan, I think you have a remarkable history and you should be very proud of your accomplishments as a minority businesswoman who did something any American would be so grateful to do—create a business that you could be so proud of. And you did it, and many of us haven't. I congratulate you for that.

I also want to thank you from the bottom of my heart for your service to our country, for your willingness to step in and basically make so much less than you make in the private sector, and want to serve a President you believe in. And I particularly appreciate it because now the President isn't so popular, and the in thing is to say you hardly know the man, and good for you.

You know, with hindsight I would have recommended to the White House they not do this chart and I would have recommended they should know to have probably said to you, you know, this shouldn't happen on a Government site. But this wasn't about how you were going to raise money and it wasn't how you were going to undermine Democrats. It helped explain why we lost. And I think we, Republicans, you know, we lost because of corruption issues, we lost because we weren't doing things as well as we should have. You know, a terrible thing for someone to have learned. Frankly, I am happy that would have been conveyed so it would tell you that, you know, if you want to help your country and you want to help someone you believe in, just do a good job. That is the message that I heard.

It is my understanding—and I want to say this—that when you have had events, that you make sure Republicans and Democrats all know about it. And I fully understand if a Democrat administration is in power, you know, they might notify our two Senators, or at least one of our Senators first before they notify me, but they are going to invite me and they are not going to say I have done

a great job. They will say the Senator has. I understand that, and I don't lose sleep about it.

I feel like this committee is straining out gnats and swallowing camels at this particular hearing. We have had a lot of very important hearings. This isn't one of them.

With that, I would like to yield time to my colleague.

Mr. DAVIS OF VIRGINIA. Thank you.

You never met Mr. Butterfield to your recollection; is that correct?

Ms. DOAN. I still have not yet.

Mr. DAVIS OF VIRGINIA. And I'd just refer the gentleman to Ms. Budd's, who did negotiate that, her comments that we put in the record earlier in the day.

SUN Microsystems were referred to the Department of Justice, is my understanding from the IG.

Ms. DOAN. That is what I believe.

Mr. DAVIS OF VIRGINIA. Did you do anything to stop them from being referred? Did you step in the way and say we can't do this?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. You just let the ordinary process take its way and let the—

Ms. DOAN. Apparently, it actually had already been done, but nobody bothered to inform me. It had already happened 2 weeks before.

Mr. DAVIS OF VIRGINIA. And it would be helpful to know that, wouldn't it?

Ms. DOAN. It would have been nice to at least have a courtesy memo dropped to me or something.

Mr. DAVIS OF VIRGINIA. And that is really part of the problem here, isn't it? The IG, who is supposed to report to you, just—

Ms. DOAN. And he doesn't, and it is hard because we sit with our vendors and they feel in many ways that we are two-faced and we are not, you know, we are not understanding of their issues, and it is very hard when you are sitting in a meeting with someone and they know they have been referred to the Department of Justice and you are smiling and doing a meet and greet and you don't bring it up, and it looks like we are duplicitous, when the truth of the matter is we were simply uninformed.

Mr. DAVIS OF VIRGINIA. We don't debar companies for referrals to Department of Justice, do we?

Ms. DOAN. No, we do not.

Mr. DAVIS OF VIRGINIA. It is not in the rules, is it?

Ms. DOAN. No. I think there has to be a ruling and a finding and wrongdoing found.

Mr. DAVIS OF VIRGINIA. Yes, there has to be adjudication.

Ms. DOAN. Nothing has happened in that area yet, to my understanding.

Mr. DAVIS OF VIRGINIA. So if you were to debar them or throw them out for this and there had been no adjudication, you would probably be in violation of the law, wouldn't you?

Ms. DOAN. Yes, but I don't think debarment would be happening even as a result. That is for the Department of Justice to decide what has to happen.

Mr. DAVIS OF VIRGINIA. Exactly.

Ms. DOAN. I think.

Mr. DAVIS OF VIRGINIA. If they were convicted—

Ms. DOAN. Can I just correct it, because I don't know the—

Mr. DAVIS OF VIRGINIA. You are not an attorney.

Ms. DOAN. The General Counsel for GSA is making wild signals to me.

Mr. DAVIS OF VIRGINIA. Not renewing the contract would be de facto debarment.

Ms. DOAN. Yes. right.

Mr. DAVIS OF VIRGINIA. That is my point.

Ms. DOAN. OK. I am sorry.

Mr. DAVIS OF VIRGINIA. But if SUN Microsystems is adjudicated, if Justice sees merit in this and moves forward, they could still be debarred, right?

Ms. DOAN. Yes. It would then come to our suspension and debarment official and then he would take that action.

Mr. DAVIS OF VIRGINIA. And that has not happened, has it?

Ms. DOAN. No, that has not.

Mr. DAVIS OF VIRGINIA. And if that came up, then you would review it on its face and weigh all the other factors?

Ms. DOAN. Well, I wouldn't be. I actually have delegated that authority to the suspension and debarment official at GSA.

Mr. DAVIS OF VIRGINIA. Well, that brings me up, because there were some allegations earlier about there was—and you might say this where the Big Five accounting firms or Four—I don't want to slight anybody—en masse, and you were told about that, and what would that have done to the Government to not have been able to get the accounting from the biggest accounting firms and have them eligible to do audits. That would have crippled.

Ms. DOAN. It would have been devastating, especially since initially, when e-mail came to me, it was 2 weeks before the end of the fiscal year.

Mr. DAVIS OF VIRGINIA. But you didn't do anything to interfere with that, did you?

Ms. DOAN. No. It was a Sunday. I just wanted to be informed. I was hoping people could wait until Monday to do it.

Mr. DAVIS OF VIRGINIA. Can you imagine what would have happened if a debarment official debarred the Big Four accounting firms with Government audits coming on and we had to go to smaller companies that did not have the level of expertise to get this done, and all of the sudden—

Mr. SHAYS. Could I ask for a unanimous consent?

Mr. DAVIS OF VIRGINIA [continuing]. You didn't know about—

Mr. SHAYS. Mr. Chairman, could I ask unanimous consent for my colleague. It is my time.

Chairman WAXMAN. This is your time.

Mr. SHAYS. It is my time. And could I ask for unanimous consent for an additional minute?

Chairman WAXMAN. I will let Mr. Davis complete his sentence, but we have—

Mr. SHAYS. Could I ask for a unanimous consent for an additional minute?

Chairman WAXMAN. The Chair will object, because we do want to get another Member able to ask questions.

Mr. DAVIS OF VIRGINIA. I think my point is simply this. My understanding is that you just made an inquiry at that point and wanted to be informed. You did nothing to interfere with that decision.

Ms. DOAN. I did not.

Mr. DAVIS OF VIRGINIA. But had you not been informed and that, in fact, took place, can you imagine coming up before this committee at that point and saying you were out of the loop.

Ms. DOAN. Yes.

Mr. DAVIS OF VIRGINIA. Thank you.

Chairman WAXMAN. Let me ask you this question. Jim Williams, your Commissioner of Federal Acquisition—

Mr. SHAYS. Point of order, Mr. Speaker. Point of order.

Chairman WAXMAN. The Chair has not taken his time.

Mr. SHAYS. And are you yielding yourself—

Chairman WAXMAN. I am asking a question. That is my answer to your point of order.

Mr. SHAYS. I'm asking if you are yielding time. I am raising a point of order. I would like to know—

Chairman WAXMAN. What is the point of order?

Mr. SHAYS [continuing]. If you are yielding yourself 5 minutes now.

Chairman WAXMAN. I am yielding myself 1 minute.

Mr. MICA. Point of order. Point of order. Question. The parliamentary inquiry about the rules—

Chairman WAXMAN. Look, you have carried on enough today. I would like to ask a question.

Mr. MICA. I have a parliamentary inquiry.

Chairman WAXMAN. Jim Williams, your Commissioner—

Mr. MICA. I have a parliamentary inquiry—

Chairman WAXMAN [continuing]. Of Federal Acquisition Services—

Mr. MICA. I have a parliamentary inquiry.

Chairman WAXMAN [continuing]. Told the committee that he knew of the—

Mr. MICA. Parliamentary inquiry.

Chairman WAXMAN [continuing]. Department of Justice referral in early August.

Mr. MICA. Parliamentary inquiry.

Chairman WAXMAN. Did he not tell you that? And do you know why he didn't tell you if he didn't.

Mr. MICA. Parliamentary inquiry.

Ms. DOAN. I don't know what Jim Williams told you all. What I do know is that I was—I think it was—I don't want to go with the date, but it was, like, 26, 27, somewhere, 29, something like that. That was when I first heard about it. It is not, I believe—I don't know who heard about it first. I think you would have to probably followup with me afterwards. I can do something in writing and figure out exactly that time line.

Chairman WAXMAN. OK. Thank you.

Mr. MICA. Parliamentary inquiry.

Chairman WAXMAN. It is Mr. Welch's time. What is your parliamentary inquiry?

Mr. MICA. Parliamentary inquiry relates to yielding 1 additional minute to the minority Member who requested it. He waited patiently for his time. Others were yielding—

Chairman WAXMAN. I am sorry. That is not a parliamentary inquiry. It is, rather, a complaint, and I think an unfounded one.

Mr. Welch.

Mr. SHAYS. I do have a parliamentary inquiry, Mr. Chairman, and it is a sincere one. I just want to—

Chairman WAXMAN. All of your statements are sincere. What is it?

Mr. SHAYS. Well, I know, but I would like you to listen, and my request is this: would you think that your obligation is to yield yourself 5 minutes, because what I see is you yielding yourself 1 minute in between our questioning, and then we never know when your time is. So wouldn't it be logical that you would—

Chairman WAXMAN. If the gentleman would permit, while I don't think that is a parliamentary inquiry, I gave Mr. Davis additional time. I didn't cut him off when his time finished. It wasn't a great deal of time.

Mr. SHAYS. My parliamentary inquiry—

Chairman WAXMAN. But I, as the Chair, have the prerogative of asking a question that related to this matter, and I said I yielded myself time for that. That is out of my time. But, if you will permit—

Mr. SHAYS. Just one question.

Chairman WAXMAN. Let me ask this of Mr. Welch. Do you want to take your time now, because we are going to have to respond to votes.

Mr. SHAYS. I just want to know how the process works.

Chairman WAXMAN. Well, you know how the process works. What is your question?

Mr. SHAYS. The question is this: when you yield yourself time isn't it appropriate to yield yourself 5 minutes and to use your 5 minutes and not choose a minute here and a minute there and a minute here? That is my question.

Chairman WAXMAN. Well, that is a good question, except the Chair does have prerogatives, and I have seen other chairmen, including yourself, use the prerogatives of the Chair to occasionally ask questions. I am not going to consider that in violation of the rules.

Now, Mr. Welch—

Mr. SHAYS. So you can give yourself time any time you want?

Mr. WELCH. I will proceed if we have enough time for the vote.

Chairman WAXMAN. I think we have 5 minutes.

Mr. WELCH. OK. Thank you.

Ms. Doan, thank you. Just one very simple question about this presentation, and it is this: you know what the content is. It identifies the 20 Democratic targets to be defeated in the next election. Was that a proper topic of discussion and presentation at a lunch at your office?

Ms. DOAN. Congressman, there is an investigation open by the Office of Special Counsel. I am not even going to try to speculate on this. I am just going to let the investigation take its course, let

them make their decision. They are independent. I will live with it.

Mr. WELCH. In your capacity as the head of that organization, was that a proper topic of discussion at a lunch?

Ms. DOAN. Congressman, I am going to let the Office of the Special Counsel's investigation move forward and let them make a judgment as to what they feel is appropriate or not.

Mr. WELCH. I heard you the first and the second time.

Ms. DOAN. OK. Great.

Mr. WELCH. And let me ask you my question the third time. In your capacity as the head of the organization, where you have responsibility about the administration of time within your office, was that a proper topic of discussion?

Ms. DOAN. I am going to allow the Office of the Special Counsel to make a decision on this investigation. Since it is open, and this is exactly what they do, I am going to allow them to make a decision as to whether they thought it was appropriate or not.

Mr. WELCH. Yes, but I am asking you whether you thought it was appropriate.

Ms. DOAN. And, Congressman, I am going to allow the Office of Special Counsel, which has an open investigation, to proceed with the course of their investigation. I am not going to try to murky the waters one way or the other, and I am going to allow them to make their independent judgment, and I will live with it.

Mr. WELCH. Well, I would be glad to live with your answer, if you would give me an answer.

Ms. DOAN. I am happy to leave the investigation and the decisionmaking to the Office of the Special Counsel, Congressman.

Mr. WELCH. If Nancy Pelosi called up and said that she wanted to come over or send somebody over to identify the top 20 Republican targets, maybe some of our friends here, would that be a topic that you would invite her or her representatives to discuss at lunch?

Ms. DOAN. We were very blessed to have Speaker Pelosi in our new San Francisco Federal building, and I'll tell you—

Mr. WELCH. I didn't ask you if she was going to come to a ribbon cutting. Look, this is a very serious question. You have a very serious responsibility.

Ms. DOAN. Yes.

Mr. WELCH. The person who heads an agency has to make certain that there is integrity in how the time of taxpayer money and people working for taxpayers is used, whether they are Schedule C employees or not. Right?

Ms. DOAN. Yes. I have a responsibility to—

Mr. WELCH. It is a very simple question. I honestly, you know, I listened to you not remember, not remember, not remember, despite what is very clearly a very good memory and a very competent record of accomplishment in your own career, so I found that a little frustrating.

Ms. DOAN. So does my husband, because I can never remember our wedding anniversary.

Mr. WELCH. You want to know something? I am deadly serious about this because it is a very simple question.

Ms. DOAN. I understand.

Mr. WELCH. And I find you being evasive on this, in all candor. I am asking you very simply, as the Chief Operating Officer of this very important organization, whether you think it was proper to allow a political appointee to come in on lunch time and identify the 20 political targets in the House races. It is a simple question that I am asking you. I am asking you your opinion. I am not asking you what I know to be the case if there is an "investigation" ongoing.

Ms. DOAN. I appreciate that, Congressman, and since there is an open investigation ongoing and since this investigation involves me I believe that I need to allow this independent investigation by the Office of Special Counsel to proceed without weighing in one way or the other and coloring their judgment.

Mr. WELCH. How does it adversely affect the investigation if you express an opinion about—

Ms. DOAN. I have not yet been interviewed.

Mr. WELCH [continuing]. Using lunch to have a discussion targeting political candidates?

Ms. DOAN. Congressman, I have not had an investigation before by an Office of Special Counsel. I have actually not testified in front of a committee before. But what I will tell you is that I will allow what is another organization's responsibility, which is to make a decision on this matter, to proceed. And I will wait and live with their judgment.

Mr. WELCH. Let's say an archbishop—I am a Catholic—

Ms. DOAN. So am I.

Mr. WELCH [continuing]. Wanted to come in and proselytize at lunch. Would that be a proper activity at lunch?

Ms. DOAN. I don't know. I might have to take the Fifth on this. I don't know the murkiness of that.

Chairman WAXMAN. Would the gentleman yield?

You are going to have to answer this question to the Special Counsel. Why can't you answer this question to us?

Ms. DOAN. And when the Special Counsel asks me, this is their purview. When they investigate and—

Chairman WAXMAN. It is also our purview—

Ms. DOAN. I appreciate that, Mr. Chairman.

Chairman WAXMAN [continuing]. To ask you whether you think it is appropriate. I think it is a violation of the law.

Ms. DOAN. Mr. Chairman—

Chairman WAXMAN. Do you think it is appropriate?

Ms. DOAN. Mr. Chairman, you are allowed to have an opinion—

Chairman WAXMAN. I want your opinion.

Ms. DOAN [continuing]. And this is a free country, I am allowed to have one, too, and my opinion is that I get to wait—

Chairman WAXMAN. We are asking your opinion.

Ms. DOAN. I am telling you. My opinion is I get to wait until the Office of Special Counsel makes a decision, and I will live with it.

Mr. WELCH. That is not an opinion.

Ms. DOAN. Yes, it is.

Mr. WELCH. That is a—

Ms. DOAN. It is my opinion.

Mr. WELCH. That is a tactic.

Ms. DOAN. No, no, no.

Chairman WAXMAN. That is a tactic—

Ms. DOAN. Politicians have tactics.

Chairman WAXMAN [continuing]. Of evasion.

Chairman WAXMAN. The gentleman's time has expired. We have a series of votes on the House floor. We will recess to respond to those votes, then Members who have not been recognized will complete the questioning of Ms. Doan. Then we will hear from the Inspector General.

Mr. TURNER. Mr. Chairman, if you might, please, if you could recognize me and allow me to yield my time to the ranking member so that he might have my time when we return, I would greatly appreciate the favor.

Chairman WAXMAN. You want to do that now?

Mr. TURNER. If you would allow.

Chairman WAXMAN. We do have to respond to the vote.

Mr. TURNER. And then he could take his 5 minutes when we return from voting.

Chairman WAXMAN. I will check the rules on that, but I would certainly want to be as generous as possible to my colleagues.

We will now adjourn to respond to the votes.

[Break.]

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

Mr. DAVIS OF VIRGINIA. Mr. Chairman.

Chairman WAXMAN. Yes?

Mr. DAVIS OF VIRGINIA. Let me just say at the outset that I know some of my colleagues have expressed some consternation about your inter-toning. When I was chairman I would occasionally, as you know, tone in after a question for clarification, and we have always had an understanding. We don't try to abuse it, and I know you are bending over backward to be fair, but that is in tune with how I acted, as well. I just wanted to clarify that. This has been a rough hearing. We have some disagreements about this, but, you know, I appreciate your trying to answer some of the inquiries and just note for the record that I intoned when I was chairman, as well.

Chairman WAXMAN. I appreciate that.

Mr. DAVIS OF VIRGINIA. And we are trying to get through this.

Chairman WAXMAN. I appreciate that, and I want to be fair to all the Members on both sides of the aisle on this committee.

Mr. Tierney, it is your turn.

Mr. TIERNEY. Thank you, Mr. Chairman.

Chairman WAXMAN. Just a minute, Mr. Tierney. Ms. Norton was ahead of you. I didn't see her walk in, but she is here, and I am going to recognize her to take her turn.

Ms. NORTON. This may not be a welcome occasion. More than most Members, I am saddened by this occasion, surprised even by it, because I have gotten to know you since you have become Administrator. I share jurisdiction with this subcommittee. I also know personally about your accomplishments and am proud of your accomplishments, particularly as an African American businesswoman. I know how likeable and bright you are.

One of the reasons why I think, for the administration people here, you have an obligation because you are not doing your job when these people are making their transition from the private sector. Anybody in the White House who had this woman in on that call, you ought to be—that is who ought to be punished.

Look, I am not going to ask the political questions, because the most serious things that have happened here, as far as I am concerned, the political questions are very embarrassing, very straightforward, will be understood by the public. I am more concerned about the IG and the SUN Microsystems, and I can't ask about both of them.

Ms. Doan, I worked with the appropriators when you combined Government policy and congressional affairs, because that, again, gave the impression of politicizing the Office of Government Policy. Maybe it wouldn't have looked that way in the private sector. That is an agency where GSA is the lead agency, but it controls travel and space use all around the Government. It is kind of the CR. It kept that from happening. But the IG, somebody should have told the Administrator how sacred the IG was.

In your testimony—and you have to explain how you explain this—on page 4 you describe what amounts to your attempt to order the IG. In black and white here it looks like the Administrator is having problems with the IG, the way he spends his money. And you say that the divisions were required to supplement the Office of IG with an additional \$5 million above and beyond the budget that Congress had approved and appropriated, and you quickly moved to address this imbalance.

Administrator Doan, were you not aware that, in removing this \$5 million, you were not removing money from the IG's budget. Each division has set aside funds that are, indeed, included in the budget of your agency so that pre-audits may occur. Pre-audits are what divisions do to make sure that they will not be hauled before Congress for violations or for not getting the best deal for the Government.

Your agency manages \$56 billion in contracts for the Defense Department, Homeland Security, and other agencies. By taking that \$5 billion (sic), which divisions request pre-audits be done of their work, very businesslike practice, to assure they were getting the best deal for the Government, you left the impression that you did not want, particularly in eliminating the entire amount, that you did not want pre-audits in order to assure that the best deal was being done. Far from what your testimony says, as if somehow the IG was over-spending, the money had been included and you apparently had to restore it because the Hill went ballistic. This money was included so that this \$56 billion in contracts could be pre-audited to catch the kinds of errors and bad deals that this committee has already heard a great deal about last year and this year.

Why do you characterize in your testimony as the IG spending beyond his budget? Were you aware that this money was already in the budget of your agency to do pre-audits and that you were de-funding all pre-audits for \$56 billion of contracts when you did that?

Ms. DOAN. Do I have time to respond?

Chairman WAXMAN. Yes, please. Please respond.

Ms. DOAN. Congresswoman Norton, thank you for your kind comments at the beginning.

To give you a very brief context, as I mentioned in my hearing submission and in my oral presentation, when I came to GSA this was an agency that was in distress, and I mentioned that it was over \$100 million deficit that I had to immediately work to address. What I found was that the \$120 million that was sort of in the red, if we are going to go from a business point of view, was actually in the division that ironically was now being tasked with paying the \$5 million supplemental to the Inspector General.

I am not undermining oversight. I am totally supportive of oversight.

Ms. NORTON. I am just asking you a question. Did you know that money was included in your budget precisely for pre-audits, and that he was not over-spending his budget?

Ms. DOAN. What I know is that this funding was coming from a failing division that was already \$120 million in the red and they were required to supplement it. What I have always said is I approve—

Ms. NORTON. And so you think—

Ms. DOAN [continuing]. Of oversight because I want it to occur—

Chairman WAXMAN. The gentlelady's time has expired.

Ms. DOAN [continuing]. In the appropriated dollars from the Inspector General. That is all I have asked. Do as many as you want, be as independent as you want, but do it within your appropriated funding.

Chairman WAXMAN. Thank you.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Ms. Doan, I think today's hearing is pretty much about judgment, and yours in particular, and I know we are not going to go into political slides again. I accept the fact that you apparently want to give no opinion on that. But on the diversity issue, before you decided to give a contract to Edie Fraser had you ever personally reviewed the Small Business Administration report that granted an F to the agency?

Ms. DOAN. I'm sorry? What?

Mr. TIERNEY. Before you decided to look in the direction of Edie Fraser, had you ever personally reviewed the SBA report that gave an F to your agency on the diversity issue?

Ms. DOAN. I had spoken with Philippe Mendosa, our OSDBUA. I trust him, and he at that time was warning me, giving me a heads-up, it is coming.

Mr. TIERNEY. OK.

Ms. DOAN. It did, indeed, come.

Mr. TIERNEY. So had you looked at the report, the SBA report, before you wanted to contract Edie Fraser—

Ms. DOAN. I believe that Philippe Mendosa tells the truth, and when he tells me that—

Mr. TIERNEY. Ma'am, this isn't rocket science. I am asking you a question, and I am asking you to answer it. The Mr. Smith Goes to Washington stuff is old already, and it is not even over for this

hearing, so just please answer the question. Did you personally look at the SBA report before you looked in the direction of Edie Fraser for a contract?

Ms. DOAN. I appreciate what you are trying to ask—

Mr. TIERNEY. No, you don't, because you are not answering it. Did you or did you not?

Ms. DOAN. Congressman—

Mr. TIERNEY. Did you or did you not personally look at the SBA report?

Ms. DOAN. Congressman Tierney—

Mr. TIERNEY. Are you going to—Mr. Chairman, would you direct the witness to answer and be responsive?

Ms. DOAN. Would I be allowed to just—

Chairman WAXMAN. This is the time for Members to ask you questions.

Ms. DOAN. OK.

Chairman WAXMAN. There is a limited amount of time.

Ms. DOAN. I am sorry.

Chairman WAXMAN. If it is a yes or no question, answer it yes or no. If you say you don't know, that is fine.

Ms. DOAN. OK. I appreciate it. I'm sorry, Mr. Chairman.

Chairman WAXMAN. Just answer the question directly.

Ms. DOAN. This is the first time I talked with him. I was trying to be respectful.

The answer to that, Congressman, is no.

Mr. TIERNEY. Thank you. Now, had you talked to the people, your own Office of Minority and Disadvantaged Matters, about that report, about the F?

Ms. DOAN. Yes. I talked with Philippe Mendosa.

Mr. TIERNEY. And did you do it in detail to find out what that report and findings were, what the data was behind it?

Ms. DOAN. Yes. We had a pretty long talk. I think we spoke in our first meeting for—

Mr. TIERNEY. So the answer is yes?

Ms. DOAN. Yes. The answer is yes.

Mr. TIERNEY. Thank you very much. If I direct your attention to page 16 of your packet, please, I want to show you a fact sheet that the GSA career people put together during the SUN Microsystems contract negotiations. It says in the post-audit audit, which covered 1999 to 2005, we have forfeited \$70.4 million in reseller price reductions and \$7.04 million in GSA price reductions, for a total of \$77.4 million. That was the last 5 years. The career auditors also discussed what would happen for the next 3 years of GSA signed the contract, and the fact sheet says about that, for the remaining 3 years on the extension option, if we accept SUN's proposed price reduction clause, we estimate we will lose a minimum of \$13.1 million in reseller price reductions and \$1.31 million in GSA contract price reductions, for a total of \$14.41 million.

Had you read that or familiarized yourself with that part of the report before Shana Budd took over for Mr. Butterfield?

Ms. DOAN. No, I did not, because I did not in any way—

Mr. TIERNEY. OK. So without having read that—

Ms. DOAN [continuing]. Get involved in this process.

Mr. TIERNEY. Without having read that, all right, Shana Budd comes on, and she then, within 9 days of the time she takes the job, for a matter that has been going on for a couple of years, within 9 days she then signs a contract with returns highly unfavorable to the taxpayer, and when we asked her about it, the committee asked her about it, she said, well, she doesn't rely on auditors to determine contract prices. Her approach is just to do what the contractor wants. That is a serious judgment issue.

You are her boss. You don't look into this report or even know what the projected losses are or what the past losses are. You hire a woman whose approach, apparently which you adopt, is that she just wants to do what the contractor wants to do.

The Inspector General then goes on to say that, with regard to your involvement in this, it is the first time we are aware of which an Administrator has personally intervened in this way.

Now, you, on the other hand, tell Senator Grassley in his letter that you weren't involved. I wasn't briefed by FAS in August or any other time on the SUN Microsystems contract deficiencies. I had no knowledge of the negotiations or the basis for decisions made regarding this contract.

I direct your attention to page 4 of your packet. On August 27, 2006, Marty Wagner, Jim Williams' Deputy at FAS, the Federal Acquisition Service, sent an e-mail to your chief of staff, John Phelps, explaining that the SUN contract was likely to be canceled because they couldn't meet contract requirements on pricing. Your chief of staff forwarded the e-mail directly to you with this message: "Lurita, wasn't sure you had seen this or not. Looks like Jim's prediction came true." He is referring, of course, to Jim Williams, the Commissioner of the FAS.

Three minutes later you wrote back your chief of staff, Mr. Williams, saying, "This is truly unfortunate. There will be serious consequences felt across the FAS."

Less than an hour later Mr. Williams writes back to you stating that he has scheduled a meeting with the president of SUN's Federal sales to see what can be done to resurrect the partnership.

Then you have an e-mail exchange between Washington Management Group, a fellow named Larry Allen—I'm looking at page 7 of your packet. Mr. Allen works for the Washington Management Group. That firm represents SUN in the negotiations. Mr. Allen also runs a group called the Coalition for Government Procurement that just happens to have SUN as a premier member.

In that packet you will see an e-mail dated September 7, 2006, from Mr. Allen that says, "Ms. Doan, I understand that new life has been breathed into the SUN situation. They are meeting with Mr. Williams today, among other things, and I understand that a new deal is, indeed, possible within the 30-day timeframe you have envisioned."

Chairman WAXMAN. The gentleman's time has expired.

Mr. TIERNEY. My question is, Ms. Doan, how can you tell Senator Grassley that you had no involvement in this at all and then look at that trail of e-mails?

Ms. DOAN. Because I was not directly involved in this matter at all. What I did do is exercise proper oversight that I should do as the administrator of GSA. Larry Allen is, to my knowledge, the

head or president or something of the Coalition for Government Procurement. This is the capacity in which I know him, in which I have met with him, with all of our schedule holders and things of that nature. I think you are mischaracterizing this and I think it is a little bit outrageous what you are trying to say.

Mr. TIERNEY. Just read the—I am not mischaracterizing. I directed you to the e-mails. Just read it. I was reading literally from it.

Chairman WAXMAN. The gentleman's—

Mr. TIERNEY. That is not a characterization; that is a quote.

Chairman WAXMAN. The gentleman's time has expired.

Mr. Davis, you can be recognized now.

Mr. DAVIS OF VIRGINIA. Thank you.

Chairman WAXMAN. Five minutes.

Mr. DAVIS OF VIRGINIA. You were not directly in the negotiations with SUN Microsystems, correct?

Ms. DOAN. No, I was not.

Mr. DAVIS OF VIRGINIA. Basically, you were up there saying we would like to keep this going. What would have been the ramifications on the supply schedule if SUN Microsystems were not an option for Government buyers?

Ms. DOAN. I think this would be very dire for the Federal Government.

Mr. DAVIS OF VIRGINIA. Can you explain why?

Ms. DOAN. Because SUN Microsystems has servers, it has software, it has java scripts, that everyone in the Federal Government uses. They may not be aware of it, but it is one of the things that is the backbone of their Internet and many other areas.

Mr. DAVIS OF VIRGINIA. And if you didn't offer your supply schedule, is it likely it would have been offered on other supply schedules, perhaps at even more disadvantageous rates?

Ms. DOAN. I think it would have been much more expensive for the Federal Government to purchase SUN products.

Mr. DAVIS OF VIRGINIA. You can't just measure it by what is on your schedule.

Now, let me just ask you, on the procedures on this, as I understand it, once on the schedule SUN is not guaranteed any business at all, correct?

Ms. DOAN. No, they are not.

Mr. DAVIS OF VIRGINIA. A Government agency orders items off the schedule after it reviews the prices of at least three schedule holders; isn't that correct?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. So SUN would offer their prices. If they weren't competitive, a Government buyer could go somewhere else, is that correct, to some of the other schedule holders that offer same or similar services?

Ms. DOAN. That is true.

Mr. DAVIS OF VIRGINIA. And the chosen contractor would have to represent the best value. Now, throughout the process, ordering agencies are encouraged to seek and often receive significant price reductions above and apart from the discounts that are encompassed in the schedule prices. So even if the schedule price is something, isn't it true—and we have been through this before—that

very often the negotiated price is far lower than what is on the schedule?

Ms. DOAN. Yes. That is what we hope and anticipate.

Mr. TIERNEY. Would the gentleman yield?

Mr. DAVIS OF VIRGINIA. I would be happy to.

Mr. TIERNEY. Thank you. If SUN Microsystems wasn't on the schedule, somebody else would be; is that correct?

Mr. DAVIS OF VIRGINIA. No. I can answer that.

Mr. TIERNEY. SUN Microsystems was the only one offering on that schedule, was it?

Mr. DAVIS OF VIRGINIA. No. There were a lot of people on the schedule.

Mr. TIERNEY. Exactly. That is my point.

Mr. DAVIS OF VIRGINIA. Well that is my point.

Mr. TIERNEY. And your staff had filed a report that said it was going to cost \$77 million plus if you sign the agreement with them to put them on the schedule.

Mr. DAVIS OF VIRGINIA. Let me—

Mr. TIERNEY. I am hard pressed to see what you are losing by not having them on.

Mr. DAVIS OF VIRGINIA. As someone who has spent their career on this, I can explain it very quickly. There are going to be some Government servers that are SUN systems that are going to want to continue with SUN products. If they can't get it off the schedule, they would go to NASA soup or GWETS or they may go off the schedule entirely and buy it on the market, which traditionally had been much higher prices. That is one of the concerns with this.

Now, let me just ask, the contract that Mr. Butterfield was negotiating—maybe this is to a detail you don't know, but maybe you have learned it after the fact—we didn't say yes to the contract he said no for. There were changes, weren't there, after Mr. Williams negotiated it?

Ms. DOAN. That is true. It was a negotiation, which means there is give and take on both sides.

Mr. DAVIS OF VIRGINIA. And when Mr. Butterfield was relieved at that point and Shana Budd came in and negotiated, she negotiated a different agreement than what Mr. Butterfield had offered; isn't that right? Both parties moved?

Ms. DOAN. That is my understanding, that both parties moved.

Mr. DAVIS OF VIRGINIA. And maintenance was one of the key elements of this?

Ms. DOAN. Yes, I believe it was.

Mr. DAVIS OF VIRGINIA. A key element throughout. So I think it is important for this committee to understand how schedules work, how these are negotiated. That is certainly appropriate. But I think the key here is all you were doing as the Administrator was to just keep the negotiations going.

Ms. DOAN. That is exactly right.

Mr. DAVIS OF VIRGINIA. Because you recognized what it could do to the schedules, what it could do to Government buying options if you didn't reach an agreement. You never dictated an agreement, did you?

Ms. DOAN. That is exactly correct.

Mr. DAVIS OF VIRGINIA. You didn't walk into a room and negotiate directly with SUN Microsystems, did you?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. You didn't appoint the contracting officers that negotiated it, did you?

Ms. DOAN. No, I did not.

Mr. DAVIS OF VIRGINIA. So I think if Members have questions, we are asking the wrong person. To my way of thinking, she did the appropriate thing to try to get a more inclusive schedule. SUN Microsystems' business, less than 10 percent of it is with the Federal Government. If we say no to them, they can walk around the world and sell their products, and they don't have to sell at discounts here when they can sell at a fuller price other places.

We have held hearings on this before. One of the difficulties is trying to get companies that traditionally don't sell to the Government to sell to the Government, where we can get the variety of prices and the options and the technologies that are being developed in the private sector and apply them to Government. But because Government has a different set of regulations, a different set of accounting standards, a different set of rules, some companies just find it disadvantageous to redo all of these kind of things. We try to work through the procurement process to find options to bring them in.

So I don't know that there is anything necessarily improper about this. Time will tell if this was the right approach or not. It is hard to say if you save or lose money, because we don't know how SUN Microsystems competes with other products that are on the schedule right now once you have to go to three for Government buyers to choose whether they want SUN Microsystems or something else on the schedule and get the best deal; is that correct?

Ms. DOAN. That is correct.

Mr. DAVIS OF VIRGINIA. Thank you.

Chairman WAXMAN. Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Thank you, Ms. Doan, for being here today. Ms. Doan, it is my understanding that, as Administrator of the GSA, you manage over \$56 billion in contracts. What percentage of the GSA contracts is currently held by minority owned businesses?

Ms. DOAN. I do not have that fact at this moment. Can you hold 1 minute?

Mr. CLAY. Sure.

Ms. DOAN. Could we followup with you after the record for that precise number?

Mr. CLAY. You certainly can. I would appreciate a description of what types of programs you have.

Let me ask you, during your 10 month tenure, how many contracts have you personally awarded to minority owned businesses?

Ms. DOAN. I haven't personally awarded any contracts to minority or large businesses.

Mr. CLAY. OK. All right. You stated in your written testimony that it was outrageous for the committee to cite that, as an example of the personal assistance Ms. Fraser provided to you—she assisted your high-school aged daughter in securing a congressional

internship—you denied that Ms. Fraser assisted you and called the suggestion despicable; yet, in her interview with the committee Ms. Fraser was asked this very question and confirmed that she called a Senate office to seek an internship for your daughter.

Here is what Ms. Fraser told the committee: “I am really glad you asked that question because I think it is a really—if there is any humor in this whole situation, you know, when she said to me, you know, Edie, I am so dedicated to the Republicans, you are so dedicated to the Democrats. My daughter needs to learn there is another side. And so I called the administrative assistant to Senator Stabenow and said, ‘This high school kid, you know, all their high school has internships in Government and in the Senate. Would you take her on?’ ”

So, Ms. Doan, it was Ms. Fraser who said that she did this for you. By the way, no one has suggested that your daughter did anything wrong by accepting Ms. Fraser’s help, but perhaps you would like to reconsider your statement to Congress that Ms. Fraser did not provide any assistance, in light of Ms. Fraser’s clear testimony that she did.

Ms. DOAN. What I believe I said—and if I am incorrect maybe I will check my letter that I wrote to the committee. What I said is that this is a 40-year program that is hosted by Madera High School that has been well documented. It provides 90 interns, non-paying, throughout the entire Federal Government. I am happy to hear that she had support from so many different people, but this is how—they have interns in many, many offices, both Democratic side and the Republican side, the House, and the Senate. Every junior at this high school does this. It is a very well-recognized program. That is what I believe, something of that nature I think I wrote in that.

I still believe, and I will say this, the fact that you are willing to keep pushing this point absolutely indicates your willingness to drag whatever kind of extraneous things in. There is nothing wrong. I was not the Administrator at the time. This is a high school child—

Chairman WAXMAN. Will the gentleman yield?

Mr. CLAY. I will yield to the gentleman from California.

Chairman WAXMAN. I just want to read that, what you said in your statement. This is what you said: “Over 3 years ago, as a high school junior, my daughter participated in a mandatory school-sponsored community service program. School counselors worked directly with Members of the House and the Senate to arrange for entry-level, non-paying positions. My innocent daughter was assigned to the staff of Senator Debbie Stabenow.”

Now, what Mr. Clay is pointing out is that we know it wasn’t school counselors but your good friend who was the one who recommended her.

I yield back the balance.

Ms. DOAN. Am I allowed to comment at all, because this—

Chairman WAXMAN. If there is a question.

Mr. CLAY. Please do.

Ms. DOAN. There is nothing on this that is incorrect. There is nothing on this that is incorrect. The high school counselors at Madera work with the House and the Senate, and they absolutely

have internships. We have probably people on this committee who have these interns here.

Mr. CLAY. Well, Ms. Doan, why would Ms. Fraser make this statement? Can you shed any light on that?

Ms. DOAN. No, I can't shed any light on that. I can share with you that people often try to help when other people say there are things that are of interest or concern or things. This is what we do. We care for one another. People do things like this. This is very kind of her to have done that.

Mr. CLAY. And that is all fine and well, but I think that the concern here is that this is conflicting testimony between Ms. Fraser and you and what you have told committee investigators.

Ms. DOAN. This is not conflicting testimony. It says here that high school counselors worked directly with Members of the House and Senate to arrange for entry-level, non-paying positions.

Chairman WAXMAN. The gentleman's time has expired.

Ms. DOAN. This is a statement of fact.

Chairman WAXMAN. I would ask unanimous consent that I have a minute so I can pursue this issue, without objection.

Mr. DAVIS OF VIRGINIA. Without objection, but I would like to also reserve just a clarification question at the end of that.

Chairman WAXMAN. Absolutely.

Ms. Doan, I know you are outraged about this whole thing. You expressed it with a great deal of emotion. But your statement was it was school counselors. We pointed out that Edie Fraser claimed that she helped her daughter. I am not saying that there is anything wrong with it, but it is something—

Ms. DOAN. Thank you. I appreciate that, because the implication there was that there was something improper going on.

Chairman WAXMAN. No, the implication of it was that she helped you. You had a relationship, she helped you, and evidently you wanted to help her with that contract, and there was a give-and-take kind of relationship.

Ms. DOAN. Mr. Chairman, with all due respect, Congressman, Congressman Clay prefaced it—and I don't have the exact transcript, but he prefaced it with something like, "In the process of her performing personal services for you." That was improper, in my mind. That implied a certain amount of impropriety.

Chairman WAXMAN. But you don't deny that she helped?

Ms. DOAN. She apparently did help, and I am very grateful that she did.

Chairman WAXMAN. OK. That is fine. Let's just get the record complete.

Mr. DAVIS OF VIRGINIA. Mr. Chairman.

Chairman WAXMAN. Yes, Mr. Davis.

Mr. DAVIS OF VIRGINIA. I have had interns from the Madiera School. It is not in my District. It is not uncommon for kids from Madiera to apply across the Hill, and it is not uncommon, by the way, for people to recommend people that are applying. These are unpaid internships during the school year when, frankly, many offices can use interns. Summer time it is different. These are during school year. And we work directly with the counselors, because we have to fill out forms—

Ms. DOAN. Exactly.

Mr. DAVIS OF VIRGINIA [continuing]. Telling how the kids do. I don't see any conflict in this at all. If this is the best you can do, I think we are wasting our time.

Chairman WAXMAN. Well, I certainly don't think it is a conflict. I think people ought to understand the complete picture.

Let's see, Mr. Lynch, it is your turn now.

Mr. LYNCH. Thank you, Mr. Chairman. Thank you for having this hearing. I also thank the ranking member.

We seem to be getting tied in knots about your testimony, previous testimony, current testimony. I am getting a little frustrated, just like you are, trying to figure out what you are exactly saying.

You just told us a moment ago that you weren't involved with the SUN Microsystems deal, you were just involved in the oversight of it. Now, you weren't directly involved, you just did your job in an oversight capacity.

Now, I just want to compare what you said to Senator Grassley. This is a quote. When asked about the SUN Microsystems, you said, "I had no knowledge of the negotiations or the basis of the decisions made regarding this contract." That is a very broad statement, and it is completely inconsistent with what you have said here today. I just want to tell you—and this may go further. I know you know that you are under oath. What is troubling to me is this—and there is a lot of peripheral stuff, but there is some central stuff about what is being testified to here today.

You have testified to the facts that at the GSA headquarters, the headquarters of this agency, a Government institution, that there was a meeting, a presentation, a teleconference at which you were present. The object of that meeting, especially, was for influencing the election. More specifically, the object of the meeting was to target, and, if successful, remove Members of Congress who are charged with the oversight of your agency. This goes to the integrity of the electoral process that has been violated here, not just in the Hatch Act but also embodied in the Voting Rights Act.

There were Members of this Congress that were targeted by a Government agency, by a sitting Government agency with the head of that agency present, and also special assistants to the White House present to influence the election. That is central to what you did. That is central.

Now, you haven't claimed the fifth amendment, which maybe you should have, but you have come here today and you have testified, you have really adopted the Sergeant Shultz defense, you know nothing. But I want to just recount what you have testified here today. And I came here in an objective fashion just to listen to what you had to say.

You have testified that you remember the time you have arrived. You testified as you knew who was in the meeting, who was not in the meeting. You testified that you know who called in and who did not call in. You testified as to what food was served. You testified—if you want to read the transcripts, go ahead—you remember the folks that were telecommunicated in from California. You testified that you saw before a PowerPoint presentation, which is an enhanced cognitive medium, but then you have a blank spot in your memory as to what you recall about the PowerPoint presentation targeting Members of Congress.

We have the testimony of six Republican colleagues who have your own testimony as to what can we do to help the Republican Members of Congress, and that is terribly troubling, in my estimation. Maybe this will be worked out in the subsequent investigations. I am not sure. But certainly just the core facts that you have helped establish here, you know, leads me to believe that there is further action necessary to be taken on this, and it is not good for you. I have to say, your own testimony has been very damning, I think, that you have had this very selective lapse of memory before Members of Congress.

You know, I think the whole episode is utterly disgraceful, in my opinion, and, you know, maybe there are Members here that think that you helped yourself here today by testifying, but I need to be quite honest with you. The only thing that you have removed here is the original impression that it was incompetence, it was incompetence, because now it appears that your action was purposeful.

I just have to say, as a Member of Congress trying to uphold the Constitution, trying to uphold the integrity of Government, that I am deeply disappointed in your testimony here today and I will do everything I possibly can to get to the bottom of this and to restore the integrity that I think has been diminished by your own actions.

Thank you.

Chairman WAXMAN. The gentleman's time has expired.

The Chair wishes to recognize himself for 5 minutes just to ask a few questions. Maybe I won't even take the full 5 minutes.

There were two contracts that we have been discussing. One was the SUN Microsystems contract. In your March 13th letter you said, "I was not briefed by FAS in August or at any other time on the SUN Microsystems contract deficiencies." FAS is the Federal Acquisition Service.

Ms. DOAN. Right.

Chairman WAXMAN. Now, we interviewed Mr. Williams and we asked him whether he briefed you on the SUN contract and he said he did. He told us directly that he updated you on the SUN situation several times during the contract negotiations. Was he lying to us? How do you explain this contradiction?

Ms. DOAN. Mr. Chairman, I don't want to ask you to read it back to me again, but I think—

Chairman WAXMAN. You said that you weren't involved and he said he briefed you.

Ms. DOAN. In the August timeframe, I believe we talked about. Is that what we talked about? I think I would much rather sit there and, you know, add up the dates and stuff like that and organize it for you and provide it.

Chairman WAXMAN. Did he brief you?

Ms. DOAN. Some time in early September.

Chairman WAXMAN. I am not asking you when. Did he brief you on this contract?

Ms. DOAN. Well, I thought the date was the issue we were discussing here.

Chairman WAXMAN. Well, your March 13th letter you said he had not briefed you. I presume this is before you agreed to the contract. Did he brief you or not?

Ms. DOAN. Well, no, he didn't brief me.

Chairman WAXMAN. He did not brief you?

Ms. DOAN. He just spoke, you know, once on the phone. I don't know.

Chairman WAXMAN. Only once on the phone.

Ms. DOAN. I honestly cannot—we never sat down and actually had a briefing. We just had a brief discussion on the phone.

Chairman WAXMAN. On how many occasions?

Ms. DOAN. He said one or two times. I am just following, maybe twice.

Chairman WAXMAN. OK. And then on the—

Ms. DOAN. I think the issue is August versus September.

Chairman WAXMAN. Do you consider it a briefing if it is a telephone conversation when someone tells you about a contract?

Ms. DOAN. No. I consider a briefing when you are actually provided with substantive information related to a matter at hand. That is what I consider a briefing.

Chairman WAXMAN. I would just point out that you sent a letter to Senator Grassley to say, "I was not briefed by FAS—" Federal Acquisition Service—"in August or at any other time on the SUN Microsystems contract deficiencies." That is a pretty clear statement, but now it seems as if you are backing off that statement. You did have a couple phone conversations telling you about it? Yes, you did have phone conversations? No, you didn't have a couple phone conversations?

Ms. DOAN. I don't consider that a briefing.

Chairman WAXMAN. OK. That is Clintonian. Now, on the other contract, you were directly involved in the contract for Edie Fraser, weren't you?

Ms. DOAN. I do not believe that was a contract, but yes, I was directly involved in directing the action to try to start a study for minority and women-owned and diversity—

Chairman WAXMAN. OK. You were directly involved in that. But these others you were indirectly involved. You are the head of GSA, and that is the agency in charge of giving out those contracts, so other things were delegated to other people, but on the Edie Fraser contract you were personally involved; is that a fair statement?

Ms. DOAN. Yes, it is a fair statement at the beginning of the action. After I approved the draft outline, I then moved it on to be processed through the contracting shop and the office for the procurement.

Chairman WAXMAN. OK. Thank you.

Well, I want to thank you.

Does the gentleman have any additional questions he would like to ask, maybe make some comments about the way life is going?

Mr. MICA. Could you yield?

Chairman WAXMAN. Certainly.

Mr. MICA. How much time?

Chairman WAXMAN. Whatever time is left, I would be glad to give it to you.

Mr. MICA. OK. Well, again, let's just take it in reverse order. The \$20,000 contract that you attempted—and it wasn't a contract, was never awarded.

Ms. DOAN. It was not.

Mr. MICA. OK. The video conference, this says the White House. The first chart there is the White House Political Office? Is that what that says, the White House Political Office?

Ms. DOAN. Yes.

Mr. MICA. Is that who conducted that? Did you initiate the video-conference?

Ms. DOAN. No, I did not.

Mr. MICA. OK. And then SUN Microsystems, the third question, you were never fully briefed? You never sat down and had a full briefing about the terms of the contract, and most of the problems had occurred before you got there?

Ms. DOAN. All of that is true.

Mr. MICA. In 15 years, you know, they tried to get you on this \$20,000, and this is embarrassing, too, what they are doing to your daughter, 2004 to intern with a Democrat Senator. But I have never seen such an attempt to go after a minority appointee of any administration in this fashion, and the thing about this—

Chairman WAXMAN. The gentleman's—

Mr. MICA [continuing]. It will discourage others from ever coming into the—

Chairman WAXMAN. The gentleman's time has expired.

Mr. MICA [continuing]. What you are doing here today.

Chairman WAXMAN. Ms. Doan, thank you very much for your presentation.

Ms. DOAN. Thank you, Chairman. Thank you, Ranking Member Davis. Thank you, committee members.

Chairman WAXMAN. We will probably ask you some further questions for the record.

We are now pleased to call our next witness, Mr. Brian D. Miller, the Inspector General of GSA. Before assuming this post in 2005, Mr. Miller worked as Federal Prosecutor in the U.S. Attorney's Office for the Eastern District of Virginia, where he helped prosecute Zacharias Mousaui and John Walker Lindt. In this position, he also supervised numerous audits and investigations involving procurement, grant, and health care fraud.

Mr. Miller, I thank you very much for being here. Your prepared statement will be in the record in full. I would like to ask you now to proceed with your oral statement.

STATEMENT OF BRIAN D. MILLER

Mr. MILLER. Thank you, Mr. Chairman, and thank you, ranking member, and thank you, members of this committee, for inviting me here to testify.

I would also like to thank Senator Grassley for taking the time to testify here this morning about the importance of oversight and the role of an Inspector General. Indeed, it is a privilege for me—

Mr. MICA. Parliamentary inquiry and procedure. Was the witness sworn in?

Chairman WAXMAN. The gentleman is correct. It is our practice to swear in all witnesses, and we want to put you under oath, as well.

[Witness sworn.]

Mr. MILLER. Thank you, Mr. Chairman.

Chairman WAXMAN. I thank you. Now let's start all over again.

Mr. MILLER. OK. It is a privilege to be here this afternoon. I have devoted most of my professional life to public service. For roughly a decade-and-a-half before becoming Inspector General at GSA I served as a career Federal attorney. As a U.S. Attorney in the Eastern District of Virginia, the ranking member's own District, I worked on a variety of cases, including terrorism cases, as the chairman has noted.

In July 2005, the Senate confirmed me as Inspector General of GSA, and it is, indeed, an honor for me to lead the Office of the Inspector General. Our audits and investigations safeguard the integrity of Government operations and provide cost avoidance for taxpayers in the billions of dollars.

For years my office enjoyed good working relations with GSA managers who appreciate our work. My relationships with former GSA Administrator Stephen Perry and Acting Administrator David Bibb were excellent. They recognized that independent oversight was a tool for good management. And I have been trying to establish a good working relationship with Administrator Doan and will continue to do so.

It is important for me to note here that it is my duty, as Inspector General, to investigate allegations of wrongdoing and to conduct audits. I would not be doing my job if I were to look the other way at credible allegations of wrongdoing or pass over an embarrassing audit, as Senator Grassley has noted this morning.

The taxpayers and the Congress rely on IGs to do their job to ferret out fraud, waste, and abuse, and to help their agencies run more efficiently and effectively.

At the end of the day, it is about accountability, accountability to the President, to the Congress, and, most importantly, to the American taxpayers.

Now, this committee has asked me to address three issues in connection with the actions of the Administrator: first, her intervention in a major contract negotiation, SUN Microsystems; second, her sole source award of a contract to a friend; and, third, her alleged role in encouraging use of GSA resources for partisan political purposes.

Six months ago GSA awarded a contract extension to SUN Microsystems. Our auditors showed that it was a bad deal for the Government. The contracting officer thought it was a bad deal. All of GSA's management, up to and including Commissioner Jim Williams, agreed it was a bad deal. And a notice was sent to SUN that the contract would end.

But then Administrator Doan found out and word went out that SUN was a strategically important vendor and that the Administrator wanted the contract awarded. The contracting officer could not extend it, so a new contracting officer was assigned. Eight days later, the contract was renewed.

Why is this such a bad deal? Well, the auditors warned that SUN's past charges looked fraudulent and told GSA management. Frankly, the deal should have been terminated when allegations of potential fraud first surfaced.

I agree with Senator Grassley that once the potential for serious fraud was identified, the deal should have been slowed down, at the very least. Instead, it was speeded up. None of this would have

happened if Administrator Doan had not intervened and directed GSA to make the award.

Now, turning to the Public Affairs Group contract, Administrator Doan was wrong in attempting to award a sole source contract to the company of a personal friend, Edie Fraser. She was wrong to keep trying to get this project awarded to her friend, even when told the first contract was improper. And she was wrong to try and cover up the extent of her improper efforts.

Administrator Doan has tried to say that she did nothing improper and that, anyway, it wasn't a contract, but that is not what her own General Counsel has told her. Administrator Doan has claimed that she did everything she could to clean up the mess, but that is not what her own General Counsel told this committee.

Turning to the Hatch Act issue, when my investigators received credible information about a potential Hatch Act violation, we referred the matter to the appropriate investigatory agency, the Office of Special Counsel. That is our duty.

Now, in tandem with these events, the Administrator has advocated for reduced oversight and has made many statements to that effect. Unfortunately, the Administrator has demonstrated a disregard for the very contracting rules that oversight is meant to detect.

I notice my time is out. I would like to thank the committee, and I stand ready to answer questions.

Thank you.

[The prepared statement of Mr. Miller follows:]

Statement of Brian D. Miller
Inspector General
General Services Administration

Before the

Committee on Oversight and Government Reform
United States House of Representatives

Allegations of Misconduct at the
General Services Administration

Wednesday, March 28th, 2007



Thank you, Mr. Chairman, for providing me with this opportunity to update you and your colleagues about the work of the Office of Inspector General (OIG) at the General Services Administration (GSA).

First, let me say that I am truly honored and privileged to lead such a dedicated and professional group of public servants. They work hard everyday to see to it that the taxpayers' dollars are spent wisely and efficiently and that federal laws and regulations are followed.

Second, I want to express my deep appreciation to you, Mr. Chairman, the Members of this Committee, other Members of Congress, the Office of Management and Budget (OMB), and to GSA staff who have worked with us to achieve what I believe are tremendous results for the taxpayers of our great country.

Today, my testimony will address a few of the accomplishments of GSA, OIG and its new ventures. I will also provide a detailed overview of some of the challenges GSA OIG faces with the new GSA Administrator since she took office on May 31, 2006.

Background

I have devoted most of my professional life to public service. For roughly a decade and a half prior to becoming Inspector General at GSA, I served as a career federal attorney. As an Assistant United States Attorney, I worked on a variety of federal cases, including terrorism cases—perhaps most notably the case against Zacharias Moussaoui. In July 2005, the Senate confirmed me as Inspector General of GSA.

When I was confirmed as Inspector General (IG) of GSA, I took an oath to perform the duties of an IG: to conduct audits and investigations. I am duty-bound in assuming office to carry out the duties of an IG. In fact, the President and the Congress sent me here to GSA to root out fraud, waste, and abuse and to ensure that GSA programs are run with efficiency, economy, and effectiveness. These are the requirements of the Office of Inspector General under the Inspector General Act of 1978 (IG Act), and to these ends I have dedicated my efforts.¹

The duties of an IG are well established by federal law and policy. And at the end of the day, it is about accountability: accountability to the President, to the Congress and, most importantly, to the American taxpayers.

GSA OIG's Accomplishments

I would like to take just a few minutes to describe some of GSA OIG's accomplishments.

¹ Among other things, that statute requires the OIG:

1. To conduct independent and objective audits, investigations, and inspections,
2. To prevent and detect waste, fraud, and abuse,
3. To promote economy, effectiveness, and efficiency, and
4. To advise the agency head and Congress of what is necessary to achieve the above objectives.

During Fiscal Year (FY) 2006, OIG issued 155 audit reports with over \$870 million in recommendations that funds be put to better use, and OIG had 73 case referrals accepted by the Department of Justice for criminal prosecution or civil litigation. OIG activities resulted in nearly \$1.2 billion in management decisions agreeing with audit recommendations; \$52.4 million in criminal, civil, and administrative recoveries; and \$3 million in other recoveries.

In conjunction with the Department of Justice, OIG achieved the largest recovery in a civil settlement under the False Claims Act in the history of GSA's Multiple Award Schedules (MAS) program - a \$98 million dollar recovery from the Oracle Corporation for PeopleSoft's defective pricing of sales. OIG's experienced auditors, counsel, and investigators contributed to this recovery.

OIG's audits and investigations have resulted in recommended cost avoidance for the taxpayers of billions of dollars. In fact, for every dollar spent on OIG operations in FY 2006, over \$25 was identified in cost avoidance—a return on investment of over 2,500% for the taxpayers. All of these concrete benefits to the American taxpayer refute the Administrator's characterization of OIG's appropriation as "wasteful spending."

In addition, OIG has placed an investigative emphasis on public integrity investigations, and several GSA employees were identified as committing fraud against the Government in the form of bribes and kickbacks. Those individuals were prosecuted and sent to prison; and their removal from their positions of authority in the agency helps to ensure the integrity of GSA programs and operations. OIG currently has over 390 active fraud investigations ongoing at this time involving almost every GSA service.

OIG also worked with other IG offices as part of the Hurricane Katrina Task Force. A report on our audit of approximately 255 contracts valued at \$741 million awarded by GSA on behalf of FEMA was issued in February 2007.

OIG has increased coordination and strengthened partnerships among other Inspectors General, law enforcement, and the Department of Justice to more effectively fight procurement fraud through the creation of the National Procurement Fraud Task Force. I serve as the Task Force's Vice-Chair. The goal of the Task Force is to protect the taxpayer by increasing the deterrence and effectiveness of sanctions imposed on those prosecuted for and found guilty of procurement fraud.

In addition, Congress looks to OIG for a candid assessment of the agency's financial statements, and OIG has been supportive of the agency's efforts over the last several years to improve its financial statements. The OIG closely supervised the audit of GSA's finances by Price Waterhouse Coopers, which rendered a clean opinion of the agency's financial statements in FY 2006. The Administrator had the opportunity to hear OIG's June 7, 2006, testimony in support of the agency's efforts to achieve a clean opinion before the Subcommittee on Government Management, Finance, and Accountability of this Committee during the first few weeks of her tenure.

Finally, GSA was tasked by Congress to perform a joint review with the Department of Defense (DOD) OIG to audit compliance of GSA's Federal Technology Service Client Support Centers (CSCs) with applicable acquisition regulations. Successive GSA OIG reviews of the CSCs over 3 years that initially found numerous deficiencies in contracting practices, this past year finally established that the CSCs had come into compliance, thereby improving the ability of the agency to continue its acquisition mission in compliance with applicable laws and regulations.

OIG Audit Program

Even with all of the good results listed above, the OIG's limited resources restrict its audit work to a small fraction of contracts for which GSA is responsible. In FY 2006, OIG audited contracts with a five-year value of \$8.8 billion, whereas in that year, GSA's business volume was many times that amount.

In FY 2007, OIG is undertaking a number of internal audits that will focus on GSA management. These audits include the following:

--Reorganization of the Federal Supply Service (FSS) and Federal Technology Service (FTS) as the Federal Acquisition Service (FAS)

On October 12, 2006, the GSA Administrator signed a GSA Order (ADM 5440.591, Change 1) that officially established the organizational structure of the new FAS. This action combines the FTS and FSS. The Order announces ten national office-level organizations reporting to the Commissioner in Central Office and 11 FAS Regions, each with a FAS Assistant Regional Administrator, in lieu of the six FAS zones previously envisioned.

The projected benefits of the FAS reorganization include:

- Improved customer service and focus.
- Greater career opportunities for employees.
- Greater business flexibility for acquisition solutions.
- Enhanced financial management and accountability.
- Increased efficiencies.
- Greater standardization within FAS and with external industry partners, while allowing for more innovation.
- Better support for the President's Management Agenda.

OIG has initiated an audit survey of the FAS reorganization. OIG's focus will be to assess whether the steps that FAS is taking will help it achieve the benefits and guiding principles it was designed to accomplish.

--Suspension and Debarment

OIG is reviewing the controls over GSA's administration of contractor suspension and debarments. OIG's objective is to determine if the controls in place are effective in ensuring that suspension and debarment sanctions are used to protect the Government's interests and ensure that only responsible contractors are awarded contracts. Policies and procedures governing the suspension and debarment actions are set forth in the Federal Acquisition Regulations (FAR). Agencies are responsible for establishing appropriate policies and procedures. In 2006, GSA experienced a backlog in processing these actions. OIG will review what GSA has done to address the backlog and whether there are opportunities to make the process more effective and efficient. OIG will also examine GSA's hiring of a contractor, CACI, to assist in processing suspension and debarment actions.

--Reorganization of the Office of Governmentwide Policy under the Office of Congressional and Intergovernmental Affairs and Governmentwide Policy

On December 21, 2006, the GSA Administrator signed GSA Order ADM 5440.600, which established the Office of Congressional and Intergovernmental Affairs and Governmentwide Policy (OCGP). OIG has started an audit of the reorganization of the Office of Governmentwide Policy (OGP) and the congressional affairs office because it has created concern about the new office's ability to fulfill and reconcile the independent missions and goals of the legislative and executive branches. In the past, the congressional affairs office was responsible for all aspects of GSA's communications and coordination with Congress, the Judiciary, and other federal state, and local governments. The Office of Governmentwide Policy, which was established in December 1995 at the urging of OMB, had policymaking authority to cover the areas of personal and real property, travel and transportation, information technology, regulatory information and use of federal advisory committees. The primary concern is that such a consolidation of the two offices could create problems by bringing politics into administrative, operational, and fiscal decisions. The focus of the OIG review will be to determine whether this consolidation will achieve the benefits and guiding principles it was designed to accomplish and how the goals and performance measures will be addressed in the new single office.

--Federal Procurement Data System- Next Generation (FPDS-NG)

This limited scope review is nearing completion. OIG's primary focus was to determine if FPDS-NG provides an accurate representation of Federal Procurements related to the response and recovery for Hurricane Katrina. What OIG is finding is that the system is challenged to provide timely and accurate information on procurements in this area. For example, not all agencies were submitting information to this database for Hurricane Katrina relief efforts in a timely manner. Additionally, OIG noted that some of the information was incomplete or inaccurate. The timeliness and accuracy issues surrounding the reporting and tracking of Hurricane Katrina relief efforts occurred because initially there was no way to track these procurements in the system and because data was not being directly put into the system from the agencies' contract writing systems. Agencies are making more of an effort

to timely report information and OMB now requires a process for agencies to assess the accuracy of the information. The reliability of the data is even more important now that the data will likely be used to meet the Federal Funding Accountability and Transparency Act of 2006.

OIG Investigative Program

The OIG has the only statutory law enforcement authority in GSA. OIG conducts a nationwide program to prevent, detect and investigate illegal and/or improper activities involving GSA programs, operations and personnel. The office currently has an active caseload of over 390 investigations with a staff of only 60 investigators nationwide. During this past fiscal year the office was responsible for 188 judicial actions that include 82 criminal indictments and 106 convictions. Referrals for criminal prosecution were made, in 63 cases totaling 141 subjects, to cognizant prosecutorial authorities. Criminal, civil, and administrative recoveries exceeded \$55 million—more than the entire operating budget of the OIG—which represents funds returned to the U.S. Treasury as a result of OIG investigative efforts.

Additionally, OIG made over 200 referrals for consideration of suspension or debarment to agency officials. Last year there were 138 individuals and/or companies suspended or debarred from doing business with the government as a result of our efforts. During the first 5 months of this fiscal year, an additional 102 suspensions or debarments have taken place.

The detection and investigation of criminal conduct by employees of GSA and other government employees and contractors doing business with GSA has been given top priority within the OIG Office of Investigations. OIG's efforts have led to numerous criminal prosecutions and civil actions, sending the message to government employees and the public that the Office of Inspector General is aggressively pursuing public corruption. Cases prosecuted last year included former GSA employees who have taken bribes and kickbacks and employees who inflated the costs of contracts and directed payment to companies they or their relatives owned.

The OIG Office of Investigations has placed an increased investigative emphasis on charge card fraud relating to the GSA Voyager Fleet credit card program. Working closely with the Fleet program agency officials, this initiative resulted in numerous judicial actions and defendants paid over \$402,000 in restitutions, fines and special assessments. In addition, the GSA Fleet initiative has been able to identify and cancel numerous charge cards that have been misused, thus avoiding further losses. Analysis of GSA Fleet card investigations indicates that enforcement actions during the past year may have averted as much as \$2 million in potential losses to GSA.

GSA OIG's Challenges

Over many years, the GSA OIG has developed good working relations with agency managers who appreciate the information they receive from the professional audit and

investigative work performed by the OIG staff. Many GSA contracting officers have expressed gratitude for the OIG audit information that enables them to negotiate better prices for taxpayers. My relations with former GSA Administrator Stephen Perry and Acting Administrator David Bibb were excellent. They were clearly committed to the proper functioning of GSA, and they recognized that independent oversight was a tool for management in achieving that end.

I had hopes of a similarly constructive working relationship with Administrator Doan. A day after she was sworn-in, I met with her and gave her a memorandum outlining a few short term projects that we could work together on. I also suggested that we meet monthly to go over issues. Unfortunately, early on dissonance emerged between the Administrator's view of federal procurement rules, regulations, and laws,² and my office's role in ensuring compliance with federal procurement rules, regulations and laws. Obviously, the Office of Inspector General plays a pivotal role in safeguarding adherence to legal requirements.

In many ways, the problems at GSA may reflect the larger debate about the IG Act. The Administrator's quarrel seems to be with the IG Act, which provides for an independent office to conduct credible and thorough investigations and audits. This debate, however, is one that belongs in Congress, not within federal agencies. The Congress enacted the IG Act, and Inspectors General serve the President and the Congress assisting in its important oversight role. Unfortunately, by choosing to address her complaints instead to GSA's leadership and staff employees, she undermines the effectiveness of the OIG to carry out the IG Act at GSA.³ For example, her comparison of IGs to terrorists and other insinuations of impropriety⁴ undermine the ability of OIG auditors and investigators to do their important jobs. In fact, the Administrator insults our hard-working auditors and investigators when she characterizes the funds for them as "wasteful spending."⁵

² For example, some of the Administrator's recent comments may illustrate this difference. The March 12, 2007, Federal Computer Week article entitled, *Doan Urges Balancing Rules and Results*, reads in part: "You can get so compliant that you have no accountability," said Lurita Doan, Administrator of the General Services Administration. But Doan, whose own actions have come under scrutiny in recent weeks, said ignoring compliance with procurement rules in seeking the cheapest prices is equally wrongheaded. Good contracting strikes a balance between rules and results," she said.

<http://www.fcw.com/article97871-03-12-07-Print>

Likewise, the Administrator is quoted in the Federal Computer Week as saying, "We don't want to spend so much time on being compliant that we don't get it done." March 2, 2007, Federal Computer Week, *"Katrina subcontracting plans incomplete, GAO finds,"* by Matthew Weigelt.

³ In an email dated February 3, 2007, addressed to the Regional Administrators, the Administrator stated: "Second, everyone now understands that we have challenges with our OIG. This is going to require a lot of work to fix and I am going to need your help. I am frankly very worried that our contracting officers have grown even more worried about a 'gotcha' environment that inhibits, slows, and retards all of our initiatives. We are going to have to double our efforts to support our contract officers and let them know that they will not be hung out to dry for making procedural mistakes and difficult judgment calls." (Emphasis added.)

⁴ Introductory letter to the FY 2006 GSA Performance and Accountability Report (PAR), p. 8 (alleging "undue pressure and intimidation from the OIG").

⁵ Introductory letter to the FY 2006 GSA Performance and Accountability Report (PAR), p. 6.

The Administrator's express disapproval of 50% of OIG's proposed audit activity for FY2007—70% of all non-statutory audits—is bad enough, especially after her management team had initially approved or even suggested many of them. It became worse as her comments became known throughout the agency.⁶ The effect was to undermine the ability of the OIG's line auditors to conduct these needed audits. GSA officials are in an extremely uncomfortable position when they know that the Administrator does not want an audit conducted. This is bound to chill cooperation as a result.⁷

The Administrator's Campaign to Reduce Oversight

Unfortunately, the Administrator has made many statements advocating reduced oversight in general.⁸ Perhaps, the clearest expression of her intent is in her State of the Agency Address in December 2006, in which she stated:

Oversight has become another challenge. By the way, oversight is a euphemism for the IG, Congressional, and legal review. . . . The intensity and frequency of oversight has increased. . . . I believe balance in oversight is critical to the success of GSA's newly formed Federal Acquisition Service. I do not know if I'll succeed in getting others to recognize the need for greater balance – or if I will get others to agree to work toward achieving that balance, but I believe so strongly that I must try.⁹

At our August 18, 2006, monthly meeting, the Administrator stated, “There are two kinds of terrorism in the US: the external kind; and, internally, the IGs have terrorized the Regional Administrators.”¹⁰

In the 2006 Annual Performance and Accountability Report (PAR) to Congress, the Administrator stated GSA's “most serious challenge” was to find a balance between proper independent oversight without undue pressure and intimidation of the GSA

⁶ We received telephone calls from OIG staff in regional offices about the Administrator's comments, which they heard about from regional GSA staff.

⁷ Perhaps not surprisingly, we received significant “push back” to audits. Under Administrator Perry and Acting Administrator Bibb, I do not recall being personally asked to intervene to stop or delay an audit, with one possible exception. In December 2006, however, three heads of major components within GSA expressed strong opposition to our efforts to move forward on OIG audits, sometimes with dire predictions, such as ‘this audit will break our backs.’ We stood firm, however, and the audits are proceeding—and without adverse effect on those components. Indeed, we are confident that OIG's findings will help the career managers of GSA to strengthen the operations of their components.

⁸ Notably, she also includes at times Congressional and legal oversight as well as the OIG's oversight role.

⁹ It is unclear what the Administrator means by “balance.” In a March 8, 2007, speech to the Executive Women in Government Summit, the Administrator said:

“Some people will say that leadership is about balance. I think that is wrong—I don't try to be balanced. . . . I don't worry about balance. I have been truly blessed to live the American dream and I have never once, not ever, tried to be balanced.”

http://www.gsa.gov/Portal/gsa/ep/contentView.do?pageTypeId=8199&channelId=-18821&P=&contentId=22556&contentType=GSA_BASIC

¹⁰ Other notable statements made during that meeting include: “I need an IG that's helping to solve the problem, not just tell about it,” and “you're killing this organization.”

workforce by the OIG—this in an agency that is charged with managing tens of billions of dollars worth of goods and services for the Government. In the one instance in which the Administrator and her immediate staff provided any specifics to look into, I directed the OIG Internal Evaluation and Analysis unit to investigate it, and the allegations were found to be unsubstantiated. Each year, OIG develops a list of the most serious management challenges facing GSA, including ensuring the best value for the taxpayer in the negotiation of GSA's contracts, protecting federal employees in safe and economical buildings and infrastructure, and securing information technology. It is remarkable that the Administrator would identify the OIG's work as the most serious challenge over these truly daunting challenges to the mission of GSA.

Compounding the seriousness of this situation, the Administrator has obfuscated statements she has made, especially the statement in which she called the IG / OIG employees "terrorists." She claims not to have called the IG / OIG employees "terrorists," even though the statement was witnessed by GSA and OIG senior staff. I was there and heard it myself.

The Administrator Proposed Significant Decreases in Audits

As discussed earlier, the Administrator has proposed significant decreases in audits which would hinder the OIG's ability to guard against fraud, waste, and abuse. In her September 19, 2006, memorandum commenting on the OIG's draft audit plan for FY 2007, the Administrator recommended deletion or delay of approximately 50% of the OIG's proposed agency audits for Fiscal Year 2007. The percentage of audits opposed by the Administrator rises to 70% if we do not consider the OIG audits required by statute. The Administrator's memorandum ignored OIG's detailed analysis of risk areas, extensive consultation with GSA managers regarding vulnerable program areas, and analysis of agency priorities under the President's Management Agenda, as well as GSA's strategic goals, in formulating the draft audit plan.

On October 19, 2006, the Administrator gave a public speech to the Northern Virginia Technology Council in which she proposed to relieve the stress on contractors by removing all preaward audits from the OIG and giving them to small businesses. The Administrator's publicly stated proposal was that \$5 million, previously allocated to OIG for reimbursable preaward audits of MAS contracts, would be spent on "surveys" by small businesses.

The funding, that would have otherwise been applied to an auditing function that the OIG is very experienced and successful in performing, would have been spent on "surveys" by contractors who may or may not have extensive experience in performing reviews of large firms. In addition, to have reviews performed by private firms could pose a risk to the proprietary data of the firms being reviewed. In fact, a number of vendors that we have audited have expressed that concern to us. The argument that using independent, small third party auditing firms would somehow result in real budget savings is speculative at best.

The \$5 million reimbursement arrangement was structured by OMB in 2004 in response to a Government Accountability Office (GAO) report that found that more preaward auditing was needed.¹¹ In that report, GAO recommended "... that the Administrator of the General Services Administration ensure that preaward audits are conducted when the threshold is met for both new contract offers and contract extensions; ... [GAO also noted that] the use of preaward audits and the millions of dollars in savings from such audits have declined dramatically in recent years.... The GSA Inspector General reported in August 2001 that (1) GSA contracting officials were not consistently negotiating most favored customer prices, (2) contracts were being extended with little negotiation or price analysis, and (3) preaward audits had decreased significantly in recent years. **Clearly, these problems are serious, longstanding, and have significant financial consequences....**"¹²

The facts over the last 3 years speak for themselves: while GSA was reimbursing OIG \$10.25 million for additional preaward audits of MAS, OIG was recommending cost avoidance for taxpayers of over \$2.3 billion.

The Administrator's Changes to OIG's Budget Submission

Departing from long-established practice in the agency, the Administrator made significant changes to OIG's FY 2008 budget submission in text as well as numbers. It is well known that budget text sets policy, in addition to the numbers that set funding levels.

All this was done without discussions with OIG before the changes were made, and OIG was not given the opportunity to directly present its request to OMB. The Administrator removed several references to fighting "fraud, waste, and abuse" and struck out **entirely** the OIG's proactive investigative effort. This matched her striking out entirely the OIG request for additional investigative staff to keep up with the rising investigative workload in geographic areas where GSA has operations, but OIG does not have investigative offices.

The Administrator also initially cancelled the FY 2007 reimbursable agreement through which the OIG investigated abuses of the GSA vehicle Fleet credit card program. Only the urging of senior GSA officials led the Administrator to restore the Fleet Card investigation Memorandum of Understanding (MOU)—and when she restored it, she asserted at our meeting of October 26, 2006, that she had never cut it.

The Administrator also reversed the course set by OMB and the President in the FY 2007 Budget which he sent to Congress. OMB had developed the reimbursable approach to preaward audits and it was approved by the President. The Administrator's action, cutting reimbursable funding in half and giving notice of termination of that approach in FY 2007, contravened those authoritative decisions, and did not support the President's budget already submitted to Congress.

¹¹ GAO-05-229, dated February 2005.

¹² *Id.* at 23-24 (emphasis added).

GSA's operations should be seen as serving the whole government. OIG audits are designed to serve taxpayers generally (and the client federal agencies) by assisting GSA to get the biggest discount for volume sales. The Administrator appears to have too narrow a view of GSA's mission, with the corresponding mistake of seeing OIG as merely "overhead" which does not produce revenue for GSA (and whose findings may even lead to reductions in GSA revenue).¹³ OIG's cost avoidance recommendations serve the government as a whole and the American taxpayers.

Other Budget Issues

In discussing the OIG budget issues, it should be kept in mind that the current OIG budget is less than one-quarter of 1% of GSA's budget.¹⁴

--New Charges Imposed with a Questionable Basis

Excessive centralized charges imposed by the agency have the potential to erode OIG's ability to provide core functions in a significant way. Centralized charges imposed by GSA amounted to about 17% of OIG's budget in FY 2006. In FY 2007, the agency imposed new charges on the OIG on a questionable basis. For example, even though OIG does its own personnel work for all employees at GS-15 and below, the agency has for the first time imposed a charge of \$550,000 for services of the Chief Human Capital Officer. Another questionable charge for the "Surge Account." Upon inquiry, OIG was informed that this account is the "Administrator's Discretionary Account."

--The Budget May Be Another Way For the Administrator To Reduce Oversight

- The Administrator has couched her efforts to reduce oversight as a mere "budget squabble."¹⁵ The problem with this is that she was not truly planning on saving any money, since she publicly announced plans to spend the \$5 million, proposed by the President's Budget for FY 2007 for audits by OIG, on "surveys" by private companies. So the expenditure level would have been the same, while the cost avoidance to the American taxpayer of over \$1 billion per year achieved by OIG audits would have, in all likelihood, diminished substantially.
- The Administrator's attempt to justify the need for restraining OIG's budget in her 2006 Annual PAR lacks credibility. There she stated, "The IG budget and staff have grown annually and substantially over the past five years and future unrestrained growth cannot be justified or afforded." While this sounds alarming, in truth, OIG staff grew only by 4% from 297 Full Time Equivalents (FTE) in FY 2000 to 309 FTE in FY 2006.

¹³ For example, the fees paid to GSA generally go down when the price goes down.

¹⁴ GSA announced on February 6, 2007, that GSA's budget for FY 2008 is \$20.1 Billion. The current OIG appropriation of \$52.6 million represents less than one-quarter of 1% of that figure.

¹⁵ See Federal Times, *Watchwords: Transparency, integrity, accountability*, at 22 (January 15, 2007).

- In her December 4, 2006, speech to the National Contract Management Association, the Administrator claimed that OIG enjoyed an automatic yearly 30% budgetary increase in recent years. In truth, the appropriation for OIG has grown at an annual average of about 4% with aggregate growth between FY 2000 and FY 2006, totaling about 30% (for the six year period)¹⁶. Most importantly, the workload of the OIG is driven by the magnitude of contracting conducted by GSA. Based upon the self-reported sales from Nationwide Schedule Sales reported to GSA by its contractors and published on the GSA intranet site, over the FY 2000 to FY 2006 period, sales growth exceeded 150%, multiple times the growth rate experienced by the OIG in its appropriated funding over the same years.¹⁷

Oversight In Action

Despite these challenges, the OIG is continuing to protect the taxpayer's money from fraud, waste, and abuse by performing audits and investigations every day.

We strive to maintain our independent audit and investigative authority, because proper actions thrive in places where oversight is curtailed.

OIG's Investigations of Administrator Doan

This Committee has also asked me to discuss today three particular actions of Administrator Doan. These actions are (1) her sole-source award of a contract to a friend, (2) her personal intervention in another contract negotiation, with Sun Microsystems, including the replacement of the contracting officer after he had sent notice to Sun that its contract would not be renewed in view of Sun's refusal to provide discounts to the Government comparable to those given Sun's commercial customers, and (3) her alleged role in encouraging use of GSA resources for partisan political purposes in a manner that may have violated the Hatch Act. These matters all came to OIG from persons with information to report to OIG. In following up on these matters, OIG did its duty to investigate matters brought to us.

The Contract with Edie Fraser's Public Affairs Group, Inc.

The first of these actions is perhaps the most striking, given GSA's procurement mission. How could someone with Administrator Doan's years of experience as a government contractor have made such a basic error as to award a government contract, without competition, to a friend's company? At her confirmation hearing last May, Ms. Doan assured the Senate, "If confirmed, I would also bring to this position, a knowledge of procurements, especially GSA GWAC procurements combined with a solid knowledge

¹⁶ The budgetary figures cited reflect the appropriated funds minus rescissions and do not include the variable amounts in funds received for selected pre-award audit functions.

¹⁷ Over the FY 2000 to FY 2006 period, the Consumer Price Index increased a total of 17%.

of the FAR.”¹⁸ Her friend, Edie Fraser, similarly described Ms. Doan as “having an amazing knowledge of procurement.”¹⁹

Administrator Doan’s knowledge of procurement procedures makes this episode all the more serious. The OIG investigation disclosed a clear disregard for the Federal Acquisition Regulations by Administrator Doan, those same regulations for which her office is responsible for providing leadership to the rest of the Government. The investigation also identified actions by Administrator Doan that appear to be Federal ethics violations,²⁰ and statements that were potentially false and, at best, inconsistent and misleading to the OIG investigators.

The OIG’s investigation started on August 28, 2006, when an anonymous source provided documents indicating that Administrator Doan personally awarded a sole source contract to a friend on July 25, 2006. Based on this information, the OIG initiated an investigation. The focus of the investigation was Administrator Doan’s award of a sole source contract to Public Affairs Group, Inc. (PAG), and its division, Diversity Best Practices (DBP). Her friend, Edie Fraser, was the founder and President of PAG and its subsidiaries.

This investigation confirmed that Administrator Doan personally signed this sole source contract for public relations services in the amount of \$20,000, at her own initiative and without consulting any contracting or legal professionals on her staff. Ms. Fraser countersigned this contract on behalf of PAG/DBP on the same day, July 25, 2006. During an initial interview with OIG investigators on September 8, 2006, Administrator Doan denied any inappropriate actions, stating that she did not even have contracting authority. She characterized the document she signed as a draft proposal, only to be used to start the formal contracting process. She emphasized that once she learned the process was wrong, she did everything she could to clean up the situation. She also minimized the extent of her prior dealings with Ms. Fraser, indicating her company was called a “partner” of PAG because it bought tickets to banquets and helped mentor other small businesses.²¹ Unfortunately, subsequent interviews and documents showed that these assertions of Administrator Doan were incomplete and inaccurate.

First, was the July 25 document a contract? By its very terms, right above where Administrator Doan signed the document, the document states, “By signing this Confirmation of Service order, you agree to pay our fee for the services described above within thirty (30) days of receiving an invoice(s)”. Would an experienced businessperson

¹⁸ S. Hearing 109-168, “Nomination of Lurita Alexis Doan,” Senate Committee on Homeland Security and Governmental Affairs (May 22, 2006), p. 33.

¹⁹ Email of April 14, 2006, from E. Fraser, subject “RE: Special Lurita Doan nominated for GSA”.

²⁰ Specifically those concerning Impartiality in Performing Official Duties, i.e., Executive Orders 12674(¶8)(1989) & 12731 (1990); Presidential Memo January 20, 2001; 5 C.F.R. § 2635.101(b)(8); and 5 C.F.R. §§ 2635.501, 502 (which state, Federal executive branch ethics principles provide that employees ‘shall act impartially and not give preferential treatment to any private organization or individual’; those regulations further provide that employees should be aware of situations that may raise an appearance of partiality.)

²¹ GSA Office of Inspector General Report of Investigation I-06-0248 (the ROI), pp. 4-7.

sign such a document, if she did not intend to receive and pay for the services described?²² Our investigation later showed that both the GSA Contracting Officer and a Counsel subsequently involved treated this as a contract. When it became clear that the contract was improper and could not be corrected, GSA's Office of General Counsel insisted on sending a formal termination for convenience letter, including an offer to pay for expenses incurred prior to termination. Needless to say, a termination including an offer to pay wind-down costs would itself have been improper if there was no contract in the first place.

Second, the record does not support Administrator Doan's assertion that she did everything she could to clean up the situation. Quite the contrary, the evidence gathered suggests that Administrator Doan was at best reluctant, and at worst defiant, about terminating the contract. In describing what happened, GSA's General Counsel at the time, Alan Swendiman, told this Committee he repeatedly advised that the contract be terminated, but was unable to convince Administrator Doan to do so. She refused to sign the termination letter he had prepared for her.²³ Even after providing Administrator Doan

²² Ms. Fraser has also made public statements recently trying to characterize this as something other than a contract. However, the following excerpts from PAG's communications belie this *post hoc* characterization. By whatever name, whether One Pager, Confirmation of Service Order, PO, or contract, the evidence shows there was substantial effort to make the "final submission" and get signatures, and that the "action phase" started right afterwards:

"Based on this, GSA will issue a Purchase Order." (July 19 4:49 PM Fax cover sheet, from Fraser to Doan, transmitting a draft of the contract).

"Hi Edie: I spoke with Liz Ivey [GSA]...she suggested two minor changes to the report outline..." (July 20 1:32 PM email from K. Briscoe [PAG] to Fraser).

Subject: "Confirm time to talk in AM and interrupt me" (July 24 11:31 PM email from Fraser to Doan and Meghan Espinoza, Doan's assistant).

"Thanks for taking this next step"; Subject Line: "GSA Report Lurita doing Purchase Order" (July 24 11:26 PM email reply from Fraser to Briscoe).

"Could I get a copy of the final submission to Lurita?" (July 25 7:02 AM email from Strzyzewski [PAG VP] to Briscoe).

"PO being cut. Kevin in lead with this now to set up this week at GSA" (July 25 11:42 AM email from Fraser to Espinoza and Briscoe).

"Hi Edie, Could you send me Meghan Espinoza's phone number so that I can confirm that she received the fax?" (July 25 1:46 PM email from Gnaill [PAG] to Fraser).

Fax of the contract, PAG's date/time stamp having: "JUL-25-2006 13:55 BWN"

"Jamie, get the one pager and confirm with Meghan ... Kevin, confirm that we are on to performance getting the job done" (July 25 1:59 PM email from Fraser to Briscoe, Strzyzewski).

Fax time stamp of the contract (with Doan's signature) from GSA: "7/25/06 TUE 14:04".

"Hi Liz: Just wanted to touch base to make sure we're on track to move to the action phase." (July 25 2:56 PM email from Briscoe to Liz Ivey).

"Just spoke with Liz: we're set for a 10:30 meeting Thursday [July 27]" (July 25 2:56 PM email from Briscoe to Fraser).

"When will we get the purchase order?" (July 26 12:56 PM email from Strzyzewski to Fraser).

"This is it with signature" (July 26 1:28 PM email from Fraser to Strzyzewski).

²³ The termination letter was attached to a Memorandum dated August 3, 2006, from Mr. Swendiman, GSA General Counsel, to Mr. Phelps, GSA Chief of Staff. In this memo Mr. Swendiman advised:

"1. [PAG requested information] so that they can begin work under the contract executed July 25, 2006...

2. It would appear that either the Public Affairs Group has not been notified that the contract is terminated or the program manager has not been so informed.

copies of the relevant regulations so she would understand why termination was necessary, he heard nothing back from her office. According to Mr. Swendiman it was he, not Administrator Doan, who then directed the termination letter be sent without Administrator Doan's approval.

Third, the record does not support Administrator Doan's apparent attempt to minimize this whole affair as little more than her concurrence with a draft proposal, which was quickly dropped. Rather, Administrator Doan admitted to the OIG investigator that the idea of contracting with Ms. Fraser's company for \$20,000 worth of services was her own idea, and this came to her on her second or third day at GSA.²⁴ Less than two weeks later staffs at both GSA and PAG were busy working on a statement of work, and Ms. Fraser was already suggesting other areas for work. At least three drafts of the Confirmation of Service document were circulated between GSA and PAG, with a draft of the contract sent by Ms. Fraser to Administrator Doan's home fax at Administrator Doan's request. When Administrator Doan signed the contract on July 25, Ms. Fraser's email to the PAG team was "Now on to performance", and the Administrator's office requested a purchase order number—a necessary requirement for payment, and a number was assigned by July 31. As late as August 2, an email from Ms. Fraser to PAG employees on the subject of "GSA Call David Bethel Director of Communications," gave no indication anything had been dropped, stating, "He [Bethel] and team will market the report once done . . . PAPERWORK hopefully we get it redone in the next two days." Even after the contract was terminated on August 4, that very same day the email exchange between Administrator Doan and Mr. Phelps, GSA's Chief of Staff, showed the matter was far from over. After informing Administrator Doan of the upcoming termination, Mr. Phelps went on to say, "I will simply tell [Edie's folks] that we have more work to do on our end before moving forward." Administrator Doan's response was "Okay. Now, for the next step: the SOW [statement of work]. Who is doing that work, Felipe [Mendoza, of GSA] or Edie?"²⁵ Several times over the next month Ms. Fraser sent emails to Administrator Doan asking about the status of the report work, and met Administrator Doan at her office three more times. It would appear that Chief of Staff Phelps' message that there was "more work to do on our end before moving forward" was understood by Ms. Fraser, that efforts to get her the report work were not over, and there is no objective evidence, despite the opportunities over the next month, that Ms. Doan contradicted this understanding.

Fourth, the OIG investigation revealed that prior to Administrator Doan's appointment as Administrator, her relationship with Ms. Fraser went far beyond purchasing some banquet tickets and participation in mentoring activities. In the three and a half years

3. If this is the case, the contract must be terminated immediately and in writing.

4. Attached is a proposed termination letter...

[5. ...]

6. Please advise me when a notice of termination for convenience of the government has been transmitted."

²⁴ ROI, p. 4.

²⁵ Contrast this email exchange with Administrator Doan's interview statement a month later: "DOAN said that it appeared that Fraser seemed to believe that DBP was awarded a contract and that the termination notice was a way of voiding this perception..." ROI, Ex. W1-2, p. 3.

before Ms. Doan sold her company, New Technology Management, Incorporated (NTMI), she hired Ms. Fraser's company, PAG, to provide over \$500,000 in services. Ms. Doan / NTMI paid \$206,411 in corporate and personal sponsorships of events produced by Fraser's companies. Over and above the sponsorships, \$300,000 was paid to Ms. Fraser's company for a management consulting contract. The OIG investigators found it more than slightly coincidental that under this contract Ms. Doan's company paid PAG \$20,000 a month for services until the year NTMI was sold—the same \$20,000 amount that Administrator Doan felt was a fair price to pay Ms. Fraser's company under the subsequent contract with GSA.

Administrator Doan and Ms. Fraser also enjoyed a personal relationship. This is evidenced in part by Fraser's assistance in obtaining a Congressional internship for one of Administrator Doan's daughters, by her vigorous promotion of Administrator Doan as a business leader,²⁶ and her personal advocacy with Senators in support of Administrator Doan's confirmation.

So, the record paints quite a different picture than what Administrator Doan told the OIG investigators. Instead, what the record reflects is a range of business contacts between Administrator Doan and Ms. Fraser, starting seven years prior and continuing almost without interruption at GSA, coupled with a determined effort by Administrator Doan to get a contract awarded to Ms. Fraser's company. But, Administrator Doan—who testified during her confirmation hearing that she knew procurements and the Federal Acquisition Regulations—should have known the document she was signing was a contract. She should have known that the procurement had to be subject to fair and open competition. She should have known that GSA schedules included companies who had negotiated with GSA to provide such services to the Government. Instead, Administrator Doan awarded, without competition, a \$20,000 government contract to her friend's company for a 24 page public relations report.

²⁶ For example, Ms. Fraser was on the Women's Advisory Board of Office Depot, and co-presenter of awards, at a February 2003 ceremony hosted by Office Depot, in which Administrator Doan and Ms. Bohan (Omega Travel) received Business Entrepreneur Award and Businesswoman of the Year awards, respectively. During the prior year, 2002, Administrator Doan's company paid \$85,800 to Ms. Fraser's company. After the February 2003 awards, Ms. Fraser gave an interview praising both Administrator Doan and Ms. Bohan as follows:

“EW: You have been very supportive of Lurita Doan and Gloria Bohan ... What can other women business owners learn from them?”

“Fraser: Lurita Doan is precisely what this nation needs. Her company brings innovative solutions that have been applied not only to Homeland Security, but to a number of other departments in the government. She will assess a need and foot the cost to prove an innovative solution. The company remains on the cutting edge of information technology under her visionary leadership. It hasn't been easy for Lurita. Large companies want to compete and bundling is still a reality. But with passion, perseverance, and the best there is to offer in solutions, she is winning.

“Gloria Bohan is a wonderful role model and I have been proud to promote her and support her efforts. We are so proud that Omega World Travel is the largest woman-owned business in the DC metropolitan area. *As with Lurita, we are there to support one another.* She has achieved tremendous success with government contracting, and this opportunity has helped her to significantly expand her business.” (Emphasis added). (Full article available at www.enterprisingwomen.com/fraser_qa.htm).

Of course, there may be instances where such a contract could be sole sourced to one company. FAR Part 13 provides that simplified acquisitions—those under \$100,000—can be sole sourced, but only if a contracting officer determines that only one source is reasonably available, and that source must be a small business concern.²⁷ These are facts that were, or should have been known by the head of GSA, the Government's premier contracting agency, before contracting with PAG. These were facts that, in any event, were provided to Administrator Doan the week after the contract was signed. Unfortunately, they were disregarded. Despite PAG's efforts to provide an after the fact sole-source justification on July 31, a Contracting Officer together with GSA counsel determined there was nothing unique about the work being done by PAG. Ironically, although the end-product was to be a short report promoting GSA's small business utilization, at the time the contract was awarded PAG no longer even qualified as a small business. A careful review would have shown that at the time the contract was awarded, PAG was a subsidiary of NBC Universal, itself a subsidiary of GE, one of the largest multinational corporations in the world. Thus, the award by Administrator Doan also violated the exclusive set-aside under FAR Part 13 for small businesses. Administrator Doan would like to characterize all of this now as a mistaken attempt to obtain unique services from a small business; but the record suggests her actions as more akin to a reckless disregard of the facts while attempting to award a contract to a friend and her company.

It is also illuminating to consider how the \$20,000 figure for the contract was arrived at. During her interview, Administrator Doan tried to dismiss the contract as a mere proposal, in view of its lack of detail. She read aloud the task portion that states, "Produce a report with data and case examples, show progress and significance of where GSA stands and its deep commitment to the future," and commented, "What does that mean?" Yet, she admits that on her second or third day at GSA (with even less information), she had already determined that the \$20,000 amount was "a good fair number" in order to get a good job done. This number never changed during the next month and a half's negotiations over the statement of work, and was still the total used by PAG when backing in hourly rates in its revised statement of work, provided together with its sole source justification on July 31 in an attempt to keep the contract. Here again we would expect that the greenest of contracting officers, let alone the head of GSA, to know that when conducting a procurement you do not tell a contractor how much they can charge for their services before you have even determined the level of effort needed. It seems evident that it was not a considered view of the services needed by GSA that set the price. Rather, it appears the price may well have been arrived at from an extension of Administrator Doan's quite different private-sector experience, such as her awards of \$20,000 to Ms. Fraser's company each month for public relations services.

Now, the question has been asked, what is the big deal, if the contract was only for \$20,000 and was terminated less than two weeks after signing? There are several answers to this question. First, we are not talking about a simple error, a technical violation of an obscure regulation. *We are talking about the violation of key contracting*

²⁷ FAR 13.106-1(b), 13.003(b).

principles—promoting open competition with only limited exceptions, and avoiding any appearance of personal favoritism in awarding government business—by the leader of the Government’s premier civilian contracting agency, GSA.

Second, the OIG investigation showed that Ms. Fraser was planning to do far more work for GSA, and we found no evidence that Administrator Doan did anything to discourage Ms. Fraser until after they both became aware of this investigation. Only two weeks after Administrator Doan was sworn in, on Ms. Fraser’s third email of the day to Administrator Doan on June 14, 2006, (going, incidentally, to Administrator Doan’s home email account), Ms. Fraser set out a “Checklist for GSA and Lurita.” The report project which culminated in the contract was called “GSA first assignment,” and Ms. Fraser emphasized “have some other ideas . . . We can do so much with you.” Ms. Fraser went on to say: (1) “[I] want GSA to be member of Diversity Best Practices [DPB, a PAG company] and take table at Summit [DBP’s 2006 fall Banquet]”; (2) promote appointments with PAG clients (“II. OMEGA Travel and GSA and government overall”), sponsors (“V. ETHEL Batten [Vice President, HR for Lucent] for August (YES)”) and several other companies; and (3) offer what appeared to be recruiting assistance (“Sandy might handle recruiting as well” and “VI. CFO for GSA”). Ms. Fraser’s email was effusive, saying “Thanks for time and mutual support; will give you my all.”

Although the next three months must have been busy ones for Ms. Doan as the new Administrator, she met at least four times and regularly talked and corresponded with Ms. Fraser (PAG even produced ten emails and one fax with Ms. Fraser using Administrator Doan’s private email and fax.)²⁸ Administrator Doan made time to speak at DBP’s July WOW! Conference, and Ms. Fraser’s prepared introduction called Administrator Doan “a committed supporter of BWN and Diversity Best Practices.” A week later, even while work was underway finalizing the outline of work for the PAG contract, Ms. Fraser was discussing more expansive work. Her emails with Administrator Doan between July 20, at 11:41 pm, and July 21, at 7:19 am, said “I have great idea to match what Lurita wants to do,” and “have recommendation re Public / Private Partnership as for the meetings I have two companies that would join in hosting with GSA and this is huge deal for doing all year long for two meetings per month.”

Between July 19 and August 17 Ms. Fraser continued to work on these other matters. In her email of August 17 to Administrator Doan entitled “GSA Relationship,” Ms. Fraser reported success on both a “Meet the Administrator” initiative (stating, “Native American on Sept 6th”), as well as two other appointments for August 31—while still urging action on the GSA contract (“The REPORT: on GSA plate and awaiting response.”) These additional meetings occurred as scheduled. While it is not clear what direct benefit Ms. Fraser and PAG received from these meetings, it is worth highlighting that Ms. Fraser urged both the Native American participants and Administrator Doan to have their respective organizations pay for tables at DBP’s upcoming October 2006 Gala.²⁹

²⁸ By contrast, Administrator Doan produced none.

²⁹ To GSA, Fraser said “Summit and GALA: . . . want you to speak and Want GSA to be member of Diversity Best Practices and take table at Summit.” (June 14, 2006, Email from Fraser to Doan). To the participants at the Native American meeting with Doan, Fraser said “Congratulations on a great

On September 6, 2006, Ms. Fraser sent another email to Administrator Doan, summing up the success of the Native American meet and greet earlier that day, while also prompting for more, paying, work.³⁰

On September 8, 2006, PAG's custodian of documents was served with its first subpoena from GSA's Office of Inspector General concerning this matter. Administrator Doan was also interviewed on September 8, 2006. According to Ms. Fraser, she also received a brief phone call from Administrator Doan around this time in which Administrator Doan alerted her that she might get a call about the work that PAG had done for GSA.

Based on her own experience, Administrator Doan knew or should have known that Ms. Fraser stood to benefit far more than just from this first \$20,000 contract. The stream of calls, emails and meetings show that Ms. Fraser clearly hoped for much more from GSA. But, after it became clear that the leading activity of the relationship, the July 25 contract and report preparation, was under investigation, all further activity appears to have ceased.

The Contract with Sun Microsystems, Inc.

Administrator Doan's conduct, and its results in a recent award of a contract extension to Sun Microsystems, Inc. (Sun) for certain information technology (IT) products and services, are also troubling. There are three problems that I would like to highlight in connection with this award. First, the price accepted by GSA fell far short of GSA's regulatory policy, which requires GSA to seek from its multiple award schedule (MAS) vendors the best price they give to their most favored commercial customers (MFC pricing).³¹ Unfortunately, it appears that Administrator Doan, in intervening in the contracting process to keep the Sun contract from expiring, was far more concerned about GSA's business volume and portfolio than she was about the overall value to its U.S. Government customers. Second, as a direct consequence of her intervention, and in breach of GSA's fiduciary duty to the U.S. taxpayers, the pricing concession made to Sun means that the U.S. taxpayers will inevitably pay far more for Government IT products and services than they should. Third, Sun's competitors are adversely impacted in competing for Government business. To the extent one contractor is able to get away with lower discounts (i.e. higher prices) to the Government, it has achieved an unfair competitive advantage over all other companies forced to grant the Government the accurate discounts reflecting their true commercial marketplace pricing. If this were to become accepted practice, it would encourage more companies to adopt aggressive price negotiations strategies, further eroding the ability of conscientious contracting officers to

meeting...Our Summit and Gala is October 25, 26...we want to have at least 35 Native American businesses represented." (September 6, 2006, email from Fraser to meeting participants).

³⁰ This email reads, in part,

"Hispanics are ready. Disabled are ready. African American in process. Asian American in process.

"Lurita, I will do anything for you and will do for the rest of my life. Bottom line, want relationship with GSA and will keep delivering as you know. But I have spent so much time at GSA from the report planning to these sessions with ZERO \$\$. How do we solve"

³¹ General Services Administrative Manual (GSAM) 538.270.

achieve the goal of MFC pricing for the Government. While this is not the first time a contracting officer has awarded a GSA contract below MFC pricing, it is the first time we are aware of in which an Administrator has personally intervened this way.

Let me begin by first providing some background on the contract in question. Sun was awarded two contracts, one in June 1997 and another in August 1999, covering hardware and software maintenance, IT equipment and services, software licenses, and training. The contracts were merged together into one MAS contract in January 2003.

In September 2004, in response to a hotline complaint alleging overcharging in connection with Sun's maintenance services, the OIG initiated a post-award audit for both contracts. Since the consolidated Sun contract was due for renewal around this same time, GSA's Federal Supply Service and contracting officials were briefed on the significant compliance issues identified in connection with the post-award audit then underway. Because of their concern, the contracting officer (the second CO³²) decided not to renew the contract, but instead granted a six month extension in order to allow the OIG to perform a pre-award audit to help determine Sun's current commercial sales practices and the appropriate discounts due the Government. The CO also required Sun to agree to an extensive corrective action plan addressing each deficiency already identified. When negotiations had not yet closed at the end of the extension period, the second CO informed Sun that he was considering canceling all of Sun's resellers MAS contracts because of the poor pricing offered and Sun's failure to submit a complete, updated offer as requested. In fact, on August 1, 2005, the second CO cancelled Sun's contract. But, after Sun's management complained to GSA management about the cancellation, the second CO was directed to reinstate the contract with an extension. He did so, but only after requiring Sun to agree to significantly higher discounts (the Interim Discount) for the extension period. The CO felt this step was necessary because by that time it was already clear that Sun had substantially understated its commercial sales discounting, and the Government was due a substantially higher discount.³³

Unfortunately, as the end of the extension period approached, the second CO was notified that he was being reassigned. He tried to expedite and conclude negotiations with Sun, but was directed to stop working on the Sun contract. A new contracting officer (the third CO) was assigned, and several months were spent by the third CO in familiarizing himself with the complicated details of the contract and negotiations up to that point. The contract was also extended to August 31, 2006, continuing to use the Interim Discount rate. When the third CO commenced negotiations, he agreed with, and substantially adopted, the negotiating position taken by the second CO. This position included setting a Low Objective (i.e. the minimum discount that would be accepted as fair and

³² This was the second CO, since a different CO was responsible for the original 1997 and 1999 contract negotiations. The second CO handled the extension negotiations until he was replaced in February 2006. The third CO handled negotiations until he was replaced on August 31, 2006. The fourth CO was assigned on August 31, 2006, and awarded the contract on September 8, 2006.

³³ The actual percentages of the different discount rates is being withheld, as these could indirectly disclose commercial trade secrets of Sun and/or its customers. However, a confidential briefing can be provided to the Committee discussing the actual amounts identified. These amounts were provided to the responsible contracting officials of GSA throughout the course of events recited here.

reasonable to the Government) at a substantially higher rate than even the Interim Discount adopted in August 2005, with a target objective higher still.

Despite the abundant evidence of Sun's better discounts to comparable commercial customers at and above the third CO's Low Objective, it became clear by July 2006 that Sun was refusing to offer the Government discounts at the MFC level. This led to a series of briefings that culminated on August 14, 2006, in an Impasse Briefing to GSA senior management, including Commissioner Williams of GSA's Federal Acquisition Service (FAS). At this Impasse Briefing, the third CO and his supervisors informed FAS management about the gap between what Sun was offering and what the CO felt should be a minimum acceptable discount rate. Other issues were also discussed, including Sun's refusal to accept the standard MAS price reduction clause. The CO recommended that the Sun contract should be allowed to expire, and FAS Commissioner Williams approved the recommendation. A week later, on August 24, 2006, the CO sent an email to Sun's lead negotiator "that since SUN did not accept GSA's offer by the 12:00 noon deadline of August 23, 2006, that GSA will be informing Government agencies that the Sun contract expires on midnight August 31, 2006."³⁴

This could have been a success story for GSA and its Government customers had the third CO been allowed to proceed, highlighting the importance GSA gives to achieving best pricing for the Government. But, for the second time in the course of these negotiations Sun complained, and for the second time a contracting officer was replaced. This time, it was the President of Sun Microsystems Federal, Inc., Bill Vass, who contacted the head of FAS, Commissioner Williams, and the suggestion was made that both sides change their negotiating teams, to see if a fresh perspective might not help.³⁵

Shortly thereafter Administrator Doan became aware of the situation, and on August 29, 2006, she called for an emergency meeting to discuss this matter with members of my staff and her staff, including GSA's General Counsel, Chief of Staff, and the Assistant Inspector General for Auditing. That same day the Sun contract was extended two weeks, and two days later the CO was replaced.

One of the more troubling aspects of the August 29, 2006, meeting, was that Administrator Doan did not ask for any briefing, or even allow discussion, on the key issue of the disparity between the discount Sun was offering the Government and the discounts it was offering its other big commercial customers. Instead, her comments were directed at two themes: how the CO was negatively impacted too much by his knowledge of the audits to continue in his role, and that the OIG was threatening to irreparably damage GSA's IT business. She went on to elaborate, in her view, that if GSA did not have the Sun contract, Sun would just take its business to NASA's SEWP contract, and without Sun, the leading workstation server vendor, GSA's IT business could be destroyed. With respect to the CO, she went so far as to state that the CO's awareness of the auditors' recommendations and the potential for litigation over Sun's

³⁴ CO email to Mike Abramowitz [Sun], dated August 24, 2006.

³⁵ Interestingly, while GSA did change its negotiating team, Sun's team, including its lead negotiator, while allowed to stay the same.

past charges must have so stressed him, that she would not believe he was able to continue unless she went and personally interviewed him. At this point both the General Counsel and Chief of Staff jumped in, urging against such a personal interview, and the Chief of Staff volunteered to follow up instead.

That same day the Sun contract was extended an additional 11 days. Two days later, on August 31, 2006, Commissioner Williams personally called the CO and his supervisors, telling them that he and Administrator Doan considered the Sun contract strategically important, and wanted the contract awarded. He asked if the CO could move forward, and when the CO replied he did not see how he could, he was offered the ability to opt out without any negative consequences. After agreeing, a new, fourth CO was assigned. In just five business days (and overtime over Labor Day weekend), the paperwork was done and the new Sun contract awarded on September 8, 2006.

Unfortunately, the contract awarded by the new CO conceded to Sun on both the discount and price reduction issues. It essentially stopped at the Interim Discount rate as the rate going forward,³⁶ although the Interim Discount was only meant as an interim rate by the second CO until Sun's discount practices could be verified and the appropriate discount rate determined. It also included a meaningless price reduction clause, in practice allowing Sun to discount its major commercial customers in the future without having to pass on price reductions to the Government.

While the total financial consequence of this award are not as easy to predict, the findings of the OIG's pre- and post-award audits certainly help scope the impact. The post-award audits performed on the original contracts concluded that Sun had misled GSA with inaccurate and incomplete commercial business practice information, which led to overpayments in the amount of \$27.1 million, with other refunds identified in the amount \$0.4 million.³⁷

The pre-award audit similarly identified issues with Sun's most recent offer, showing that Sun was offering a discount that was substantially lower than those granted to comparable commercial customers. At the time the pre-award audit was issued in January 2006, the cost savings identified amounted to \$18.6 million over the remainder of the contract. A small part of these savings, less than \$1 million, were achieved in a September 2006 award through a slight improvement over the Interim Discount, but this

³⁶ There were slight improvements in the product discounts, as negotiated by the third CO, but the critical maintenance discounts remained essentially unchanged at the Interim Discount level.

³⁷ This is a conservative calculation, basically accepting the Interim Discount rate in calculating direct damages. The calculation would have been significantly higher had the second and third CO's discount rate targets been adopted instead. Also, the calculation does not take into account other factors that might be argued if litigated, or the potential for doubling of the amount of damages under the False Claims Act, 31 U.S.C. 3729. It is also limited to sales to the U.S. Government directly under Sun's two MAS contracts. Since the MAS rate is often considered during negotiations with resellers and by other agency contracting organizations (like NASA's SEWP), it is likely that the total cost to the U.S. Government is significantly higher. Finally, the audit findings had to be qualified due to Sun's repeated inability to provide a verifiable, accurate, auditable database of its commercial and GSA sales; as such, there is an increased possibility that additional review could disclose more monies owed to the Government under Sun's MAS contracts.

in turn was more than offset by accepting a meaningless price reduction clause. As with the post-award audit computations, this calculation is limited to the Sun MAS contract, and does not include an estimate of additional cost savings that could be realized on sales by Sun resellers or sales via other Government contracts.

Thus, the rush to accept Sun's take-it-or-leave-it position has had a real and demonstrable impact, both deflating the potential recovery for Sun's past misrepresentations and increasing the Government's costs going forward. We do not agree, as Administrator Doan appears to claim, that this shows good stewardship of the taxpayers' dollars, or that the reasons put forward by Administrator Doan warranted this concession. Her first position argued that the possibility of an enforcement action was so intimidating as to render the third CO incapable of carrying out his responsibilities as a warranted contracting officer. Fortunately, this is not a view held by the vast majority of COs in GSA.³⁸ It is impossible to have an enforcement action without the assistance of the COs, since their testimony is an essential part to establishing the facts concerning a contract. Without enforcement, experience shows too many contractors will ignore the terms of their contracts. In other words, this is part of the job description of being a contracting officer, and the thousands of professionals who hold these positions understand this. It is also interesting to note that Administrator Doan's concern was not shared by the third CO, who has gone on the record that he was not stressed by considerations of the audit findings or litigation potential during the Sun negotiations.

The OIG is also concerned over matters that threaten the health and efficiency of GSA's programs. However, we do not share Administrator Doan's fear that the loss of one contract with one contractor, Sun, would threaten to irreparably damage GSA's IT business. While Sun is a valued vendor by many Government users, it is still only one of many players in the IT field, and other vendors and contract vehicles are available.³⁹ Nor was it absolutely clear that Sun would walk away from Government business, as evidenced by its clear concern and reaction when told of GSA's planned announcement that Sun's MAS contract would expire August 31, 2006. The concern over business shifting to NASA's SEWP appears parochial and assumes NASA would not, if approached, join with GSA in demanding MFC pricing. Actually, the timing was uniquely ripe for GSA and NASA to join forces, as NASA typically set its pricing in view of GSA negotiated pricing, and was at the same time negotiating its SEWP2 vehicle. This opportunity was raised at a meeting with Commissioner Williams on September 5, 2006, and GSA's Deputy Inspector General even offered to help facilitate the discussion of GSA's audit findings with NASA. However, Commissioner Williams declined, stating he did not think Administrator Doan would agree to discussions with NASA, given her public criticisms against NASA even having the SEWP contract.

³⁸ Not that litigation support is necessarily welcomed, as we have heard anecdotal concerns that some FAS managers are less sensitive to the need to re-balance work loads when one CO is faced with unplanned-for enforcement work. But this is a problem with workload balancing, not the necessary role of litigation support.

³⁹ Administrator Doan was mistaken in calling Sun the leading server vendor. While still a major player, according to Gartner Dataquest, in 2006 Sun was a distant third (at 10.8%) and fourth (at 4.5%) place, for market share in terms of revenues and server shipments, respectively, behind IBM, HP and Dell. See February 22, 2007, Gartner release (available at <http://www.gartner.com/it/page.jsp?id=501405>).

In this process, it does not appear that sufficient concern was given for the fiduciary obligation of GSA to negotiate the best pricing for the U.S. taxpayers. That impact has been direct, and is ongoing. Nor is it clear that sufficient concern was given to the impact on GSA's Government customers. Many of these assume GSA is negotiating MFC pricing, and when it does not, they are ultimately the ones that have to pay the price. Nor was any concern apparent for maintaining a level playing field between competitors, or the consequences to Government procurement practice if this "strategic" exception is given root. Some vendors have more than fifty percent share of the market for types of Government goods or services; are these, too, strategic enough to warrant an exception to MFC pricing? How many small businesses would qualify as strategic, and is it a fair policy to force those that do not to offer MFC pricing, while the large "strategic" businesses are excepted?

In the end, I am concerned that at the core of this matter, Administrator Doan allowed her personal concerns and campaign against IT contracting vehicles at NASA and other agencies to cloud her judgment about the Sun negotiations. But, it is equally disturbing that in order to accomplish this she would justify the removal of a conscientious CO based on a false assumption—that contract audit and enforcement activities can be so stressful to COs as to render them unable to carry out their duties. These are not the types of views we should expect from the Administrator of the Government's premier civilian contracting agency.

The Hatch Act Allegations

The final area of concern involves Administrator Doan's alleged role in encouraging use of GSA resources for partisan politics. The specific allegations were that Administrator Doan, using GSA resources, led a nationwide teleconference on January 26, 2007, with other GSA political appointees, and during the call Administrator Doan asked the participants, "How can we use GSA to better support our candidates in the upcoming election." By candidates, she meant Republican Party candidates. One Regional Administrator was then alleged to have responded by describing an effort to exclude House Speaker Pelosi from an upcoming opening of a courthouse in San Francisco. Also discussed was the opening of a new courthouse in Florida where former President Clinton was to be present. Administrator Doan is alleged to have suggested an effort to get Senator Mel Martinez to attend. Because these activities would have all taken place on Government property, with the expenditure of Government funds (e.g., for the teleconference and contractor supporting the teleconference), the alleged activities represent a potential violation of 5 U.S.C. 7324, the Hatch Act.

After determining that the allegations came from a credible source, the allegations were referred to the Office of Special Counsel, which has primary jurisdiction over the investigation of Hatch Act violations. This referral was also provided to this Committee at its request.

Conclusion

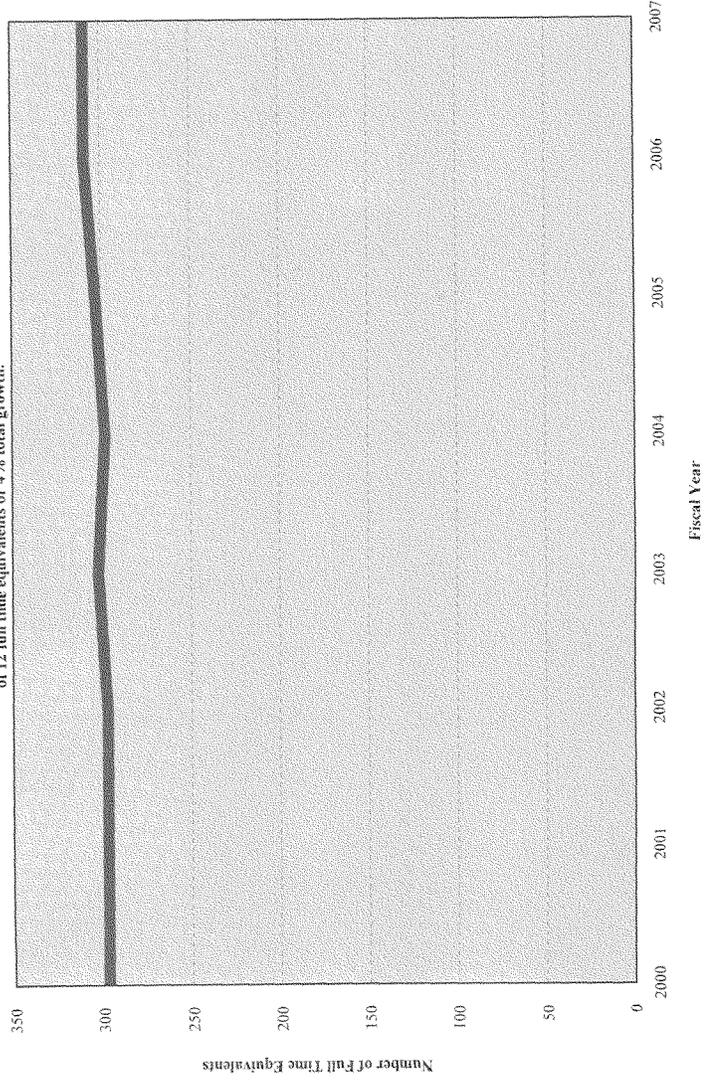
The OIG's audits and investigations have helped to safeguard the integrity of government operations and provide cost avoidance for taxpayers of billions of dollars. For years, the GSA OIG enjoyed good working relations with GSA managers who appreciate the information they receive from our professional audit and investigative work. Many GSA contracting officers have expressed gratitude for the OIG audits that enable them to negotiate best prices for taxpayers. My relations with former GSA Administrator Stephen Perry and Acting Administrator David Bibb were excellent. They were committed to the proper functioning of GSA, and they recognized that independent oversight was a tool for management in achieving that end. I had hopes of a similarly constructive working relationship with Administrator Doan, and I still do.

Unfortunately, however, the recent investigative efforts of the OIG show that, parallel to the Administrator's campaign to reduce oversight, the Administrator demonstrated a disregard for the rules governing contracting that oversight is meant to detect. In sum, the Administrator may have both violated basic rules of conduct for an agency head and worked to pare back the mechanisms for uncovering such violations. What may explain both is a lack of respect for both the law and law enforcement. My sincerest hope is that this is not the case.

Independence and objectivity are the hallmarks of a successful Inspector General. I have worked hard to give effect to these principles since I became Inspector General at GSA. That is why Congress and the President enacted the Inspector General Act. I was honored to be nominated by the President and confirmed by the Senate in the summer of 2005 to continue this good work. I pledge to you that I will continue to do my duty for the people of the United States. Thank you.

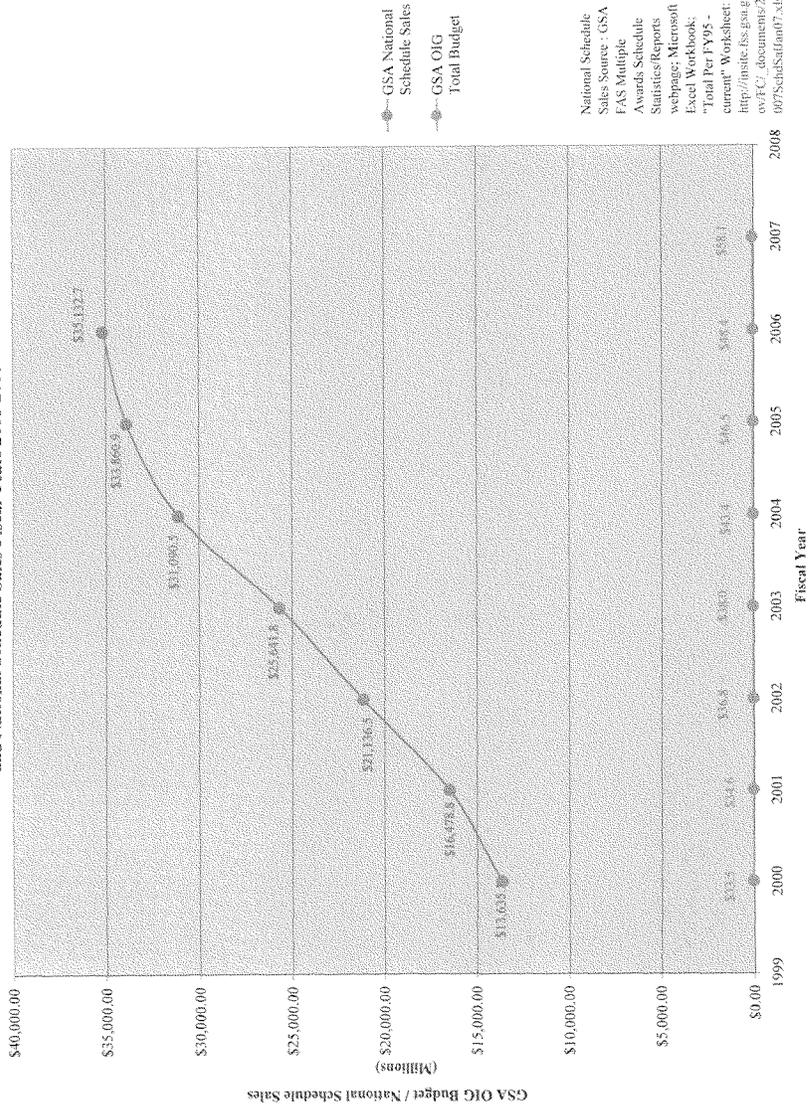
**Full Time Equivalents Authorized by Appropriation, GSA
Office of Inspector General, Fiscal Years 2000-2007**

Between Fiscal Year 2000 and Fiscal Year 2007, the number of full time equivalents authorized by appropriation for the GSA Office of Inspector General has varied from 297 to 309. Over the period from Fiscal Year 2000, that translates into an increase of 12 full time equivalents or 4% total growth.

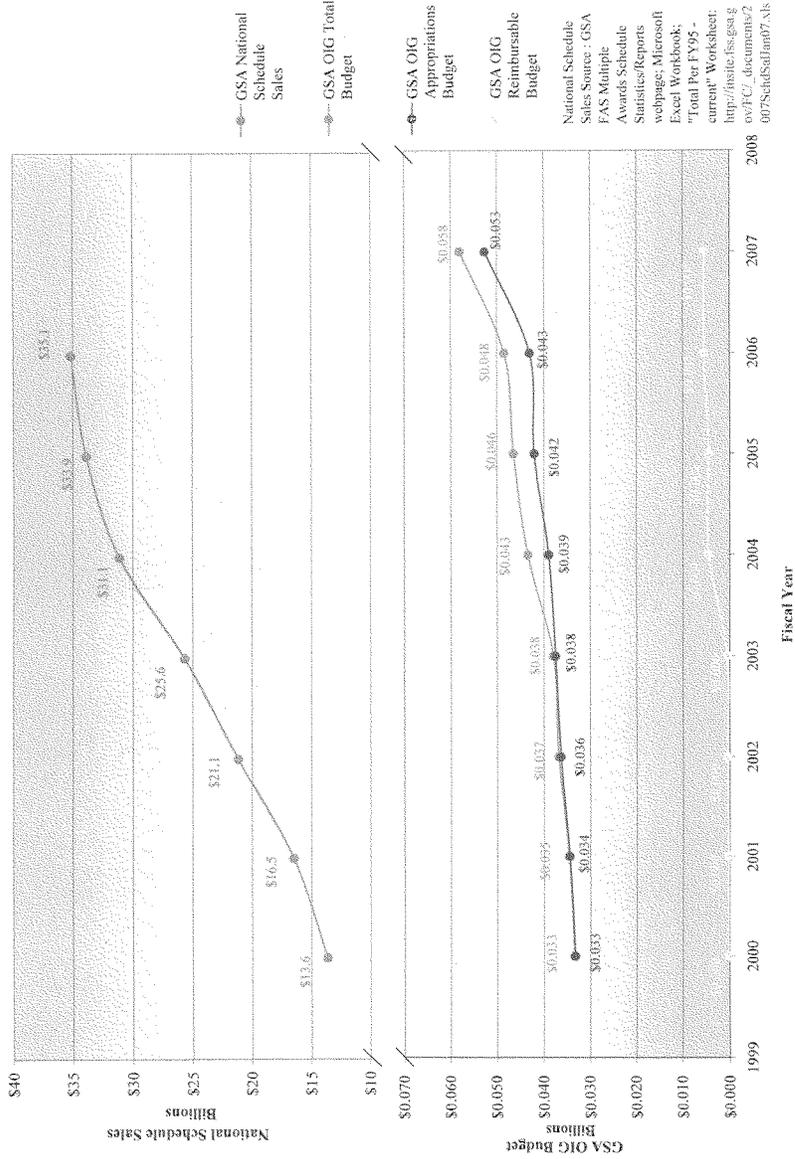


Note: Data for FY2007 represents the OIG's budget request.

GSA Office of Inspector General Budget Fiscal Years 2000-2007
and National Schedule Sales Fiscal Years 2000-2006



GSA Office of Inspector General Budget Fiscal Years 2000-2007
and National Schedule Sales Fiscal Years 2000-2006



National Schedule Sales Source : GSA FAS Multiple Awards Schedule Statistics/Reports webpage: Microsoft Excel Workbook, "Total Per FY95 - current" Worksheet: http://nsite.fas.gsa.gov/FU_documents/2007SchedSalesJan07.xls



**U.S. GENERAL SERVICES ADMINISTRATION
Office of the Inspector General**

February 20, 2007

TO: Lurita Doan, Administrator
FROM: Brian D. Miller, Inspector General *BDM*
SUBJECT: Your private attorney's letter of February 16, 2007,
 refusing access to GSA documents

Late Friday, February 16, 2007, we received the above-referenced letter from your private attorney, Michael Nardotti, which among other things informed me of your refusal to turn over agency documents to investigators of GSA's Office of Inspector General ("OIG"). This refusal was in response to my formal request of February 16, 2007, which was in turn necessitated by your failure to respond to an earlier request on February 7, 2007, by OIG's Assistant Inspector General for Investigations.

I am deeply disappointed by your refusal and urge you to reconsider this decision. This refusal is a violation of both federal statute and agency regulations. Coming from the Administrator, it also has the potential for chilling cooperation throughout GSA with the Office of Inspector General. The Inspector General Act of 1978 requires your cooperation, stating "Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation." 5 U.S.C. App. §3(a); *see also* §6(a)(1)-(6) and (b)(2). The GSA Administrative Manual similarly requires, "OIG auditors, investigators, and attorneys have unrestricted access to all records, reports, reviews, documents, papers, and materials available to GSA and pertaining to agency programs and activities. ... All GSA employees are required to cooperate fully with OIG investigative special agents." GSA Administrative Manual (OAD P 5410.1), ch. 9, §§ 4 and 24.

In addition to your own conduct, I am concerned that your actions are impeding cooperation from other senior agency officials. OIG's Acting Deputy Assistant Inspector General for Investigations made the first request for these documents on February 2, 2007, directed to GSA's Acting General Counsel. At that time he was informed by the Acting General Counsel that the documents were in the process of being prepared by the Office of General Counsel for production to Chairman Waxman -- so it would have been very easy to make a copy for OIG. However, instead of making the documents available, the Acting General Counsel said he would have to pass the request along to you. When we did not hear back from him, we repeated the request on February 5, 2007. GSA's Acting General Counsel then informed us that the Office of General Counsel no longer had access to the requested documents, that they were delivered to you and private attorneys representing you in your individual capacity for review in your Office, and a formal request would need to be sent to you.

I find it extraordinary that any part of the documents that your private attorney characterizes as "sensitive" would be made available in your offices to non-governmental persons such as your

private attorneys, while career investigators of GSA's OIG are prohibited access. Whether or not it is intentional, your refusal to turn over the requested GSA documents also has the practical impact of impeding OIG's investigators from conducting their investigation and providing timely responses to our Congressional oversight committees.

Finally, your reliance on a PCIE complaint for not complying with a valid investigative request is misplaced. You are obligated to follow the law, and the filing of multiple complaints does nothing to relieve you of that obligation. Moreover, based on what I know I am confident that the statement your private attorney identified to OIG investigators as leaked was not disclosed by anyone from GSA OIG, except to other government officials having a legitimate interest in the investigation. Thus, I fail to see any legitimate reason to slow down, let alone stop, the timely completion of OIG's investigation.

I encourage you to reconsider this course of action and produce these documents by Thursday. To do otherwise will constitute a continuing violation of the Inspector General Act.

Attachment: M. Nardotti Letter of February 16, 2007

cc: Lennard Loewentritt, Acting General Counsel

Chairman WAXMAN. Mr. Davis.

Mr. ISSA. Mr. Chairman, he will be right back. Do you want us to begin?

Chairman WAXMAN. Why don't you just finish your statement. We did give Ms. Doan additional time, and I think it would be only fair to let you have additional time to complete your statement.

Mr. MILLER. Thank you, Mr. Chairman. There is not much left.

In fact, she may have violated basic rules of conduct for an agency head while, at the same time, worked to pare back the mechanisms for uncovering such violations. What may explain both is the lack of respect for law and law enforcement.

I would be happy to answer questions.

Chairman WAXMAN. Thank you very much.

Mr. Davis, I am going to recognize you to control 15 minutes, and we will let you go first, then our side will control 15 minutes.

Mr. DAVIS OF VIRGINIA. Mr. Miller, I heard you say that you are accountable to the White House, to the Congress, and to the American people.

Mr. MILLER. That is correct, Congressman.

Mr. DAVIS OF VIRGINIA. Aren't you also, under the statute, accountable to the head of the agency to keep the establishment and the Congress fully informed?

Mr. MILLER. Indeed.

Mr. DAVIS OF VIRGINIA. You mentioned that?

Mr. MILLER. Yes, sir.

Mr. DAVIS OF VIRGINIA. You didn't mention that.

Mr. MILLER. Well, I would be happy to mention it now.

Mr. DAVIS OF VIRGINIA. And you are not an accountant; is that correct?

Mr. MILLER. Pardon me?

Mr. DAVIS OF VIRGINIA. You are not an accountant; is that correct?

Mr. MILLER. That is correct.

Mr. DAVIS OF VIRGINIA. You are not a CPA; is that correct? You are a prosecutor by career, right?

Mr. MILLER. Correct.

Mr. DAVIS OF VIRGINIA. Your prepared statement today takes credit for saving the Government a lot of money. How much did the investigation of this diversity study cost in your own staff time and expense? Any idea?

Mr. MILLER. Congressman, I don't have that number right now, but let me tell you that when this complaint originally came in, it came in with documentation to our office. It was a credible complaint. We looked at it. We decided that it was credible. We had to interview the Administrator.

I personally went up and told the Administrator that we had received this complaint and that my agents would have to go up and interview her.

Mr. DAVIS OF VIRGINIA. You didn't save any money on this one, though, did you, because it was canceled? Am I right? You didn't save any money on this one?

Mr. MILLER. Part of our job, Congressman, is——

Mr. DAVIS OF VIRGINIA. Just yes or no.

Mr. MILLER [continuing]. Is to investigate——

Mr. DAVIS OF VIRGINIA. Is that a yes or a no? Did you save any money on this investigation? The answer is no, isn't it?

Mr. MILLER. I believe it—

Mr. DAVIS OF VIRGINIA. Because the contract was never—

Mr. MILLER. There was no money paid on that contract. That is correct.

Mr. DAVIS OF VIRGINIA. Now let me ask you this. What obligation does the IG and his investigators and his staff have to prevent disclosure of investigative information to outside sources in ongoing investigations? Can you tell us what your responsibility there is under the statute?

Mr. MILLER. I will, but I hadn't finished my answer to the last question.

Mr. DAVIS OF VIRGINIA. I have limited time and I want to have the answer to this question.

Mr. MILLER. OK. The question is responsibilities to safeguard confidential information. We do have a responsibility to do that and we do take measures to safeguard confidential information, Congressman.

Mr. DAVIS OF VIRGINIA. Now, do you think that the premature disclosure of investigative information, even when permitted by law, can cause substantial harm to an ongoing investigation?

Mr. MILLER. It is possible, Congressman.

Mr. DAVIS OF VIRGINIA. Do you think that the GSA IG investigative information in the ongoing investigation of Administrator Doan was provided to the Washington Post reporters who authorized the January 19, 2007, article entitled, "GSA Chief Scrutinized for Deal with Friend?"

Mr. MILLER. Congressman, we did not disclose any part of the investigative file to anyone who is not authorized to see it. I don't know how the Post reporters got that information. I was surprised to see it.

Mr. DAVIS OF VIRGINIA. Did you do any investigation to see how it might have gotten out of your office?

Mr. MILLER. Well, we did ask around. In fact, we received a call in January, January 25th, from Mr. Nardoti, Administrator Doan's private attorney. He called our lead investigator and said that on January 19th the Washington Post reporters had documents, they showed Administrator Doan documents that came out of the investigative file. I think they claimed it was her supplemental statement correcting mis-statements in the earlier—

Mr. DAVIS OF VIRGINIA. That information, under the law, shouldn't get out; isn't that correct?

Mr. MILLER. That is correct, Congressman.

Mr. DAVIS OF VIRGINIA. And your office—you are under oath—had nothing to do with this?

Mr. MILLER. I am confident that my office had nothing to do with it. If I may finish, we immediately looked into this. Mr. Nardoti said that the Post reporter showed the information to Administrator Doan and to the acting General Counsel. When we heard this, we immediately interviewed the acting General Counsel, who said that didn't happen, that the Post reporters did not show him any documents from the investigative file, and that to his knowledge they had not.

Mr. DAVIS OF VIRGINIA. What did you do to investigate the leak at that point, though? It is clear that something had been leaked, correct?

Mr. MILLER. Well, at that point the head of my investigations said that the allegation by Administrator Doan's attorney was not credible. In fact, the lead agent called him back and told him that.

Mr. DAVIS OF VIRGINIA. So there was no documents that were leaked to the Post that shouldn't have been out there; is that correct?

Mr. MILLER. Congressman, they didn't come from my office.

Mr. DAVIS OF VIRGINIA. Did you investigate—

Mr. MILLER. I am confident my office did not disclose any—

Mr. DAVIS OF VIRGINIA. What did you do to ensure that it didn't? Did you do an investigation in your office to make sure that they didn't? Did you talk to employees, put anybody under oath, or anything?

Mr. MILLER. Well, Congressman, I am trying to answer your question—

Mr. DAVIS OF VIRGINIA. I want you to answer it.

Mr. MILLER [continuing]. As best I can. It is a little involved, and I ask you to bear with me, but at that point our lead agent called Mr. Nardoti back and told him what the General Counsel said, and he gave a nervous laugh and said, Well, gee, I will have to go talk to my client again. Well then he calls back on February 1st with a changed story, and the revised story said that Ms. Doan saw the statement in the Post reporter's hands, and that he also talked to another party that indicated subpoenaed e-mails had been turned over to the press, and he then told us he was filing a PCIE complaint.

Now, part of the mystery was solved 2 weeks later on February 13th. The attorney for PAG—Public Affairs Group—sent a letter to us saying they were producing an e-mail for the first time to us because they had learned that it had been leaked to the press. That is before it even got to our office. PAG tried to characterize it as outside the scope of our request, but it was a September 6th e-mail ending in 309.

At any rate, that second half of Mr. Nardoti's statement was clearly explained that it came from the Public Affairs Group.

Mr. DAVIS OF VIRGINIA. OK.

Mr. MILLER. I am trying to answer in the sense that we also learned that there was a complaint filed with the PCIE, and we did not want to interfere with the investigation of the PCIE.

Now, we also asked the Administrator for copies of documents that she was producing to this committee relating to the PAG investigation, and in connection with that Mr. Nardoti wrote us a letter saying she would not produce them in light of the PCIE complaint.

I responded to her, in response, preparing for that response, I did ask everyone who had access to those documents, whether or not they had disclosed them to anyone except other Governmental officials with a legitimate interest in the investigation. So we did make inquiries. We did not—if your question is did we take sworn statements, the answer is no.

Mr. DAVIS OF VIRGINIA. OK. The first public disclosure of the problems between you and the Administrator were revealed in a Post article December 2nd. Do you remember that article?

Mr. MILLER. I do generally.

Mr. DAVIS OF VIRGINIA. The Post stated that they had obtained notes from a private meeting you had with the Administrator. One of your assistants took notes in that meeting, and those notes found their way to the Post. The Post wrote that, according to these notes, the Administrator compared Miller and his staff to terrorists. Do you know anything about that leak?

Mr. MILLER. I don't know where the Post reporters got those notes. I do—

Mr. DAVIS OF VIRGINIA. You don't think they got them from Ms. Doan, do you?

Mr. MILLER. I don't think that they got them from Ms. Doan.

Mr. DAVIS OF VIRGINIA. Is it appropriate—

Mr. MILLER. They did not—

Mr. DAVIS OF VIRGINIA. Is it appropriate for the notes of one of your staff to appear in the Washington Post in a meeting like that?

Mr. MILLER. Congressman, those notes—we did share some of those comments and those notes the congressional staff, and I don't know where the Post—

Mr. DAVIS OF VIRGINIA. Which congressional staff? when did you do that?

Mr. MILLER. We shared them with congressional staff, maybe in October.

Mr. DAVIS OF VIRGINIA. OK. Which congressional staff?

Mr. MILLER. I believe that I shared them with Representative Platts' staff.

Mr. DAVIS OF VIRGINIA. OK.

Mr. MILLER. I may have shared them with other oversight staff.

Mr. DAVIS OF VIRGINIA. You think they may have leaked it? Of course, this meeting that we are talking about here, these notes that found their way, you are assuring me they didn't come from your office?

Mr. MILLER. Congressman, as far as I know, those notes did not come from my office to the Post reporters.

Mr. DAVIS OF VIRGINIA. And you hadn't talked to the Post reporters prior to the article on December 2nd; is that correct?

Mr. MILLER. Well, they did call me and asked me to confirm the read out of the notes, and I said, look, I am not going to confirm or deny, I am not going to comment on the relationship, my relationship with the Administrator. And then I talked about the positive mission of my office.

I did have one prior conversation with the Post reporters several months before that about how GSA contracts operate, in general.

Mr. DAVIS OF VIRGINIA. Did you initiate that conversation or did they initiate that conversation?

Mr. MILLER. I believe they did.

Mr. DAVIS OF VIRGINIA. OK.

Mr. MILLER. And we talked about firm fixed price contracts versus time and material contracts. There was not one word mentioned about my relationship with the Administrator or any of the issues going on between me and the Administrator.

Mr. DAVIS OF VIRGINIA. Now, you say that Allen Swindeman, General Counsel, told this committee that he asked the Administrator several times to terminate the contract and that she refused. That was your briefing to the committee; is that correct?

Mr. MILLER. I'm sorry. I didn't hear you.

Mr. DAVIS OF VIRGINIA. That Mr. Swindeman told this committee that he had asked the Administrator several times to terminate the contract and that she refused, talking about the \$20,000 contract?

Mr. MILLER. Yes, I believe that is on the Web site in the chairman's letter.

Mr. DAVIS OF VIRGINIA. But he never told the committee any such thing that we are aware of. Are you aware of him telling the committee that, or did you get that off the Web site?

Mr. MILLER. I got that off of the Web site and the chairman's letter.

Mr. DAVIS OF VIRGINIA. So you getting the information from the majority in this case. OK.

Have you given any information about the committee's investigation that you have included in your report and testimony today, have you been given any information about the committee's investigation that you have included in your report and testimony today besides that?

Mr. MILLER. I would have to go back and look at the report. We did look at the chairman's letter, and I would have to go back and take a close look and see—

Mr. DAVIS OF VIRGINIA. How much of your testimony comes from what the majority has put on their Web site and how much of it comes from your independent investigation, because the information about Mr. Swindeman's discussion, from our investigation, is flat out false. So what does that say about your credibility?

[No response.]

Mr. DAVIS OF VIRGINIA. You don't have any independent investigation; you just took it off the majority Web site. That is what you are saying?

Mr. MILLER. That is not correct, Congressman. Most of my testimony is taken from our—

Mr. DAVIS OF VIRGINIA. I asked about that particular issue.

Mr. MILLER. Most of the report is based on the investigation that my office did.

Mr. DAVIS OF VIRGINIA. Most of it?

Mr. MILLER. Most of it is—

Mr. DAVIS OF VIRGINIA. But not all of it?

Mr. MILLER. There—

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. MILLER. The statements that Mr. Swindeman—

Mr. DAVIS OF VIRGINIA. It seems that a significant—

Chairman WAXMAN. Wait. Give him a chance to answer.

Mr. DAVIS OF VIRGINIA. He has answered it. He just took this off your Web site. Am I wrong? That is where you said you got the information?

Mr. MILLER. Well, the statements that I was referring to that Mr. Swindeman made, I actually said he said to this committee—

Mr. DAVIS OF VIRGINIA. Correct. That is why I was moving off. I'm not going to let him run the clock out on us.

Let me just ask this: it seems that a significant area of disagreement between you and the Administrator centers on the OIG's performance of contract support audits; is that fair to say?

Mr. MILLER. I don't believe so.

Mr. DAVIS OF VIRGINIA. The disagreement between you and the Administrator, is it your view that it is important that your office provide this audit assistance on contract support?

Mr. MILLER. Mr. Congressman, I think my disagreement with the Administrator is more on oversight. She has made numerous statements that she would like to reduce oversight.

Mr. DAVIS OF VIRGINIA. But you have also, in your own testimony you went after this SUN Microsystems, and that is contract support, correct? I mean, a significant part of your testimony today—

Mr. MILLER. Sure.

Mr. DAVIS OF VIRGINIA [continuing]. Was focused on that. So all I was saying is a significant area of disagreement was on contract support. Now, my understanding is that in most agencies they either use DCAA or auditors that do acquisition support exclusively, as opposed to auditors from the IG's office. Isn't that true in a lot of agencies?

Mr. MILLER. I don't know what the practice is at other agencies.

Mr. DAVIS OF VIRGINIA. You don't?

Mr. MILLER. I know that many of them do use DCAA.

Mr. DAVIS OF VIRGINIA. Thank you.

Mr. MILLER. What is different about our agency is that there was a GAO report, and the GAO recommendation was that—and it was agreed to by GSA. It was actually an arrangement developed and established by the Office of Management and Budget. It was a Bush administration initiative to set up this reimbursable agreement for us to do these pre-award price audits.

Mr. DAVIS OF VIRGINIA. But it doesn't happen that way in a lot of agencies. That is my only point.

Mr. MILLER. That is correct.

Mr. DAVIS OF VIRGINIA. OK. Is your office paid by the GSA contracting activities for this audit support?

Mr. MILLER. There is a reimbursable arrangement where they reimburse us for our audit activities.

Mr. DAVIS OF VIRGINIA. How much per year does your office receive for these services, ballpark?

Mr. MILLER. Ballpark, it is between \$4 and \$5 million.

Mr. DAVIS OF VIRGINIA. What is your total budget?

Mr. MILLER. Total budget for last year was around—I would have to get back to you with the specific number.

Mr. DAVIS OF VIRGINIA. Ballpark, \$40 million?

Mr. MILLER. About \$43, maybe more, maybe less.

Mr. DAVIS OF VIRGINIA. Is it your understanding that your office's role in providing pre-and post-award contract audit reports is to support the contracting officer?

Mr. MILLER. Yes, generally.

Mr. DAVIS OF VIRGINIA. That is not an oversight role in that sense, correct?

Mr. MILLER. I'm sorry?

Mr. DAVIS OF VIRGINIA. Your role in providing pre-and post-award contract audit reports is to support the contracting officer who makes the decision. You are not vested with making the decision?

Mr. MILLER. That is correct, Congressman.

Mr. DAVIS OF VIRGINIA. You were advisory, correct?

Mr. MILLER. That is correct.

Mr. DAVIS OF VIRGINIA. I mean, do they always take your advice?

Mr. MILLER. No, they don't always.

Mr. DAVIS OF VIRGINIA. OK. So it is not odd for a contracting officer to say thank you very much but I'm going to settle it, correct?

Mr. MILLER. They have a warrant and they are responsible to—

Mr. DAVIS OF VIRGINIA. Correct.

Mr. MILLER [continuing]. Exercise their own judgment.

Mr. DAVIS OF VIRGINIA. In our acquisition system, it is the contracting officer that makes the final decision to award a contract, exercise an option, or take any other contract action, correct?

Mr. MILLER. Yes.

Mr. DAVIS OF VIRGINIA. As I understand it, one of the roles of the Office of the Inspector General is to impartially evaluate the agency's programs and functions. Do you see any tension between the evaluation role and the role of advisor to the contracting officer in a particular acquisition?

Mr. MILLER. Do I see any conflict between—

Mr. DAVIS OF VIRGINIA. Any tension, not conflict. Do you see any tension between your evaluative role and the role of advisor to the contracting officer in a particular acquisition?

Mr. MILLER. Congressman, I think I would have to think about that question.

Mr. DAVIS OF VIRGINIA. That is fine. You can get back to us on it.

I think my time is up now. We will have more questions. Thank you.

Mr. MILLER. Mr. Chairman, may—

Chairman WAXMAN. Yes.

Mr. MILLER [continuing]. I explain, I guess, an answer a little more fully? We did interview Mr. Swindeman. The report of his interview is in our investigative report, so we did rely on those statements from Mr. Swindeman, as well. I would like to point that out.

Chairman WAXMAN. Thank you.

Mr. DAVIS OF VIRGINIA. Wait a minute. I am looking at the list of witnesses and exhibits for today, and I don't see it. I have a number of others. I am looking here at the report of investigation for official use only. This is on page 26, if you want to move to page 26. That is your list of witnesses and exhibits, and I see a number of exhibits but I do not see that.

Mr. MILLER. With the Chair's indulgence may I consult with—

Mr. DAVIS OF VIRGINIA. Sure. Please. And maybe you could be confusing Moentrip, who was the acting General Counsel. Is that what happened?

Mr. MILLER. OK. I will withdraw.

Mr. DAVIS OF VIRGINIA. That is fine. For the record, we just—

Mr. MILLER. Thank you, Congressman.

Chairman WAXMAN. The gentleman's time has expired.

The Chair will recognize himself to pursue some questions.

By the way, your investigation of the leak was more extensive than the White House investigation of the outing of the CIA agent which was involving national security. They did nothing. We had a hearing on that a couple weeks ago. They did absolutely nothing. They didn't ask any of the employees, didn't ask anybody who had access to this information how it got out, how it was being marketed to different press people, even though it affected national security and might have threatened the life of a covert CIA agent.

Mr. DAVIS OF VIRGINIA. Maybe they could transfer Mr. Miller to the White House and everybody would be happy here.

Chairman WAXMAN. Then he could make political presentations about the upcoming Republican campaigns.

I want to ask you about a statement that you made regarding the SUN contract. You said that Ms. Doan's actions were a breach of GSA's fiduciary duty to U.S. taxpayers. Why did you say this?

Mr. MILLER. Well, because for the first SUN contract—there were two contracts with SUN prior to that were consolidated into one SUN contract. We did a post-award audit. We did two post-award audits on that and learned that SUN had overcharged us by \$27 million, so the first SUN contract cost \$27 million in defective pricing. To push through another contract with SUN following that is what I was trying to express was not in the best interest of the taxpayer, especially when we had done a pre-award audit indicating that the rates, the discounts that SUN was offering were not the best discounts to the Government. They were offering commercial customers better discounts than they were to the U.S. taxpayers.

Chairman WAXMAN. And that was inconsistent with the rules, wasn't it?

Mr. MILLER. It was. Yes, sir.

Chairman WAXMAN. Now, you also said it is the first time we are aware of in which an administration has personally intervened in this way. Why did you say that?

Mr. MILLER. My staff is not aware of an Administrator becoming involved in any negotiation in the same way at any time in the past.

Chairman WAXMAN. Well, she says she wasn't involved.

Mr. MILLER. Our office has not been aware of any Administrator being involved, even in the way that she says she was involved, with the e-mails and with talking with the Commissioner of FAS, and certainly with the word going out that this was a strategically important contract and needed to go through. On August 29th she called an impromptu meeting with the head of audits of my staff and with my counsel, and at that meeting she told them how important the SUN contract was and that it needed to go through.

They attempted to explain the programs with the SUN negotiation—

Chairman WAXMAN. And this was with Ms. Doan, herself?

Mr. MILLER. With Ms. Doan, herself.

Chairman WAXMAN. Never would have thought that.

Mr. MILLER. She cut them off when they tried to explain the problems with the SUN negotiation.

Chairman WAXMAN. Now, they were trying to explain to her what her own contracting officers had said, that if they go ahead with this contract the taxpayers were going to have to pay millions of dollars in additional funds for a service than otherwise would be the case; is that right?

Mr. MILLER. That is right.

Chairman WAXMAN. So she acted as if she wasn't involved in this. I guess the question is what does involved mean. It is sort of like what is a briefing. A briefing seems to be in her mind only a sit-down meeting where charts and pointers are involved. But you actually had a sit-down meeting with her, or was it a telephone conversation?

Mr. MILLER. Actually, it was the head of my audits, Andy Pagent.

Chairman WAXMAN. Yes.

Mr. MILLER. He was the Assistant Inspector General for Auditing and the Counsel for the Inspector General, who went up and briefed her on this, at very short notice.

Chairman WAXMAN. Yes. Well, if they didn't give this contract to SUN Microsystems, wouldn't they have had other bidders come in and have some competition and see if somebody else could do the job at a cheaper amount?

Mr. MILLER. Mr. Chairman, that was our position. In fact, our Deputy Inspector General suggested that one way to resolve the impasse was for GSA to team up with NASA, the NASA soup, to force SUN to give the Government better discounts, because by joining forces with NASA we have more leverage on SUN and we would be able to push the discounts to get greater discounts at a better price for the taxpayer.

Chairman WAXMAN. Well, that would have been good. Did Ms. Doan seem to worry that NASA might provide a contract with SUN Microsystems and that she wouldn't get the money that GSA gets for that contract; is that right?

Mr. MILLER. Well, that is what I understand was her point to the head of my auditing and to the counsel. She did mention the NASA soup. Now, I wasn't there so I can't say for sure what was said.

Chairman WAXMAN. Well, the only comment I would make to that is her job is to protect the taxpayers, not to have the taxpayers pay more just so she could get a percentage for her agency.

Mr. MILLER. Well, at GSA, obviously, if the price goes up GSA gets a commission, so to speak, a fee, and so the revenues going into GSA actually increase, but if the price goes down the fee decreases. By our pre-award audits, we can actually push. If the contracting officer accepts our recommendations, the prices can actually go down and it may result in fewer funds going into GSA.

Chairman WAXMAN. How are NASA soup prices compared to GSA's? I am told NASA's are often better. Is that the case?

Mr. MILLER. Mr. Chairman, I don't know personally. I understand that NASA soup may actually adopt GSA's price negotiations. I'm not sure.

Chairman WAXMAN. Now, this is a schedule that goes out Government wide, and GSA is supposed to bargain tough, hard—

Mr. MILLER. Yes.

Chairman WAXMAN [continuing]. And negotiate the lowest prices, because otherwise that is what everybody in the Government assumes they have done when they go out and take advantage of a contract negotiated by GSA; isn't that correct?

Mr. MILLER. That is correct. And it does have an impact to resellers, as well. The price negotiation drives the price, the discount that resellers of the same product sell to Government agencies, so it can have a massive impact.

Chairman WAXMAN. Well, that involved money. Now let me ask you about a third statement you made involving Edie Fraser contracting.

Mr. MILLER. Yes, sir.

Chairman WAXMAN. And I gather that didn't go through, but in your testimony you said that the record paints quite a different picture than what Administrator Doan told the OIG investigators. This sounds like you are saying that she was not candid. Why did you say this?

Mr. MILLER. Well, as I was trying to explain to the ranking member, but I didn't get a chance to explain, was the allegation came in. We thought the agent would simply interview the Administrator and we would close the report, write a letter or report to the White House liaison, but instead she told a story to our agents that could not possibly be true. As a result, we had to go forward with our investigation of the Administrator.

Now, several days later her attorney sent a letter trying to explain that the statements she made were incorrect, inaccurate.

Chairman WAXMAN. What did she say that was not true?

Mr. MILLER. Well, as I recall, I wasn't actually at the interview, but what the agents told me about the interview was she denied signing the contract and she actually folded up the paper to say that it wasn't this, it was something like something else, and she folded it up, and when you put those pieces of paper together you get two paragraphs that have the same number, and it just was not a plausible story.

Other statements are statements that it wasn't a contract, that she also minimized her relationship with Ms. Fraser.

Chairman WAXMAN. What is the significance? I know she said a lot today that it wasn't really a contract. What is significant? Why does she keep on denying this is a contract? She said it was a draft outline of the work to be performed, but she has difficulty saying that the document was a binding contract. I find it surprising a person coming from a business background, as Ms. Doan does, would have so much trouble understanding whether or not she has entered into a contract. Was it a contract or was it not a contract?

Mr. MILLER. I believe it was a contract, Mr. Chairman. Also, the General Counsel at the time, Allen Swindeman, believed it was a contract, as did the now Acting General Counsel, Lenny Loewentritt. In fact, that was the reason why there had to be a letter of termination. In fact, when asked about the letter of termination, I believe Ms. Doan said that was to correct the perception on the part of Ms. Fraser that there was a contract, when, in fact, we saw e-mails back and forth between her and John Felts after the termination letter went out where John Felts says, Well, I will

have to tell Edie that we have more work to do on our end to get this moving forward.

Chairman WAXMAN. You started to say before that she minimized her relationship with Ms. Fraser. What is the significance of that?

Mr. MILLER. Well, over a 3-year period Ms. Doan has paid over a half million dollars to Edie Fraser's Public Affairs Group, to Ms. Fraser for consulting and other—

Chairman WAXMAN. That is interesting, because under questioning from the Republicans they made the statement that Ms. Doan—so Ms. Doan did pay money to her, so she was working for Ms. Doan?

Mr. MILLER. That is correct. It was for sponsorships and consulting. The consulting services was to promote Ms. Doan personally and as President of NTMI, and the fee for that was \$20,000 a month, and it is interesting to note that the fee that Ms. Doan fixed was \$20,000, and she said that she decided that on her second or third day at GSA.

Chairman WAXMAN. We are told over and over again \$20,000 is a small sum of money, and, besides, it didn't happen. She didn't actually enter the contract. So do you think it is a big deal or not?

Mr. MILLER. Mr. Chairman, I think what the problem is, as I explained, we thought that our agents would interview her, she would accept responsibility and admit the mistake. Instead she did not. She told a story and it forced us to continue to investigate. It forced us to issue subpoenas. We had to wait for documents to come back on subpoenas.

I think the issue is that of candor, of accepting responsibility, of being truthful with law enforcement. She mentioned that—and I think she said publicly—that she worked hard to terminate the contract, the relationship, when, in fact, the e-mails and the documents that I believe are in the committee's possession show that she was still trying to get this going as late as, I believe, early September, September 4th or so.

I mentioned the August e-mail where—

Chairman WAXMAN. That is astounding. You are saying she wasn't candid with law enforcement. Are you saying law enforcement is your independent investigation?

Mr. MILLER. Yes. I meant our agents.

Chairman WAXMAN. Your agents?

Mr. MILLER. Yes.

Chairman WAXMAN. OK.

Mr. MILLER. And the statement from her attorney admits that she made mis-statements to our agents. That explains the need for the supplemental statement.

Chairman WAXMAN. Yes. Can you explain the leadership role the GSA Administrator plays in the Federal acquisition community and why it is important for her to demonstrate a familiarity with the Federal acquisition regulations? Your investigation concluded that when she awarded this contract she ignored several of the most basic rules of Federal contracts, such as a principle that contracts should be awarded on a competitive basis.

Mr. MILLER. Yes, Mr. Chairman. As head of the premier civilian procurement agency, it is important that the chief of that agency

follow the procurement rules. As Inspector General, our job is to make sure that everyone follows those rules and procedures.

Chairman WAXMAN. That is a basic principle of Government contracting that you award a contract based on what is best for the Government, not based on your friendship with somebody; isn't that a correct statement?

Mr. MILLER. That is correct, Mr. Chairman. And, you know, at the time, Public Affairs Group was owned, I believe ultimately, by General Electric, so it was a subsidiary of General Electric at the time.

Chairman WAXMAN. Now let me just conclude, because I see the yellow light is on. You raised these concerns. It sounds like you had a pretty acrimonious relationship with her. You didn't feel she was being candid with you and your agency, even though she has an obligation to be. Her response was to try to cut your budget, wasn't it?

Mr. MILLER. Mr. Chairman, there were efforts on the part of the Administrator to try and cut our—actually, prevent us from presenting our budget to OMB, and she actually stopped and said I had a proposal to add criminal investigators, and she simply would not—

Chairman WAXMAN. You felt that was a recrimination against your criticism? Yes or no, and then I have one last question before my time is up.

Mr. MILLER. I don't want to go there.

Chairman WAXMAN. OK. The last question I want to ask you is: are you concerned about the slides that involved a political presentation on the premises of GSA that was Republican partisan from the political person at the White House about how people ought to get involved, or at least know what is happening for Republicans, and about her statement that a number of witnesses gave to us that she said, How can we help our candidates in this next election?

Mr. MILLER. As I have said, a confidential source told our agents all that, and it was very concerning. We did our duty, which was to refer to the appropriate investigatory agency, the Office of Special Counsel.

Chairman WAXMAN. Do you know whether everybody does this? It sounded to me from her defenders was that everybody does it, all the agencies do that, all administrations do that. Do you know that to be the case, and does that mean everybody violates the law?

Mr. MILLER. I certainly hope that is not the case, Mr. Chairman. As Inspector General, I have sworn an oath to follow the law. As Administrator, she has sworn an oath to follow the law. I hope that other officials follow the law.

Chairman WAXMAN. Thank you very much.

We will now proceed to Mr. Platts for 5 minutes.

Mr. PLATTS. Thank you, Mr. Chairman.

First, Inspector General Miller, I appreciate your testimony and also your service at GSA.

Mr. MILLER. Thank you, Congressman.

Mr. PLATTS. I apologize for being in three other places at the same time and having to run back out of here, but I know the one issue was raised about the documents that were shared with my

committee staff and then of the same topic was addressed in a Post story.

One, I appreciate the Inspector General having met with my staff, as we sought to, I would say, take a similar approach as Senator Grassley to try to diminish the problems that were between the IG's office, Administrator, and my staff had conversations with OMB, with Clay Johnson's office to try to resolve these issues.

Mr. MILLER. Thank you.

Mr. PLATTS. But I wanted to make clear that, in the documents that were shared by you—and I appreciated your working with us—that, neither prior to the story being published or since have any of my staff that were part of that meeting or I shared any of those documents with the Post or any other journalist to address this issue through the media. I think it is important that we understand our efforts were in a similar vein to Senator Grassley to just trying to have a good Government resolution of the issue.

Mr. MILLER. Sure.

Mr. PLATTS. But I do appreciate your service and efforts in taking your responsibilities seriously.

I apologize that I am not able to stay. I am going to yield the balance of my time to the ranking member.

Mr. MILLER. Thank you.

Mr. PLATTS. Thank you.

Mr. MILLER. Congressman, I appreciate your help and your staff's help on these issues. Thank you.

Mr. DAVIS OF VIRGINIA. Mr. Miller, let me ask who else did you brief besides Mr. Platts, because you threw his office out there. Did you brief Mr. Grassley's staff at that time?

Mr. MILLER. I believe I—it is hard for me to reconstruct.

Mr. DAVIS OF VIRGINIA. Well, we are trying to reconstruct where the documents came from, and Mr. Platts has said he didn't. Did you brief Mr. Waxman's staff at that point?

Mr. MILLER. I don't believe I did. You are asking me to think back from July through—

Mr. DAVIS OF VIRGINIA. Correct. If you don't remember, you don't remember.

Mr. MILLER. When did the story come out? December?

Mr. DAVIS OF VIRGINIA. Correct.

Mr. MILLER. And I met with oversight, I met with Senate oversight staff, Homeland Security and Governmental Affairs.

Mr. DAVIS OF VIRGINIA. Let me ask you this. You were on the invite list for the January 26th brown bag lunch. Did you attend?

Mr. MILLER. I did not.

Mr. DAVIS OF VIRGINIA. Did anyone from your office attend? Were there any Schedule C's that attended?

Mr. MILLER. No, sir.

Mr. DAVIS OF VIRGINIA. You made a referral to the Office of Special Counsel, correct?

Mr. MILLER. That is correct.

Mr. DAVIS OF VIRGINIA. Did the referral include the White House for the slides, or did you just include Administrator Doan?

Mr. MILLER. The referral referred the allegations. As I understand it, a confidential source talked to agents in my office. They contacted agents at the Office of Special Counsel—

Mr. DAVIS OF VIRGINIA. Correct. I am just saying—

Mr. MILLER [continuing]. Telling them what the allegations were.

Mr. DAVIS OF VIRGINIA. In terms of the allegations, were the allegations directed at the Administrator or were they also to Mr. Jennings at the White House who gave the political slide that has been the subject today?

Mr. MILLER. I would have to go back and look at the file, Congressman. I believe I gave a copy of the referral to the chairman on his written request.

Mr. DAVIS OF VIRGINIA. We have not received a copy of the referral, Mr. Waxman, from your staff. It would be helpful to have that.

My question here is was this labeled just at Administrator Doan or was it the White House, as well? And you don't remember?

Mr. MILLER. I don't know, Congressman.

Mr. DAVIS OF VIRGINIA. Can you ask your staff? Would anyone here know?

Mr. MILLER. I think—

Mr. DAVIS OF VIRGINIA. So you supplied it to Chairman Waxman's staff, but you haven't provided it to us, basically?

Mr. MILLER. Well, the chairman wrote a letter to me asking for it.

Mr. DAVIS OF VIRGINIA. Right. And he copied me.

Mr. MILLER. I don't know if he copied you or not.

Mr. DAVIS OF VIRGINIA. Generally you do.

Chairman WAXMAN. Yes, we always copies letters to you and we always share the information we get in response to those letters, so I can't explain it.

Mr. DAVIS OF VIRGINIA. OK. We would like to know that.

Chairman WAXMAN. We will check our files.

Mr. MILLER. I will provide a copy of the referral to you.

Mr. DAVIS OF VIRGINIA. I just want to know if it is aimed at Administrator Doan or if it is also aimed at the White House, who, after all, called the meeting. It was not called by Administrator Doan, correct?

Mr. MILLER. Congressman Davis, I wouldn't say that it was directed to any one person or another person.

Mr. DAVIS OF VIRGINIA. So you are not even saying here it was directed at the Administrator?

Mr. MILLER. What we got were credible allegations that appeared to be a violation of the Hatch Act. My investigations office referred it over to the Office of Special Counsel.

Mr. DAVIS OF VIRGINIA. But the media reports and the other allegations seemed directed just at her, and she didn't call the meeting, and at the same time she didn't make the presentation, which if you have watched today has really been the subject of some controversy, whether the administration was right to come in and make these presentations in a Federal building. She wasn't the one who originated this.

So my question would be—and I guess this goes over to Mr. Waxman—is there a retaliation going on or anything. Was this directed at her or was it directed at the whole presentation, and you don't know the answer to that is what you are telling me? You made a referral to the Justice Department or just the—not to Justice, or did you just make it—

Mr. MILLER. Office of Special Counsel.

Mr. DAVIS OF VIRGINIA. Just to the Special Counsel on Hatch Act?

Mr. MILLER. Yes. As I explained earlier—I think you may have been out of the room—I have to do my duty as Inspector General.

Mr. DAVIS OF VIRGINIA. I agreed with that. I am just asking if that included the White House or just the Administrator.

Mr. MILLER. When we get credible allegations in, we refer them to the appropriate investigatory agency.

Mr. DAVIS OF VIRGINIA. I understand, but my question is, the allegations, if you look at this, would have included both, would they not?

Mr. MILLER. Well, as I understand it, the Hatch Act issue is within the sole jurisdiction of the Office of Special Counsel.

Mr. DAVIS OF VIRGINIA. Correct. But the referral—

Chairman WAXMAN. Mr. Jennings could well have been exempt from the Hatch Act.

Mr. DAVIS OF VIRGINIA. He may or may not have. Do you know if Mr. Jennings was exempt from the Hatch Act or not?

Mr. MILLER. I am not an expert in the Hatch Act.

Mr. DAVIS OF VIRGINIA. Exactly my point. Actually, Ms. Doan has some exemptions under the Hatch Act, as well, as the Administrator.

Mr. MILLER. The Office of Special Counsel is, and that is why, when we—

Mr. DAVIS OF VIRGINIA. But you understand my point. My point is was this inclusive of the entire presentation and the slides from the administration, or was this just about Ms. Doan, and you don't know the answer?

Mr. MILLER. I think what happened was someone told our agents that this happened, it looked like it was wrong, and that it may violate—

Mr. DAVIS OF VIRGINIA. What happened?

Mr. MILLER. I think the allegation—and, again, I wish I had the referral in front of me, but—

Mr. DAVIS OF VIRGINIA. You knew this was the subject when you came here today, so I am—

Mr. MILLER. Well, as I understand it, I also knew that my office was not very involved in this, that we handed it off to the Office of Special Counsel. But, as I understand, the confidential source said that there was a presentation on some sort of election results, maybe. I don't quite remember what—then, again, I would rather just go back and check the documents and then respond.

Chairman WAXMAN. We will hold the record open to receive it.

Mr. DAVIS OF VIRGINIA. I just wanted to get him while he was under oath though to get it, because when he sends them later I don't know if that applies, and I just want to make sure you don't know the answers right now. You will get back to us?

Mr. MILLER. Yes, I will get back to you.

Mr. DAVIS OF VIRGINIA. OK.

Chairman WAXMAN. Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I am going to continue a little bit along that line. When you were speaking to Chairman Waxman and you referred to law enforcement officers—

Mr. MILLER. Yes?

Mr. ISSA [continuing]. Now, that term is really a term from your years as a U.S. Attorney, Assistant U.S. Attorney, isn't it? And, in fact, that is really your career? You are a career prosecutor, you are not an accountant?

Mr. MILLER. No, sir.

Mr. ISSA. You don't understand how to deal with bureaucracies, where the problems are? I know you are smiling, but I want to understand this. You are not just about the Hatch Act. In fact, that is not within your jurisdiction. Your jurisdiction is supposed to be to find the waste, fraud, and abuse within the GSA, right?

Mr. MILLER. Correct, and to investigate credible allegations of wrongdoing.

Mr. ISSA. OK. And it seems like we are spending an awful lot of time on a \$20,000 non-contract, but let me just run you through a couple of questions here, because I want to understand it related to Administrator Doan.

She could have taken \$200,000 worth of her employees' time and had them do research and prepare and try to consult, right? She has the ability to have those people work for her and do what she needs to do?

Mr. MILLER. Congressman, first of all, I do believe it was a contract. I believe that is what the General Counsel then concluded, Allen Swindeman, and also the acting—

Mr. ISSA. I appreciate that, but—

Mr. MILLER [continuing]. The acting General Counsel, Lenny Loewentritt.

Mr. ISSA. Right. I appreciate that, but that is a personal service contract, if we are going to put the word contract on it. It was a request for a service that would cost \$20,000 which she wanted done in order to further the office's ability to execute things. And I want to simply ask you, she could have, in fact, gone to her people and said, go study and read and spend \$200,000 accomplishing the same thing? Wouldn't have been a problem at all, right? She has the ability to use her own resources, millions and millions of dollars worth of human beings' time, to do that? As the IG, I am assuming you can answer that with some credible validity.

Mr. MILLER. Well, Congressman, I would assume that she would also look at the in-house capability to do that job, as well—

Mr. ISSA. Right. I asked you a question—

Mr. MILLER [continuing]. And she would follow all the procurement rules.

Mr. ISSA. No. You know, the point is I am asking the questions, I would like the answers to my questions.

Mr. MILLER. Sure.

Mr. ISSA. I believe that you have been on a witch hunt and that this is, in fact, an IG who, instead of looking at the waste, fraud, and abuse, is going after one person, a big prosecution, if you will, of one individual, and that is my opinion. We will see in the long run how it pans out. But I do see \$20,000 in an agency of \$54 billion, and I am going back to my questions. You are not really com-

fortable looking into the nuances of all the contracts. You picked this \$20,000 service agreement in order to go after; is that correct?

Mr. MILLER. That is not correct, Congressman. I would really like the opportunity to try and explain to you—

Mr. ISSA. My time is very short. It is 5 minutes, so when I ask a question that is a yes or no I will take a yes or no, and you are welcome to it, or a little beyond that.

Mr. MILLER. Absolutely not. It is not a witch hunt.

Mr. ISSA. OK. What other areas are you working on in the \$54 billion that is being spent by the GSA?

Mr. MILLER. Well, we recently settled a case with Oracle and PeopleSoft for \$98.5 million. That was settled in October. I am Vice Chair of the National Procurement Fraud Working Group in the Department of Justice.

Mr. ISSA. Is that as a result of your position, or is that something you had before you came to this position?

Mr. MILLER. I was appointed to that when it was formed in October.

Mr. ISSA. You know, look, I have no question you are a fine prosecutor with a great history of being able to do those things. I am just trying to understand why a mistake which was corrected by the GSA, itself, the contract, if you call it that, was canceled, even though there is nothing in that contract that says it would be canceled, it was canceled without a penny being spent.

My real question is: when you said earlier if Ms. Doan had said, oh, I made a mistake, you implied that would have been the end of it. Now, in your years as a prosecutor, do cases end if you think they are criminal or wrong? Do they end because somebody says I am so sorry? And her belief that it wasn't a contract and she didn't do anything wrong, does that somehow change the facts on the ground for you, because that is what you said here under oath today was that, in fact, if she had just apologized it would have been OK, if she had just admitted that.

Mr. MILLER. Well, Congressman, first of all, I didn't say if she just apologized. My point was that this was a credible allegation. We have a responsibility. I don't have a choice. I have a duty to followup on credible allegations of wrongdoing. This was a credible allegation. It came complete with documents.

Mr. ISSA. Because my yellow light is on, I just want to do one followup. She, in fact, said she didn't think it was a contract. As such, she wasn't apologetic for it, and that is what caused you to continue on with the prosecution, is what you said here today.

Chairman WAXMAN. The gentleman's time is expired. You will be given opportunity now to answer the question.

Mr. MILLER. Thank you, Mr. Chairman. I think that is not what I said, Congressman. What I said and what I meant was that we have a duty to followup on allegations. I went up to her personally and say, you know, I'm sorry, but our agents are going to have to come and interview you. We have this complaint.

We fully expected that she would be totally forthcoming with our agents and that would explain the whole matter, there would not be any other leads to followup on, and that we would just close it out. I was actually wondering who do I write the letter to—is it the White House liaison—because this does not happen very often. And

the agents come back and said no, she told a story that they did not believe was a correct story, an accurate story, and then we had to make a decision. We had the followup to see, gee, what are the facts here. I do have an obligation to follow the facts.

Chairman WAXMAN. Thank you.

Mr. MILLER. And no more, but no less.

Chairman WAXMAN. Thank you, Mr. Issa.

Mr. Mica, I think you are next.

Mr. MICA. Thank you, Mr. Chairman.

Sorry I didn't get to hear all of it. I heard your testimony, but not all of the questions. I hope I don't repeat any.

Mr. Miller, one of your responsibilities as the Inspector General is to look at things that aren't going right or problems with contracts within GSA; is that correct?

Mr. MILLER. Generally, yes, sir.

Mr. MICA. Were you aware of, like, say, in a human resources situation, it may or may not have been important to you, but were you aware of some of the failings as far as GSA in getting—I guess they were going to get a failing score or they got a failing score on some of the diversity issues in regard to GSA. Were you aware of that?

Mr. MILLER. We were aware of that issue and that problem, yes, sir, and—

Mr. MICA. Did you investigate it, or was there any review by you? Did you ever see the memo that was referred to that Ms. Doan did not read but she was briefed on, by Mendosa?

Mr. MILLER. Congressman, I am not exactly sure what you are referring to, but there is an SBA score card—

Mr. MICA. Yes.

Mr. MILLER [continuing]. That I believe came out in December 2006, that gave an F rating to the GSA.

Mr. MICA. A failing. But, again, this wouldn't be a concern, but you were not aware of it?

Mr. MILLER. To the extent that we are part of the agency, we are concerned about that. It doesn't fall within the mission of the Office of the Inspector General.

Mr. MICA. Well, again, I think one of the things that Administrator Doan, her concern, and probably rightfully so, an African American female Administrator of agency, one of her concerns was to come in here in this position from the private sector and see the public sector getting a failing score, or about to get a failing score, maybe for a second time. I guess she was really trying to push this contract to get a review through this group. Was it Diversity Best Practices, Ms. Fraser? She was really pushing that, wasn't she?

Mr. MILLER. Congressman, for her to be involved in those issues is perfectly fine. I understand that. Our concern was we got an allegation—

Mr. MICA. But she was trying—

Chairman WAXMAN. Would the gentleman yield? Just one point for the record.

Mr. MICA. Yes.

Chairman WAXMAN. That failing score wasn't something that motivated it. That failing score was after this contract had fallen through.

Mr. MILLER. That is what I understand, Mr. Chairman.

Mr. MICA. It is my understanding that GSA already had a reputation for a failing score, that this isn't like a new revelation, and she was briefed that they were going to get a failing score and was trying to do something about it, but it wasn't very important to you, but she was really pushing this because I think even the General Counsel had advised her. She had signed off on this contract, but was the contract executed, fully executed?

Mr. MILLER. I believe it was, Congressman.

Mr. MICA. But she was really pushing this to get this diversity study? And you advised her not to, or was that the General Counsel, Mr. Allen Swindeman—is it Swindeman?

Mr. MILLER. I believe Allen Swindeman strongly counseled her—

Mr. MICA. You did not advise her? It was Mr. Swindeman?

Mr. MILLER. That would have been the General Counsel's role.

Mr. MICA. OK. And Mr. Swindeman or the General Counsel allegedly told the committee that they had evidence that he repeatedly advised that the contract be terminated; is that—

Mr. MILLER. That is my understanding.

Mr. MICA. But you never advised that. Did he advise you that something was wrong?

Mr. MILLER. Mr. Swindeman.

Mr. MICA. Yes, the General Counsel. I don't think Doan was going to call you.

Mr. MILLER. Well, it would not have been his role. He did not advise us.

Mr. MICA. Well, how did you find out, then?

Mr. MILLER. We received a complaint, an anonymous complaint with documents of the contract.

Mr. MICA. And was that before or after?

Mr. MILLER. I guess it would be after the contract was signed.

Mr. MICA. After the contract was signed.

Mr. MILLER. I don't recall the precise date. I can look it up.

Mr. MICA. But when did the General Counsel contact you?

Mr. MILLER. Pardon me?

Mr. MICA. Did the General Counsel contact you?

Mr. MILLER. No.

Mr. MICA. It was an anonymous?

Mr. MILLER. It was an anonymous—

Mr. MICA. OK. Then did you contact him?

Mr. MILLER. Who?

Mr. MICA. The General Counsel. You get a complaint—

Mr. MILLER. Our agency—

Mr. MICA. First thing I would have done is call the General Counsel and say, I have a complaint here that she is trying to push this contract that has been signed, and you advised her against it. Did you talk to him?

Chairman WAXMAN. The gentleman's time has expired, but please answer the question.

Mr. MILLER. My agents did interview Mr. Swindeman. They also interviewed Mr. Loewentritt of the General Counsel's office. Our obligation was to followup on the contract, on the allegation. We

had the allegation, the complaint, and the contract. We then, our agents interviewed the Administrator.

Chairman WAXMAN. Mr. Shays.

Mr. SHAYS. Thank you.

Mr. Miller, I believe the Inspector Generals have a vital role to play. I get uncomfortable when I think they focus on minutia and then ignore big pictures. Frankly, you know, this is a—

Mr. MICA. Could you yield for just—

Mr. SHAYS. Let me just make my points.

So I have a problem with that. And the second issue I have a problem with is I have a problem if I feel like an Inspector General is just doing something to get you, and so when I look at this meeting that I think never should have happened and I know that you were invited, what I find curious is why someone didn't go to the chief of staff of the Secretary or the Administrator and say, you know, this is a really dumb idea. I think it borders on a bad meeting. Was it just that you knew there was a meeting but you didn't know what was going to happen in the meeting?

Mr. MILLER. That is correct. I get e-mails for these brown bag lunches all the time because I am a Presidential appointee appointed by President Bush, and I am copied on all of those—

Mr. SHAYS. You didn't know what the purpose of the meeting was?

Mr. MILLER. I looked at the e-mail briefly, and went on to my other e-mails.

Mr. SHAYS. So the answer is, like, other people come before you looked at the—but did it make clear in the e-mail what it was about?

Mr. MILLER. I think what I read was that it was Mr. Jennings coming over for a brown bag.

Mr. SHAYS. That is it?

Mr. MILLER. That is all I recall.

Mr. SHAYS. OK. The next issue I just want to ask you, with the issue of the contract, the diversity contract, basically I look at it and say no contract, no service performed, no money transferred, end of story. What am I missing in this?

Mr. MILLER. Thank you for asking that. I think what you are missing is when our agents interviewed the Administrator they received a story that couldn't possibly be true, which forced us to continue to investigate to find out what happened.

Mr. SHAYS. To me, no contract, no money spent, no service performed. That is the way I look at it.

But let me yield to my colleague, the ranking member. Did you want to quickly get something?

Mr. MICA. The committee doesn't have the Special Counsel's memorandum, the—

Mr. DAVIS OF VIRGINIA. Yes, do you have notes from the interview of Mr. Swindeman?

Mr. MILLER. I believe we do.

Mr. DAVIS OF VIRGINIA. Could you make those available? And here is why I ask. Our information—we interviewed him—is that he wrote one memo to the Administrator. There are no phone calls and no e-mails. That is at variance with what you are representing. We just need to see if we can get that squared.

Let me ask a couple other questions.

You assumed your duties as the GSA IG in July 2005?

Mr. MILLER. Correct.

Mr. DAVIS OF VIRGINIA. And in June 2006, Administrator Doan assumed her duties. The GSA at that point was experiencing serious fiscal challenges, with the possibility of Anti-Deficiency Act violations; is that correct?

Mr. MILLER. Congressman, I don't believe that is correct. I believe they were running a surplus of over—I would have to check into it, but I believe they have always run a surplus, and last year it was over \$400 million.

Mr. DAVIS OF VIRGINIA. OK. So you don't think that there were serious fiscal challenges?

Mr. MILLER. There are always serious fiscal challenges, and I applaud Administrator Doan's attempts to exercise fiscal discipline.

Mr. DAVIS OF VIRGINIA. Did you take any actions in your office to address the fiscal challenges, or did you feel that wasn't your problem, that was part of the rest of GSA? I guess that goes to the nub of it.

Mr. MILLER. No. We obviously had a very serious fiscal problem, because Administrator Doan informed us that our 2007 money was going to be terminated, and so all of the sudden we had \$5 million or \$2.5 million—

Mr. DAVIS OF VIRGINIA. I know she—

Mr. MILLER [continuing]. Taken out of our current operating budget.

Mr. DAVIS OF VIRGINIA. But had you done anything else to streamline your budget in response to her request to tighten the budget?

Mr. MILLER. Well, we tightened all around. We had to tighten.

Mr. DAVIS OF VIRGINIA. What did you do to tighten?

Mr. MILLER. Pardon me?

Mr. DAVIS OF VIRGINIA. What did you do in your office to tighten the belt?

Mr. MILLER. Well, we reduced hiring. We actually looked at—

Mr. DAVIS OF VIRGINIA. Did you put a freeze on?

Mr. MILLER [continuing]. Two dozen auditors were in danger of RIF, of reduction in force, so we were looking at those.

Mr. DAVIS OF VIRGINIA. That was under her rules, not under yours. What did you do? What did you do?

Mr. MILLER. No, that was my—I mean, I was looking at how to manage the office without the reimbursable moneys.

Mr. DAVIS OF VIRGINIA. But, aside from the reimbursable moneys, notwithstanding that, if the agency was undergoing fiscal constraints did you come forward and say, Look I don't think you need to take away that money. I will do these to reduce operations. That is what I am asking. As a loyal member of the team—

Mr. MILLER. OK. I understand your question now. I believe that I am duty bound, as an Inspector General, to make sure that we have the resources to do our job.

Mr. DAVIS OF VIRGINIA. Doesn't everybody? So the answer is you didn't do anything?

Mr. MILLER. May I explain?

Mr. DAVIS OF VIRGINIA. Yes, but my red light is on. I just wanted to make sure. You can answer that, but also do this. I think every agency head feels it is their job to do that, and if everybody does that, when the Administrator comes down and says, can you tighten up, can you let this go, you are all going to say no and you are all going to complain.

Mr. MILLER. I believe the point you are missing here is we have a separate appropriate.

Mr. DAVIS OF VIRGINIA. Right.

Mr. MILLER. The money that goes to our office is a separate appropriate. Our request or our budget requests are attached to the GSA budget. Never before has any Administrator said no, we are not going to pass it on to OMB and to the Congress or extensively edited what we said, taking out phrases like fraud, waste, and abuse. So it is not coming out of the GSA budget. It is a separate budget.

Mr. DAVIS OF VIRGINIA. Are you the only separate line in GSA? Aren't there other agencies that have separate lines in the budget, as well?

Chairman WAXMAN. That will have to be the last question. Would you answer it, and then I think we have to conclude this hearing.

Mr. MILLER. I believe other IGs have separate appropriations.

Mr. DAVIS OF VIRGINIA. But within GSA are there other separate lines of appropriation?

Mr. MILLER. I do not know the answer to that, Congressman.

One very last point is that the \$5 million that the Administrator was taking was still going to be spent. It was not a budget-cutting issue at all. It was going to be spent. It was simply going to be spent on small contractors. So it was not a budget issue.

Mr. DAVIS OF VIRGINIA. Let me—

Chairman WAXMAN. Thank you very much.

Mr. DAVIS OF VIRGINIA. Mr. Chairman, let me just ask if we could keep the record open on that just to clarify some questions and inconsistencies.

Chairman WAXMAN. Thank you very much, Mr. Miller. We appreciate your testimony. We may have further questions that we will submit in writing to you, and we would appreciate a response in writing for the record.

Mr. MILLER. Thank you, Mr. Chair. Thank you, ranking member. Thank you, Members.

Chairman WAXMAN. Let me just conclude, and I will give Mr. Davis a chance if he wants to say anything to conclude, but I think that the basic rules of Government is that Federal agencies are not to be used for Government politicking. The rules for anybody heading up an agency is that they have to follow the rules that say that Government resources are not to be used for partisan politics, they can't give no-bid contracts to their friends, and they should listen to their career staff and auditors when it involves millions of dollars out of taxpayers' pockets.

I just want to close by pointing out what Senator Grassley said. This investigation is not only worthwhile, but that we would be ignoring our constitutional oversight responsibilities if we didn't hold these hearings. I think that it is clear in my mind that Senator

Grassley was correct. GSA involves billions of dollars, and if we are seeing millions of dollars squandered I think we ought to speak up about it, because if money is being squandered it comes out of the taxpayers' pockets, and it may be millions today but it could be billions tomorrow if people just don't follow the rules.

Thank you.

Mr. Davis, any concluding statements?

Mr. DAVIS OF VIRGINIA. Mr. Waxman, let me just say of course it is appropriate oversight for this committee to look at how all of our agencies, including GSA, operate. I would have basically favored a hearing today that would have been more programmatic in terms of looking at the issues in GSA. There are a lot of issues there. We have the merger of FTS and FSS and how that has operated. I think the issue in terms of SUN Microsystems could be an interesting exercise. But I think it has become way too personalized in this particular case.

Mr. Miller, I hope that you and the Administrator can patch it up and work together. We count on everybody working as a team. That clearly hasn't happened in this case. I am not going to throw brick bats in terms of who is to blame, but if we leave here today, if we can focus and recognize you have a reporting responsibility to her and you also have independence, and balancing that appropriately is something we rely on you all to do. When it gets to this stage, I think it becomes way too personal.

Let me just say, in terms of Government politicking, I don't know how you take politics out of Government, but we will look at these issues as we move forward. Mr. Waxman and I have talked about some issues raised today that are not personal to the Administrator. But I can tell you Cabinet officers are all the time out campaigning for and against Members. I am sure their staffs are part of that. I had a Cabinet Secretary come in and campaign against me in my reelection in 1996. I am not sure what the appropriate balance is. We will explore this in future hearings.

I thank you for being here.

Chairman WAXMAN. We do have laws.

Mr. DAVIS OF VIRGINIA. Yes, we do.

Chairman WAXMAN. And the laws say that you can't, on Government time, at Government resources, go out and campaign. When Cabinet Secretaries go out and campaign, they do it at the expense of the campaign. It may be personal to Ms. Doan because she is the one heading this agency, but we have had a Senator and her Inspector General, and I must say my own conclusion is that she is not always being very candid in telling us the truth, and that makes her problems much worse, because she has to be honest.

Mr. DAVIS OF VIRGINIA. There is no evidence here that she campaigned at all on Government time. She was sitting there at a meeting that was called by the White House, and participated in that.

Mr. MICA. Mr. Chairman, as you summarize, I do think some positive things could come out of this. I did not know that the White House could videoconference in this fashion. We might want to look at that, because I am now learning that this went on, and even Mr. Miller said he participated or was invited to participate. That is one thing. I did not know the GSA Administrator didn't

have discretion to do a contract for \$20,000 and was prohibited from doing that.

The third thing I think——

Chairman WAXMAN. Mr. Mica, ignorance of the law is no excuse. The law is there. The rules are there. She has to follow it.

Mr. MICA. Absolutely.

Chairman WAXMAN. Would you make your concluding statement so we could adjourn?

Mr. MICA. Absolutely. But another thing I would like to look at is diversity in some of these agencies.

Chairman WAXMAN. Great.

Mr. MICA. This agency——

Chairman WAXMAN. We will do that.

Mr. MICA [continuing]. Failed.

Chairman WAXMAN. Thank you very much. The meeting is adjourned.

Mr. MICA. They failed. And you failed, too.

[Whereupon, at 3:25 p.m., the committee was adjourned.]

