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RECENT INTERIOR DEPARTMENT INSPECTOR GENERAL INVESTIGATIONS ON FEDERAL OIL AND GAS ROYALTY COLLECTIONS

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

Thursday, September 18, 2008

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OVERSIGHT HEARING ON "RECENT INTERIOR DEPARTMENT INSPECTOR GENERAL INVESTIGATIONS ON FEDERAL OIL AND GAS ROYALTY COLLECTIONS."

Thursday, September 18, 2008
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.

The Committee met, pursuant to call, at 10:01 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II [Chairman of the Committee] presiding.

Present: Representatives Rahall, Costa, Sarbanes, Miller, Markey, DeFazio, Kind, Pearce, Bishop, Sali, Lamborn, Fallin and Scalise.

The CHAIRMAN. The Committee on Natural Resources will come to order, please.

Mr. Secretary, Inspector General Devaney, we thank you for taking the time to appear before the Committee today and appreciate the work that you have done.

I want to say in the very beginning, I certainly agree with the comment made in your latest report, Mr. Devaney, that 99.9 percent of all the employees at the Department of the Interior are hardworking, professional, and have the interests of the American taxpayers at heart.

Let me state that I am not going to rehash the sordid details of the jaw-dropping antics of certain employees of the Minerals Management Service that were revealed last week in three IG reports.

Mr. Secretary, I want to commend you. You took forthright action, even before the release of these reports, and you have called me on this latest report and updated me on the status of the actions that you have taken, and I commend you for taking those actions.

STATEMENT OF THE HONORABLE NICK J. RAHALL, II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

The CHAIRMAN. What I do want to focus on during this hearing are three matters.

The first is whether the culture of ethical failure that the IG found within the Royalty-In-Kind Program is just the tip of the iceberg. Are we faced with a burgeoning scandal in terms of ethical

lapses within the MMS, or were the instances set forth in the three IG reports issued last week the total extent of it?

Second, to what extent can we determine how much those ethical lapses have cost the American taxpayer? We certainly know from both the IG and GAO investigations and hearings that have been conducted by this full Committee and our Subcommittees that programmatic failures are costing taxpayers money.

Just last week, for instance, GAO reports found that the United States receives one of the smallest—one of the smallest—shares of oil and gas revenues in the world, that Federal oil and gas leases are not being diligently developed and that production is only occurring on 12 percent of offshore leases and five percent on onshore leases, and we found that the Interior Department is unable to provide certainty that companies are paying the royalties owed the American people.

So, I think it is now appropriate to see if we can get some inkling as to the extent the draconianism between MMS employees and the oil and gas companies have cost the Treasury in terms of royalty underpayments, lack of royalty payments and shortcomings in the Royalty-In-Kind transactions.

Finally, third and finally, from what I can tell to date, only two MMS employees have been prosecuted: Jimmy Mayberry, who pleaded guilty in July to conflict of interest, and Milton Dial, who entered a guilty plea just this last Monday for rigging bids.

I am curious as to whether the IG has sought further prosecutions from the Justice Department and what the response has been. As we all know, these are serious issues, but they are more serious now as we face a certain prospect that vast areas of Federal waters will become open to oil and gas leasing in the very near future.

These issues are serious within the context of onshore oil and gas leasing and leasing within the Gulf of Mexico, but they will become more amplified when we expand leasing off the Atlantic and Pacific coasts.

Mr. Devaney, I do thank you. I thank you very much for your diligence on these matters. I note the number of hours, the amount of time that it has taken for this investigation, the frustration that we all felt with it due to lack of cooperation from the big oil companies—one in particular, Chevron—but I do appreciate your diligence.

I have also been at this a long time myself, longer than I care to mention. I was on this Committee, for example, when we crafted the first Federal Onshore Oil and Gas Royalty Management Act of 1982 and we thought we had solved it then.

I was Chairman of what was then the Energy Subcommittee in 1987 when our previous full Committee Chairman who is with us this morning, Mr. George Miller, and I championed the Federal Onshore Oil and Gas Reform Act, and I have to say that the only issue before the Committee that has been more vexing in my tenure here is reforming the Mining Law of 1872.

So, Mr. Secretary, I just want to state here and now that I greatly respect you, and I have complimented the reforms you have made. You are a person of courage and conviction, and I am aware of your attempts to emphasize ethics and stewardship within the

Department, stewardship and our responsibility to the American taxpayer for the disposition of their resources.

Certainly the ethical failures that were the subject of the IG's reports issued last week took place, as you have told me and as we are all aware, between 2002 and 2006, and I would note that you were confirmed by the Senate on May 26, 2006.

I am also aware that you are taking action presumably with respect to certain civil service employees named in those investigations and, as such, would not be able to delve into the details of those actions during this hearing. I recognize that there are criminal investigations, for example, ongoing to which we cannot refer.

So, gentlemen, thank you again for appearing before this Committee.

[The prepared statement of Chairman Rahall follows:]

Statement of The Honorable Nick J. Rahall, II, Chairman, Committee on Natural Resources

Mr. Secretary, Inspector General Devaney, thank you for taking the time to appear before this Committee today.

Let me state that I called this hearing, not to rehash the sordid details of the jaw-dropping antics of certain employees of the Minerals Management Service revealed last week in three IG reports.

What I will focus on during this hearing are three matters. First is, whether the "culture of ethical failure" the IG found within the Royalty-In-Kind program represents just the tip of the iceberg. Are we faced with a burgeoning scandal in terms of ethical lapses within the MMS, or were the instances set forth in the three IG reports issued last week the extent of it.

Second, to what extent can we determine how much those ethical lapses have cost the American taxpayer. We certainly know from both IG and GAO investigations and hearings conducted by this Committee last year that programmatic failures are costing taxpayers.

Just last week, for instance, GAO reports found that the United States receives one of the smallest shares of oil and gas revenue in the world. That federal oil and gas leases are not being diligently developed. Production is only occurring on 12 percent of offshore leases and five percent of onshore leases. And that the Interior Department is unable to provide certainty that companies are paying the royalties owed to the American people.

So I think it is now appropriate to see if we can get some inkling as to the extent that the cronyism between MMS employees and the oil and gas companies has cost the Treasury, in terms of royalty underpayments, lack of royalty payments, and shortcomings in Royalty-In-Kind transactions.

Third, from what I can tell, to date, only two MMS employees have been prosecuted: Jimmy Mayberry who pleaded guilty in July to conflict of interest and Milton Dial, who entered a guilty plea just this past Monday for rigging bids. I am curious as to whether the IG has sought further prosecutions from the Justice Department and what the response has been.

These are serious issues, but they are more serious now as we face the certain prospect that vast swaths of Federal waters will become open to oil and gas leasing in the very near future. These issues are serious within the context of onshore oil and gas leasing, and leasing within the Gulf of Mexico, but they will become amplified when we expand leasing off the Atlantic and Pacific Coasts.

Mr. Devaney, I want to thank you for your diligence on these matters. I have also been at this for a long time, longer than I care to mention. I was on this Committee when we crafted the Federal Onshore Oil and Gas Royalty Management Act of 1982. We thought we solved it then. I was the Chairman of what was then the Energy Subcommittee in 1987, when George Miller and I championed the Federal Onshore Oil and Gas Reform Act. I have to say that the only issue before this Committee that has been more vexing is reforming the Mining Law of 1872.

Mr. Secretary, I just want to state here and now that I greatly respect you. You are a person of courage and conviction, and I am aware of your attempts to emphasize ethics and stewardship within the department. Certainly, the ethical failures that were the subject of the IG's reports issued last week took place between 2002 and 2006, and I would note that you were confirmed by the Senate on May 26, 2006. I am also aware that you are taking action, presumably with respect to certain civil

servant employees named in those investigations, and as such, would not be able to delve into details on those actions during this hearing.

Gentlemen, thank you again for appearing before this Committee and I recognize the Ranking Member for any remarks he may care to make.

The CHAIRMAN. I would now recognize the Ranking Member, the gentleman from New Mexico, Mr. Pearce, for any comments he may wish to make.

STATEMENT OF THE HONORABLE STEVAN PEARCE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. PEARCE. Thank you, Mr. Chairman. First of all, I would like to thank you for holding this hearing.

Today, we are going to hear from the Secretary of the Department of the Interior, Dirk Kempthorne, and the DOI Inspector General, Earl Devaney. I would like to personally welcome back the Inspector. It is always a pleasure to visit with you here before this Committee.

The subject is the recently completed reports by the Inspector focusing on the shameful, disgusting and deceptive behavior by a handful of career employees in the Department of the Interior. I can say that each of the times that these reports have been leaked to the press I have found them equally disgusting every single time, and all the reports have been about the same behavior by the same people.

I expect that no one here today will attempt to defend these career employees, many who served from the Carter and Clinton Administrations. There is no defense for their actions. The juicy details of the salacious behavior are more appropriate for the pages of *People* magazine than the Congressional Record or the front pages of the Washington Post. However, clearly these details draw the media's attention and, by their attendance, the attention of my Democrat colleagues.

Mr. Chairman, in the last 18 months since the Inspector first mentioned this investigation, it has cost nearly $5.5 million. During this lengthy process, many of the worst offenders have continued to hold jobs at the Department of the Interior while the Secretary was unable to take action against them, awaiting the Inspector's report.

Some of those employees were allowed to go into retirement rather than face disciplinary action while we were waiting on the report to be issued. I have confidence that we will hear from the Secretary his plans to take decisive disciplinary action against these individuals now that he has finally gotten the reports, and I would like to hear what we are going to do about those people who have been allowed to retire before action was taken against them.

Let there be no doubt. The reckless behavior by these employees has brought shame and cast a shadow over all outstanding and responsible employees of the Department of the Interior. Sadly, many may now question the behavior of other employees in other parts of the Department. There may be those who ask, are the Park Service employees too close to concessionaires? Did those Fish and Wildlife Service personnel fabricate data or provide inside informa-

tion to environmental lawyers? Are those agency officials lobbying for legislation?

It is unfortunate that this fog is cast over this historic agency. What is more unfortunate, however, Mr. Chairman, is that it takes an issue like this for our Committee to hold a hearing focusing on the most important issues facing the American people—energy.

At a time when our constituents are struggling to make their budgets balance, while they face $4 gasoline, rising food costs, increasing taxes, the Committee responsible for legislation addressing America's energy production has gone nearly half this year without a hearing on energy.

We have had no hearing on the newest energy proposal that went before the House Floor a couple of nights ago. We have had two historic highs on energy prices without holding a hearing. We had the largest hurricane since 1909 hit right in the heart of the Houston energy corridor, and still we had no hearings.

It is not that there aren't solutions out there. Among the many proposals before this Committee, I have introduced legislation to bring more than six million acres of new solar power to the American people, but the opposition by radical environmental groups has prevented this bill from even getting a hearing.

Mr. Peterson and Mr. Abercrombie have introduced bipartisan legislation dealing with the OCS. Our Ranking Member has legislation that would increase America's domestic supply by 20 percent from only 2,000 acres. Mr. Lampson, Mr. Green, Mr. Bishop and Mr. Cannon all have legislation before this Committee which could help address America's energy problems, yet we have gone nearly half this year without debate, consideration or hearing on energy.

Instead, on the House Floor we are passing legislation telling the American people to spend more time riding bicycles. We are giving more stimulation to bicycles in the latest energy plan than we did to nuclear power. We should be helping lower the price of energy across the board, lowering the price of gasoline and the price of electricity for people to heat their homes.

China gets it. China is converting from bicycles to nuclear. China is building a new coal powered plant each week. Meanwhile, Americans are facing a winter with possibly the highest home heating cost ever.

Americans are worried about our standard of living. They are worried about the ability to pay for their kids' college, and we are sitting here discussing the intimate behavior of at least 12 30-year career analysts and one 30-year career analyst from an Interior office in Denver. With all due respect, I wonder if our time wouldn't be better spent debating energy legislation and finding a bipartisan solution for the American people.

Last year, we had the courage to debate in this Committee. Over several weeks we debated our views and proposals for energy in America. Each of us got the opportunity to put forward proposals to solve the energy crisis facing America. This year we are holding one hearing in the last half of this year, and the subject of this hearing could be the subject of a cable TV mini-series, instead of the real problems that face Americans.

Mr. Chairman, I think I speak for every one of us on this side of the aisle when I say it is not too late in this session to have the

courage to debate energy legislation in this Committee. It is not too late to put our proposals on the table and find a bipartisan solution to the energy crisis that is facing Americans.

I believe in American exceptionalism. I believe in our ability to bring hope to the entire world. I believe in our ability to solve this energy crisis. I believe this Committee can, and should, help America solve the energy problems that we have.

I would yield back my time, Mr. Chairman. I thank you.

[The prepared statement of Mr. Pearce follows:]

Statement of The Honorable Stevan Pearce, Ranking Member, Subcommittee on Energy and Mineral Resources

Mr. Chairman, I want to thank you for holding this hearing. Today, we will hear from the Secretary of the Department of the Interior, Dirk Kempthorne, and the DOI Inspector General, Earl Devaney. I would like to personally welcome back the Inspector as it is always a pleasure to have him here before this Committee.

The subject is the recently completed reports by the Inspector focusing on the shameful, disgusting, and deceptive behavior by a handful of career employees in the Department of the Interior.

I expect that no one here today will attempt to defend these career employees, many who have served from the Carter and Clinton administrations, for there is no defense for their actions. The juicy details of their salacious behavior are more appropriate for the pages of *People* magazine than the Congressional Record or the front page of the Washington Post.

However, clearly these details draw the media's attention and, by their attendance, the attention of my Democrat colleagues.

TIME AND DELAY

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They may ask are these Park Service employees too close to concessionaires? Did those Fish and Wildlife Service personnel fabricate data or provide inside information to environmental lawyers? Are those agency officials lobbying for legislation?

It is unfortunate that this fog is cast over this historic agency.

HEARINGS

What is more unfortunate however, Mr. Chairman, is that it takes an issue like this for our Committee to hold a hearing focusing on the most important issue facing the American people, energy.

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It's not that there aren't solutions out there. Among my many proposals before this Committee, I have introduced legislation to bring more than 6 million acres of new solar power to the American people but the opposition by radical environmental groups has prevented that bill from even getting a hearing.

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FLOOR

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China gets it. China is converting from bicycles to nuclear. China is building a new coal power plant each week.

Meanwhile, Americans are facing a winter with possibly the highest home heating costs ever.

Americans are worried about our standard of living. They are worried about the ability to pay for their kids' college, and we are sitting here discussing the intimate behavior of a 30 year career analyst from an Interior office in Denver.

CLOSING

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Mr. Chairman, I think I speak for every one of us on this side of the isle when I say it's not to late in this session to have the courage to debate energy legislation in this Committee. It's not to late to put our proposals on the table and find a bipartisan solution to the energy crisis facing Americans.

I believe in American exceptionalism, I believe in our ability to bring hope to the entire world, and I believe this Committee can help America solve the energy problems we face.

The CHAIRMAN. I thank the gentleman for his stump campaign speech.

The gentleman from California, Mr. Miller, wish recognition?

STATEMENT OF THE HONORABLE GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MILLER. Yes. Thank you, Mr. Chairman. Thank you very much for holding these hearings.

As disgusting and as serious as the behavior of these employees is, it is far more important I think to us whether or not we can properly determine whether the Royalty-In-Kind project is in the best interest of the taxpayer and, in fact, whether our whole current royalty system is in the best interest of the taxpayers. I think that hopefully this hearing will shine some light on those issues.

At a time when this Administration has run up a $500 billion deficit, I think we ought to be looking at making sure that we are getting a fair shake for the people's resources, and in fact, the last part of the gentleman's statement, this Committee did take a big step forward when it brought to the Floor the other night comprehensive energy legislation to develop the resources of this country, all of the resources of this country.

I think that was a very important piece of legislation to be under consideration in the Senate, I guess today and tomorrow, and hopefully they will take some action on energy legislation and we can pass that on to the President.

But I think we should get on with this hearing. Two important matters, one of grave ethical concern and the other a fiscal concern that this Committee should continue to monitor.

Thank you.

The CHAIRMAN. I thank the gentleman from California.

The gentlelady from Oklahoma wish to be recognized? I am not sure who was here first. I am sorry.

Ms. FALLIN. Thank you, Mr. Chairman.

The CHAIRMAN. OK.

Ms. FALLIN. Actually, he was here before I was. Mr. Lamborn was. Congressman Lamborn. I will have questions later on.

The CHAIRMAN. Anybody desire recognition on the minority side?

Ms. FALLIN. I would like to wait and ask questions after I hear the testimony.

The CHAIRMAN. Sure. The gentleman from California, Mr. Costa, Chairman of our Subcommittee on Energy and Mineral Resources?

STATEMENT OF THE HONORABLE JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COSTA. Thank you very much, Mr. Chairman. Last year, the Subcommittee on Energy and Minerals held a series of hearings, as it related to the challenges that we face with the Minerals Management Service—and the questions of whether or not the Royalty-In-Kind Program was being applied in the best interest of American taxpayers—not only as it relates to ensuring that those revenues are received but, in turn, that we have an energy policy that reflects our current needs.

Last year, it was clear that there were many problems that existed within the Minerals Management Service. The Inspector General indicated that these investigations were taking place at the time, that conclusions had yet to be reached, and still today I think many of us have questions as to where we make the changes, how we deal with the issues of 1998 and 1999 when the program first began and how we move forward as a part of a comprehensive energy policy that we are attempting to bring together on a bipartisan basis here in Congress as we speak.

Today, I am looking forward to seeing the Inspector General's report from the discussions that subcommittee held last year as to not only the depth of the clearly inappropriate activities that were taking place, how widespread they were, what the costs were to the American taxpayers, but, more importantly, I am also seeking from the Inspector General and from the Secretary of the Interior what reforms you advise us in terms of where we go from here.

The Chairman mentioned in his opening statement that when he chaired the Subcommittee back in the 1980s and in the early 1990s, the different reforms that had taken place. Clearly, some of them worked better than others in light of what we are dealing with today.

So, I am interested in not only trying to understand the dimensions of the size of the inappropriate behavior and the loss of revenue to U.S. tax dollars that took place as a result of the criminal action—at least in two cases because of the prosecutions that took place we know that criminal action has taken place—and to determine, most importantly, what changes are being made within the Department, Mr. Secretary, to ensure that it doesn't happen again.

Of course, the separate issue is where do we go from here as it relates to the Royalty-In-Kind Program? America needs a comprehensive energy program. We are attempting to try to put one together.

The Royalty-In-Kind Program, especially with the determination for the expansion of oil and natural gas on Federal lands, whether they be on OCS properties or whether they be on the Outer Continental Shelf or whether they be on land here within the continental United States or in Alaska, is going to happen, in my view, and therefore we need to determine whether or not the Royalty-In-Kind Program should be reformed or whether it should be dismissed altogether and how we move on.

So, I am looking forward to the testimony in both cases as it relates to the current issue at hand with regard to the Minerals Management Service, but also the application as we try to cobble together a comprehensive bipartisan energy package that will reflect America's long-term energy needs.

Thank you very much, Mr. Chairman.

The CHAIRMAN. I need to apologize to Members on my side of the aisle. Mr. Devaney does have to leave at noon. Unless there is a pressing, urgent, burning desire to make an opening statement, I would like to move on with the witnesses.

[No response.]

The CHAIRMAN. Thank you. I appreciate that.

OK. Mr. Secretary, again, welcome to the Committee. We appreciate your time and patience, and you may proceed as you desire.

STATEMENT OF THE HONORABLE DIRK KEMPTHORNE, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Secretary KEMPTHORNE. Mr. Chairman and Members of the Committee, let me begin by saying that I deeply regret the reason for this hearing. I find the conduct of a small group of long-term career employees, described in the reports issued by the Inspector General's Office, inexcusable.

I am outraged that the public's trust has been abused. I am outraged that the ethics laws have been violated. I am dismayed that these activities could negatively reflect on the vast numbers of outstanding public servants that work in both MMS and in the Department of the Interior.

I know that Assistant Secretary Steve Allred and MMS Director Randall Luthi, both of whom are here with me today to respond to any technical questions, share these feelings.

When I accepted the President's nomination to be the Secretary of the Interior, I made clear, during both my confirmation hearing in May of 2006 and my first days at Interior, that I expect the employees at the Department to conduct themselves in accordance with the highest standards of ethical behavior. You can, therefore, appreciate my disgust when I read the three reports released by the Department's Inspector General, Earl Devaney.

The first focused on three employees in the Minerals Revenue Management Division of MMS who were found to have circumvented the laws regarding conflicts of interest, post-employment restrictions and Federal acquisition requirements. All three of these 20-year employees have left government service. Two have pled guilty to charges brought by the Department of Justice as a result of the investigations and await sentencing.

The second report focused on the inappropriate and inexcusable behavior of one employee, the head of the MMS' Royalty-In-Kind

Program. The details of this report are profoundly disturbing. This employee left government service prior to completion of the Inspector General's investigation.

The third report focuses on the improprieties of some employees in the RIK Program between January of 2002 and July of 2006. Within hours of being informed by the Inspector General of specific names and his preliminary findings in December of 2006, the decision was made to transfer a number of these employees out of the RIK Program.

In the memo conveying the reports, the Inspector General affirmed my frustration with the length of time that it has taken to receive these investigative reports. I have regular meetings with the Inspector General. I appreciate his interest in good government. We share that.

At these meetings over the past two years we have discussed the necessity of awaiting completion of these reports before taking any disciplinary action. The Inspector General has assured me that he believes the behavior described in these reports no longer exists in these programs.

When I received the report, I took action. Within hours of receiving the Inspector General's final reports, Assistant Secretary Allred and Director Luthi initiated procedures to determine appropriate disciplinary action.

We will follow the letter of the law. All employees are long-term career employees and must be afforded due process. I can assure the Committee that this process will be completed as swiftly as possible, and we will examine the full spectrum of disciplinary actions, including termination.

Though these particular problems occurred in the past, I have also decided that the Department should expand its Ethics Office by placing an attorney-advisor in Denver, Colorado. This attorney-advisor will provide oversight and technical assistance to the ethics counselors of the Department's bureaus to ensure that each of the bureaus' ethics programs is in compliance with all applicable ethics laws, executive orders and regulations. Given the extensive Departmental presence in the Denver area and the Rocky Mountain Region, this individual will provide invaluable ethics support and program oversight.

The Inspector General recommended four actions. We are undertaking all four actions. We have initiated appropriate administrative corrective actions. We have enhanced our ethics program and oversight capacity in Denver, where the RIK Program operates. We are crafting a code of conduct. We have implemented organizational changes.

The Inspector General pointed out that the reporting hierarchy of the RIK Program bypassed the Deputy Associate Director in Denver, where the program is located. Instead, the RIK Program management reported directly to the Associate Director for MRM in Washington, D.C., 1,500 miles away. MMS Director Luthi has changed this reporting structure.

I am committed to an ethical culture at the Department. I hope that the Inspector General would agree that we have undertaken efforts to promote a culture of conscience throughout the Depart-

ment. In fact, at my first all-employee meeting on the second day of my tenure, I emphasized ethics compliance.

I appointed a new designated agency ethics official, Melinda Loftin, who has decades of experience in government ethics. I also expanded the Department's trained ethics staff and initiated implementation of a set of best practices compiled by the Office of Government Ethics at my request.

In 2007, I was invited by Inspector General Devaney to address all the Inspectors General at their annual meeting. I was also invited by Ric Cusick, Director of the Office of Government Ethics, to address 600 Federal ethics officers at their annual meeting that same year.

Through these actions, we are affirming a culture of conscience. We developed a DVD where I discuss ethics standards at the workplace for the employees. We have published an ethics guide for new employees. Just last week, the Office of Government Ethics recognized this new guide by awarding the Department an Education and Communication Award.

In March of 2007, I appointed a new independent subcommittee to the Royalty Policy Committee, the Subcommittee on Royalty Management, charging it to conduct a full and candid assessment of the Department's Mineral Revenue Management system.

This seven-member panel was co-chaired by former United States Senators Bob Kerrey and Jake Garn, and some very talented and knowledgeable people worked with this Committee. I asked Senators Garn and Kerrey to look at everything. They were given a free hand to scrutinize all key processes from production accountability and royalty collections to audits, compliance and enforcement. All issues were on the table for consideration.

In January 2008, Senators Kerrey and Garn gave me their report, which states that, "The Subcommittee members unanimously agree that the MMS is the Federal agency best suited to fulfill the stewardship responsibilities for Federal and Indian leases." The report also identified a number of needed improvements to the program. We have begun implementation of many recommendations provided by the Subcommittee.

Though my entire leadership team and I are offended by the misconduct of these employees, the issue arises whether their actions should call into question the merits of the entire RIK Program. Several studies of the RIK Program indicate it is a valuable tool that can result in increased revenue, reduced administrative costs for MMS, reduced incidence of valuation disagreements and earlier receipt of royalty revenues.

Finally, Mr. Chairman, let me say something about the good that MMS employees are doing. With back-to-back hurricanes this season, members of an expanded MMS Hurricane Response Team have worked nonstop since late August. Some of these individuals have lost or received major damage to their homes. Many left their families and homes in New Orleans, reporting to work in Houston in order to assist in restoring oil and gas production.

I cannot help but feel a great sense of irony these past days as we have been dealing with the preparation for and the impacts of the hurricanes in the Gulf of Mexico. One hour I am discussing huge storms, acts of nature passing through the Gulf and the he-

roic efforts by MMS, including meeting environmental and safety standards to deal with these storms. The next hour I am discussing an ethics storm, the result of ethics failures by a handful of employees.

Both of these storms demand our attention. One shows the immense good that agency staff provide. One does not. I know, as I am sure you do, Mr. Chairman, that the actions of those discussed in these reports are not indicative of the quality of employees within the MMS or the Department of the Interior as a whole, and I appreciated your comments that you made at the opening.

The vast majority of MMS employees are at their duty stations doing excellent work every working hour of every day, and they deserve our commendation. I am committed to ensuring that the Department's employees carry out their activities with the utmost of integrity.

You quoted, Mr. Chairman, and I would quote also, the IG, who said, "99.9 percent of DOI employees are hardworking, ethical and well-intentioned." I share that view and trust that the actions of these few do not serve to tarnish the hard work by the vast majority of our employees and the ethical and diligent way in which they carry out their work.

The abuse of the public trust in this instance is tragic. I assure you that we are taking swift and appropriate actions to restore this important trust.

Again, Director Luthi and Assistant Secretary Allred are here with me to respond to questions as well. Thank you, Mr. Chairman.

[The prepared statement of Secretary Kempthorne follows:]

Statement of The Honorable Dirk Kempthorne, Secretary, U.S. Department of the Interior

Mr. Chairman and Members of the Committee, let me begin by saying that I deeply regret the reason for this hearing. I find the conduct of the small group of long-term career employees described in the reports issued by the Inspector General's Office inexcusable. I am outraged that the public's trust, an important and necessary part of public service, has been abused. I am outraged that the ethics laws and regulations applicable to Department of the Interior personnel have been violated. I am dismayed that these activities could negatively reflect on the vast numbers of outstanding public servants that work in both the MMS and the Department. I know that Assistant Secretary Steve Allred and MMS Director Randall Luthi, both of whom are here with me today, share these feelings.

Background

When I accepted the President's nomination to be the Secretary of the Interior, I made clear during both my confirmation hearing in May 2006 and my first days at Interior that I expect the employees at the Department to conduct themselves in accordance with the highest standards of ethical behavior. You can, therefore, appreciate my disgust when I read the three reports released by the Department's Inspector General, Earl Devaney.

The first focused on three employees in the Minerals Revenue Management (MRM) Division of MMS who were found to have circumvented the laws regarding conflicts of interest, post-employment restrictions, and Federal acquisition requirements. All three of these 20-year employees have left government service; two have pled guilty to charges brought by the Department of Justice as a result of this investigation and await sentencing.

The second report focused on the inappropriate and inexcusable behavior of one employee, the head of the MMS's Royalty-in-Kind (RIK) Program. The details of this report are profoundly disturbing. This employee left government service prior to completion of the Inspector General's investigation.

The third report focuses on the improprieties of some employees in the RIK Program between January 2002 and July 2006. Within hours of being informed by the Inspector General of specific names and his preliminary findings in December 2006,

the decision was made to transfer a number of these employees out of the RIK Program.

Immediate and Long-Term Actions

In the memo conveying the reports, the Inspector General affirmed my frustration with the length of time it has taken to receive these investigative reports. I have regular meetings with the Inspector General. At these meetings over the last 2 years we have discussed the necessity of awaiting completion of these reports before taking any disciplinary actions.

The Inspector General has assured me that he believes the behavior described in these reports no longer exists in these programs.

When I received the reports, I took immediate action. Within hours of receiving the Inspector General's final reports, Assistant Secretary Allred and Director Luthi initiated procedures to determine appropriate disciplinary action.

We will follow the letter of the law. All employees are long-term career employees and must be afforded due process. I can assure the Committee that this process will be completed as swiftly as possible, and we will examine the full spectrum of disciplinary actions, including termination.

I have an outstanding leadership team, including those responsible for Land and Minerals Management. Steve Allred, the Assistant Secretary, was confirmed on September 30, 2006. Randall Luthi, the MMS Director, was appointed on July 23, 2007. On January 20, 2008, a new RIK program manager was appointed. In June 2008, Director Luthi chose a new Associate Director for the Minerals Revenue Management Program, under which the Royalty in Kind program is located. This individual came from outside the Minerals Revenue Management program.

Though these particular problems occurred in the past, I have also decided that the Department should expand its Ethics Office by placing an Attorney-Adviser in Denver, Colorado. This Attorney-Adviser will provide oversight and technical assistance to the Ethics Counselors of the Department's bureaus to ensure that each of the bureaus' ethics programs is in compliance with all applicable ethics laws, executive orders, and regulations. Given the extensive Departmental presence in the Denver area and the Rocky Mountain Region, this individual will provide invaluable ethics support and program oversight.

The Inspector General recommended four actions. We are undertaking all four actions. We have initiated appropriate administrative corrective actions. We have enhanced our ethics program and oversight capacity in Denver where the RIK Program operates. We are crafting a code of conduct. We have implemented organizational changes.

The Inspector General pointed out that the reporting hierarchy of the RIK Program bypassed the Deputy Associate Director in Denver where the program is located. Instead, the RIK Program management reported directly to the Associate Director for MRM in Washington, D.C., 1500 miles away. MMS Director Luthi has changed this reporting structure.

Affirming a Culture of Conscience

I am committed to an ethical culture at the Department. I hope that the Inspector General would agree that we have undertaken efforts to promote a culture of conscience throughout the Department. In fact, at my first all-employee meeting on the second day of my tenure, I emphasized ethics compliance. I appointed a new Designated Agency Ethics Official, Melinda Loftin, who has decades of experience in government ethics. I also expanded the Department's trained ethics staff and initiated implementation of a set of best practices, compiled by the Office of Government Ethics at my request.

In 2007 I was invited by Inspector General Devaney to address all of the Inspectors General at their annual meeting. I was also invited by Ric Cusick, Director of the Office of Government Ethics, to address 600 Federal Ethics Officers at their annual meeting that same year.

Through these actions, we are affirming a culture of conscience. We developed a DVD where I discuss ethics standards at the workplace. We have published an ethics guide for new employees. Just last week, the Office of Government Ethics recognized this new guide by awarding the Department a 2008 Education and Communication Award. The award recognized that the Department demonstrated "a strong commitment to ethics education and communication; created a stronger ethical culture as a result of these efforts; and utilized model practices to encourage understanding and awareness of ethical behaviors."

The Department's Deputy Secretary, Lynn Scarlett, working with a team of Interior employees, developed our core values statement, "Stewardship for America with Integrity and Excellence," which we place on name badges, published mate-

rials, and our website. Because we are all only human, our efforts can't guarantee that everyone is immune from activities like those under discussion. But we have set a standard of excellence. My entire leadership team embraces this standard. I will tell you that the vast majority of the Department's workers are excellent employees.

In March 2007, I appointed a new, independent subcommittee of the Royalty Policy Committee, the Subcommittee on Royalty Management, charging it to conduct a full and candid assessment of the Department's mineral revenue management system. This seven-member panel was co-chaired by former U.S. Senators Bob Kerrey and Jake Garn, and some very talented and knowledgeable people worked with them. I asked Senators Garn and Kerrey to look at everything. They were given a free hand to scrutinize all key processes, from production accountability and royalty collections to audits, compliance and enforcement. All issues were on the table for consideration.

In January 2008, Senators Kerrey and Garn gave me their report, which states that "[t]he Subcommittee members unanimously agree that MMS is the Federal agency best suited to fulfill the stewardship responsibilities for Federal and Indian leases. This includes the RIK Program, which has grown under MMS's management from a small pilot to a major component of the royalty management program." The report also identified a number of needed improvements to the program. We have begun implementation of many recommendations provided by the Subcommittee.

Program and Personnel Value

Though my entire leadership team and I are offended by the misconduct of these employees, the issue arises whether their actions should call into question the merits of the entire RIK Program. Several studies of the RIK Program indicate it is a valuable tool that can result in increased revenue, reduced administrative costs for MMS, reduced incidence of valuation disagreements, and earlier receipt of royalty revenues.

Moreover, MMS overall has consistently received a clean audit opinion from the Inspector General's contracted independent auditing firm as part of its Chief Financial Officers audit. In 2005, an independent CPA firm issued MRM a clean opinion regarding MRM audit functions, with no material weaknesses and no reportable conditions. In fact, just two weeks ago, we were informed that MMS will once again receive a clean audit opinion for audits from 2005 through May 31, 2008. Assistant Secretary Allred and Director Luthi can provide further facts and answer any questions that you may have on the various audits and reviews that MMS has completed.

Finally, Mr. Chairman, let me say something about the good that MMS employees are doing. With back-to-back hurricanes this season, members of an expanded MMS Hurricane Response Team have worked non-stop since late August. Some of these individuals have lost or received major damage to their homes; many left their families and homes in New Orleans, reporting to work in Houston in order to assist in restoring oil and gas production.

I cannot help but feel a great sense of irony these past few days as we have been dealing with the preparation for and impacts of the hurricanes in the Gulf of Mexico. One hour I am discussing huge storms, acts of nature, passing through the Gulf and the heroic efforts by MMS, including meeting environmental and safety standards, to deal with these storms. The next hour, I'm discussing an ethics storm, the result of ethics failures by a handful of employees. Both of these storms demand our attention. One shows the good that agency staff can do; one does not. I know, as I am sure you do, Mr. Chairman, that the actions of those discussed in these reports are not indicative of the quality of employees within the MMS or the Department of the Interior as a whole. The vast majority of MMS employees are at their duty stations doing excellent work every working hour of every day. They deserve our commendation.

Conclusion

I am committed to ensuring that the Department's employees carry out their activities with the utmost integrity. As the Inspector General states in his reports, "99.9 percent of DOI employees are hard-working, ethical and well-intentioned." I share that view and trust that the actions of these few do not serve to tarnish the hard work by the vast majority of our employees and the ethical and diligent way in which they carry out their work. The abuse of the public trust in this instance is tragic. I assure you that we are taking swift and appropriate actions to restore this important trust.

Mr. Chairman, this concludes my statement.

The CHAIRMAN. Thank you, Mr. Secretary.

Before I recognize Mr. Devaney, one of those individuals of the 99.9 percent is with us today. She was singled out in the IG's report, head of the Denver RIK Program.

She was singled out as having good behavior, the highest ethical conduct, so much so that it made those working under her go around her and report 1,500 miles away to Washington rather than directly to her, and that is Debbie Gibbs Tschudy.

I understand she is with us today. Would you mind standing up so we can thank you for your well-intentioned and good behavior? Is Ms. Tschudy with us? I understood she was. There she is. Thank you.

[Applause.]

The CHAIRMAN. Mr. Devaney?

STATEMENT OF THE HONORABLE EARL E. DEVANEY, INSPECTOR GENERAL, U.S. DEPARTMENT OF THE INTERIOR

Mr. DEVANEY. Mr. Chairman and Members of the Committee, I want to thank you for the opportunity to testify today about recent Office of Inspector General reports that address a number of issues concerning the Minerals Management Service.

I will keep my remarks brief today, as I believe that the body of our work over the last several years speaks for itself. From a programmatic standpoint, our earlier four reports, including the investigation of price thresholds, the investigation of false claims allegations, the audits of the compliance review process and the evaluation of the RIK sales process, were the most substantive in content.

As you know, our most recent three investigation reports issued last week focused on egregious conduct by MMS employees. It is important to note that we believe the single most serious problem portrayed in these last three reports is a pervasive culture of exclusivity, exempt from the rules that govern all employees of the Federal government. Simply stated, the MMS employees named in these reports had a callous disregard for the ethical rules by which the rest of us are required to play.

Although it was not an inconsiderable number of individuals who accepted gifts and engaged in improper conduct, I believe it is important to emphasize that the majority of employees in the Royalty-In-Kind Program were not part of such conduct, and perhaps were not even aware of it.

While the individuals involved in the improper contracting extended beyond RIK, this does not implicate the whole of MMS. I reiterate my belief that 99.9 percent of DOI employees are ethical, hardworking and well-intentioned. Unfortunately, the conduct of a few does cast a pall over the whole, at least for a time.

I am also at a loss to explain the behavior of the oil and gas representatives involved in these matters. It is disingenuous for employees of such major organizations, each with highly touted ethics programs, to pretend that they thought it was permissible to provide Federal government employees with gifts in excess of well known limits.

As you know, all seven of these OIG reports have made headlines, some more sensational than others. That, however, was never

our goal. Rather, our goal has always been and is today to effect positive change.

To this end, I must credit Secretary Kempthorne, Assistant Secretary Allred and MMS Director Luthi for their receptiveness and responsiveness to the findings and recommendations contained in all of our reports, particularly for taking swift action in response to misconduct exposed in these most recent reports.

Implementing controls and competencies, however, is far easier than imparting character. I am hopeful that our recommendations to the Secretary will help in this regard. First, there is a need to develop an enhanced ethics program designed specifically for the RIK Program, to include an explicit prohibition against the acceptance of any gifts or gratuities from industry, regardless of value.

Second, MMS must develop a clear, strict code of conduct for the RIK Program, and, finally, a change to the reporting structure of RIK should be made to help avoid misconduct going undetected by long-distance management.

I believe that the environment of MMS today is decidedly differently than that described in our most recent reports. While there is undoubtedly more that needs to be addressed, programmatic improvements must be matched with controls and strong oversight to ensure that this bureau, which is so lucrative to the United States Treasury and the American public, does not again veer widely off track.

I suspect that it is now clear to this Committee, as well as to anyone else who has taken the time to read our reports, why I had identified the greater need for OIG monitoring over MMS in general and in their royalty programs in particular.

When I testified before this Committee in March, I described the beginnings of what is now called our Royalties Initiative Group, a modest audit and investigative unit located in Denver dedicated to royalties-related oversight and improvements.

This group is currently responding to a congressional request to review the status of nonproducing DOI leases. They will soon be conducting an audit of MMS' processes for verifying volumes delivered as RIK, including oil destined for the Strategic Petroleum Reserve. Ultimately we would also like to expand our oversight coverage beyond MMS to the energy and minerals programs at the Bureau of Land Management and Indian Affairs.

Mr. Chairman, I have deliberately kept my prepared remarks short today so that I can better answer all the questions that you or other Members undoubtedly have in this matter. Thank you.

[The prepared statement of Mr. Devaney follows:]

Statement of Earl E. Devaney, Inspector General, U.S. Department of the Interior

Mr. Chairman and members of the Committee, I want to thank you for the opportunity to testify today about recent Office of Inspector General (OIG) reports that address a number of issues concerning the Minerals Management Service (MMS) at the Department of the Interior (Department or DOI).

I will keep my remarks brief today, as I believe that the body of our work over the last several years speaks for itself. From a programmatic standpoint, our earlier four reports—Investigative Report on the Lack of Price Thresholds in Oil and Gas Leases in the Gulf of Mexico, Audit Report on Minerals Management Service Compliance Review Process, Investigative Report on Minerals Management False Claims Allegations, and Evaluation Report of Minerals Management Service Royalty-in-

Kind Oil Sales Process—were the most substantive in content. Our most recent three reports issued last week, of course, focused on egregious conduct by MMS employees.

It is important to note that we believe the single-most serious problem portrayed in these reports is a pervasive culture of exclusivity, exempt from the rules that govern all other employees of the Federal Government. Simply stated, the MMS employees named in these latest reports had a callous disregard for the rules by which the rest of us are required to play. Although it was not an inconsiderable number of individuals who accepted gifts and engaged in improper conduct, I believe it important to emphasize that the majority of employees in the Royalty in Kind Program were not part of such conduct, and perhaps, were not even aware of it. While the individuals involved in the improper contracting extended beyond RIK, this does not implicate the whole of MMS. I reiterate my belief that 99.9% of DOI employees are ethical, hard-working and well-intentioned. Unfortunately, the conduct of a few does cast a pall over the whole, at least for a time.

I am also at a loss to explain the behavior of the oil and gas representatives involved in these matters. It is disingenuous for employees of such major organizations, each with highly touted ethics programs, to pretend that they thought it was permissible to provide Federal Government employees with gifts in excess of well known limits.

As you know, all seven of these OIG reports have made headlines, some more sensational than others. That, however, was never our goal. Rather, our goal has always been, and is today, to effect positive change. To this end, I must credit Secretary Kempthorne, Assistant Secretary Steve Allred and MMS Director Randall Luthi for their receptiveness and responsiveness to the findings and recommendations contained in all of our reports and particularly for taking swift action in response to the misconduct exposed in these most recent reports. Implementing controls and competencies, however, is far easier than imparting character. I am hopeful that our recommendations to the Secretary will help in this regard—that MMS 1) develop an enhanced ethics program designed specifically for the RIK program, to include an explicit prohibition against acceptance of any gifts or gratuities from industry, regardless of value; 2) develop a clear, strict Code of Conduct for the RIK program; and 3) consider a change to the reporting structure of RIK, an anomaly that contributed, in part, to misconduct going undetected by long-distance management.

I believe that the environment of MMS today is decidedly different than that described in our reports. While there is undoubtedly more that needs to be addressed, programmatic improvements must be matched with controls and strong oversight to ensure that this bureau, which is so lucrative to the United States Treasury and the American Public, does not again veer wildly off track.

I suspect that it is now clear to this Committee, as well as to anyone else who has taken the time to read our reports, why I had identified the need for greater OIG monitoring over MMS, in general, and their royalty programs in particular. When I testified before this Committee in March of this year, I described the beginnings of what is now called our Royalty Initiatives Group, (aptly known as RIG) a modest unit, located in Denver, dedicated to royalties-related oversight and improvements. This group is currently responding to a congressional request to review the status of non-producing DOI leases. They will soon be conducting an audit of MMS' processes for verifying volumes delivered as RIK, including oil destined for the Strategic Petroleum Reserve. Ultimately, we would also like to expand our oversight coverage beyond MMS to the energy and minerals programs at the Bureau of Land Management and Indian Affairs. In another forum, I will undoubtedly be seeking your support for more funding in order to do everything I have laid out here, and more.

Mr. Chairman, I have deliberately kept my prepared remarks short today so that I can better answer all of the questions that you or other members undoubtedly have.

* * *

NOTE: A copy of "OIG Investigations of MMS Employees" has been retained in the Committee's official files. In addition, these reports can be viewed at the following websites:

http://www.doioig.gov/upload/Smith%20REDACTED%20FINAL__080708%20Final%20with%20transmittal%209__10%20date.pdf

http://www.doioig.gov/upload/RIK%20REDACTED%20FINAL4__082008%20with%20transmittal%209__10%20date.pdf

http://www.doioig.gov/upload/FBS%20REDACTED%20with%20Transmittal%209__10%20date.pdf

The CHAIRMAN. Thank you, Mr. Devaney and Mr. Secretary.

Let me begin the questioning with the issues I raised in my opening remarks. I would ask you first, Mr. Devaney, in regard to the effect that these lapses have had, can you assure this Committee that such lapses involving the Federal oil and gas leasing and royalty management issues within the Interior Department, can you assure us that there is reason to believe that this culture of ethical failure—is there a reason to believe that it persists throughout the administration of the leasing and royalty programs?

I know the assurances that you have said in your testimony just now, but it would seem with such a gross behavior occurring that we must be sure somehow that there are not others still there that have not been yet identified that perhaps feel they can still get away with such ethical behavior.

Let me refer specifically, for example, to a report in the *Salt Lake Tribune* last week that indicated an investigation is underway regarding royalty collections on BLM and tribal lands. Could this extend even beyond the oil and gas leasing program?

Mr. DEVANEY. Mr. Chairman, as you noted earlier, these things that we looked at in these three reports occurred sometime between 2002 and 2006.

As soon as I understood what we were dealing with, with regard to the focus of this investigation, I did speak to Assistant Secretary Allred and Secretary Kempthorne, and they immediately removed the four people we knew about at the time—I mean, it was within the same day, so it couldn't have been quicker—to satisfy ourselves that those people weren't in place continuing to do what they were doing.

Since that time, we have observed—and this is both on an audit and investigative side—we have observed a marked change in the Royalty-In-Kind Program. Several long-term career professional people have been put in charge of that program now. We are working well with those people. We are interacting daily out in Denver with those folks. I know they have put policies and procedures in place that never existed before.

I would hope that this is a loud wake-up call for anyone who would even think about doing something like this again. I suspect that it will be a long time before the oil and gas company representatives begin to give gifts again to any of our employees. I would hope that those oil and gas companies look to themselves and also do the requisite ethics training that they obviously need.

So, I guess the answer to the first part of your question is I will never say never, but I think the program is on a steady course right now. It is being led by professional people who have ethics at the very top of their list.

With respect to the second, without talking about a specific case, we all the time look at allegations about underpayments of royalties. There are a lot of reasons for that happening. Clearly, when that happens, we look to see if it was deliberate, and if it is we take that to a U.S. Attorney's Office. If it isn't deliberate—it was a mistake, for instance—usually it goes to the civil side for some sort of attempt to collect the monies.

So, we are always looking at allegations that royalties have been unreported, and we do that all the time, but that is a behavior that we observe outside of Interior as opposed to inside.

The CHAIRMAN. So, you can assure us this is it? It is not just the tip of the iceberg, but this is it?

Mr. DEVANEY. This concludes my current investigations of Minerals Management.

The CHAIRMAN. Let me ask you a second issue that I have already brought up.

Is there any way to measure the potential loss, or I should say probable loss, to the taxpayers as a result of the serious ethical lapses within the RIK Program that were the subject of your recent investigations?

Now, I realize it is probably impossible to put a precise price tag on the probable loss to the American taxpayers, but would you say the losses are probable, and would you say they are significant?

Mr. DEVANEY. Well, it was, in fact, very difficult to even get near a figure when we looked at this matter, principally because within the program the contract files that we got our hands on were in terrible shape.

They were unauditable by the forensic auditors working with our investigators, so we were unable to show that any particular personal relationships resulted in particular benefits to any of the oil and gas representatives.

If we had, we might be sitting here talking about more criminal prosecutions because that is the kind of evidence that would have led to that, but we couldn't simply because there were no rules. There was no policy. There was no guidance during that period of time.

Now, that has all changed, but when we were looking at those contract files they were in horrible shape and we couldn't tell about losses. I would say that there probably were some losses, but we have no idea what that figure would be.

The CHAIRMAN. And MMS can't give us any idea either. We found that through previous hearings of this Committee and investigations that we have asked for. They cannot say "yes" or "no"——

Mr. DEVANEY. Right.

The CHAIRMAN.—with regard to probable losses to the American taxpayer and lapses in their fiduciary responsibilities.

Mr. DEVANEY. All I can say is if we were to, and I don't think this will happen, but if we were to go back, in similar circumstances today, I think we would find the records that would allow us to tell you that answer.

The CHAIRMAN. OK. My time has expired. There will be a second round of questions I am sure.

Mr. Pearce?

Mr. PEARCE. Thank you, Mr. Chairman.

Mr. Devaney, if we are going to continue the line of questioning about the loss to the Federal government, I would guess we are saying that maybe the loss could be less than $1 billion, so that gives us a benchmark.

I wonder—you spent two years looking at this entire investigation. In a previous hearing I asked if you would go back and ask Secretary Babbitt about those 1998-1999 leases that we were dis-

cussing. Those are $20 billion to $60 billion according to different estimates. Did you ever ask him was it a mistake or was it directed?

You remember we presented that letter to you that you left out of your report that declared that the Clinton Administration—it was not an oversight, that this was a dedicated piece, and so as we are discussing losses of revenue to the government my question is did you go back and ask Secretary Babbitt was this really a mistake, or was it intentional?

He is the one who could unravel the whole thing. We have different viewpoints. Did you ask that question?

Mr. DEVANEY. No, I don't believe we did ask that question of Secretary Babbitt.

Mr. PEARCE. You know, I had requested before that you would do that. So, we spent two years looking at something that is definitely under $1 billion—I would guess it is way under $1 billion—and we have a $60 billion question according to some out on the table saying that it was a mistake, and we have then the letter from the Clinton Administration employee who said no, that it was a mistake. We didn't think the price of oil would ever get high enough.

It is distressing that you would not ask significant questions about things that you have written reports about that this Committee has asked you to ask those questions about. It is distressing that we still now a couple years later have not asked that single question.

Second, Mr. Kempthorne, is it within your agency rules to allow leaks of reports, these leaks of confidential reports? Is it within your rules to allow that?

Secretary KEMPTHORNE. Congressman, confidential reports are to remain confidential.

Mr. PEARCE. And so it would be against the agency rules to allow that.

Is there—I am going to use Mr. Devaney's words—a pervasive culture of exclusivity in the IG that turns a blind eye? This is the seventh report that has been leaked to the press. He says that there was no attempts to get headline press, but this is the seventh one that has been leaked.

Has Mr. Devaney indicated any desire to give the full amount of attention to leaks inside the Department, his group, that he has given to the two and a half years of investigation to the sex and lies? Believe me, I believe we should have done that investigation, but I think the culture of exclusivity should be looked at in several regards.

Has anyone in your Department requested an IG look at the leaks inside the IG that caused these headlines to appear in the *New York Times* before we even see the reports on this Committee?

Secretary KEMPTHORNE. Congressman, my conversations with the Inspector General, and again, we meet on a monthly basis where he informs me and keeps me up to date, but I really cannot respond to the aspect of the nature of leaks.

Mr. PEARCE. I will put that in a request that we actually take a formal look at the seven times that this same report has been leaked, in its process, before we actually get it here.

We were not able to prosecute any of the individuals involved. We allowed them to move toward retirement and get into retirement where—according to the testimony in our last hearing, and I have that testimony here—according to the testimony, many of the times when they moved to retirement, they were beyond the reaches to do anything to them.

And so I am going to ask that we get an answer of why these leaks are allowed, and I would like to request a formal investigation. We will actually put that letter in too.

Mr. Devaney, you mentioned that it is unthinkable that with the touted ethics programs that members of the Federal government would think it is permissible to provide government employees with gifts in excess of known limits.

Did you ask the question were those employees ever told or did they have a reason to believe that such gifts were required or expected?

Mr. DEVANEY. Are you talking about the representatives from the oil and gas companies or——

Mr. PEARCE. That they ever have been led to believe that such gifts were required or expected because in payola as a business owner I will tell you that there are people who can give you the word that these contracts might come with the right little touch.

I am asking did you actually ask the question of those oil company employees was there the expectation or were they ever led to believe that such gifts were expected from the members of the Department?

Mr. DEVANEY. I don't know if we asked the question that way. I mean, we asked them why they gave gifts and they gave us answers, a range of answers.

Mr. PEARCE. Did those answers include such things like they were expected?

Mr. DEVANEY. No. Nobody told us that for giving a gift they would get something in return in terms of the bidding going on with the oil and gas. No.

Mr. PEARCE. I see my time has elapsed. I will come back to that, but I find it amazing that you did not ask, was there ever an implicit expectation? That just seems amazing because in all payola schemes, that knowledge is out there without the words ever being conveyed.

Thank you, Mr. Chairman, for your tolerance.

The CHAIRMAN. Perhaps it would have helped if Mr. Devaney had better cooperation from the big oil companies. That is another issue.

The gentleman from California, Mr. Miller?

Mr. MILLER. Thank you. Mr. Secretary and Mr. Devaney, thank you for being here this morning.

What is the status of the prosecutions here? Mr. Pearce mentioned that people were allowed to transfer or to leave service. I don't know that when you leave the government service you are then immune from prosecution.

What is the status of efforts to seek justice, if you will, here?

Mr. DEVANEY. Well, I think we are done. We have two guilty pleas, and they are awaiting sentence. The Department of Justice has declined to prosecute anyone else.

Mr. MILLER. You have sent individual requests for prosecution to the Department of Justice?

Mr. DEVANEY. Well, we were working with the Department of Justice, in this case the Public Integrity Unit at Main Justice, all the time. We were working with them since day one, so there was ongoing dialogue.

At a point in time toward the end of the investigation they decided to prosecute two people and not prosecute others.

Mr. MILLER. And that would end it with respect to the employees with respect to the Justice Department?

Mr. DEVANEY. Yes. Yes.

Mr. MILLER. What about the representatives of the oil companies?

Mr. DEVANEY. No.

Mr. MILLER. Were any recommendations made for prosecution by you?

Mr. DEVANEY. No, I did not.

Mr. MILLER. Why not?

Mr. DEVANEY. Quite frankly, we were never able to show. Going to Congressman Pearce's question, we were never able to show that there was any connection between the getting of gifts and the manipulation of any bidding.

We really wanted their cooperation and sought and got their cooperation from three of the companies on making their individuals available to us for interview to ask them, "Why were you giving our employees gifts, and to what extent did you do so?"

Mr. MILLER. So, in this situation, the liability runs only to the government employee?

Mr. DEVANEY. It did in this situation.

Mr. MILLER. There is no bar of offering gifts?

Mr. DEVANEY. Oh, I think there is, but I think a decision was made at the Department of Justice in conjunction with my investigators to approach the oil and gas people in a different way.

Mr. MILLER. Mr. Secretary, are we still doing business with these people who offered gifts under these circumstances?

Secretary KEMPTHORNE. Congressman, we are still doing business with the companies, yes.

Mr. MILLER. So, the same people who offered gifts over the last couple years are still in daily contact with the Mineral Management Services?

Secretary KEMPTHORNE. I can't respond if they are in daily contact or if they are the same individuals, but you could assume that that is happening.

Mr. MILLER. So, what is the ethical message we are sending to those companies?

Secretary KEMPTHORNE. Well, I think they are seeing, Congressman, the fact that we are dealing with it within the Department. We are dealing with personnel issues where actions will be taken. Because they are longstanding career employees, we will afford them all due process.

Mr. MILLER. No. I understand that. I want to know about the companies. So, the companies just go on and do business tomorrow just as they did yesterday?

Secretary KEMPTHORNE. Congressman, no. In fact, I think if we had others who could speak to this, but there has been a discussion that we will do an outreach so that they fully understand what parameters our employees must work under and, therefore, the companies will know not to offer beyond that because it puts our employees in a very tough situation.

Mr. MILLER. Not to offer what beyond that?

Secretary KEMPTHORNE. Gifts that would exceed the gift ban, activities that would go beyond what is in the ethical standards.

Mr. MILLER. So, they can offer a gift. They just have to make a decision of whether or not it violates the gift ban. Is the gift ban no gifts? Some gifts? A threshold? Is it $100? $150? $200?

Secretary KEMPTHORNE. There is a threshold, and the threshold is $20. Yes, there is a threshold that has been identified.

Mr. MILLER. So, it is $20 per gift?

Secretary KEMPTHORNE. Correct.

Mr. MILLER. So, I can give you a gift every day for $20?

Secretary KEMPTHORNE. No. It is cumulative, too.

Mr. MILLER. So, what is the upside level here?

Secretary KEMPTHORNE. Well, I will make that a part of the record. I will get back with all of that.

Mr. MILLER. I just find it kind of disturbing that one-half of the crime here just goes on and conducts business as if nothing happened. I mean, there apparently is no lesson learned in the sense inside that corporation because the same people are on the front lines holding onto the same relationships.

You have transferred people, and I thank you for doing that and I think you have handled this rather well, but we are right back with the same people who apparently thought there was some reason, some benefit to that behavior, and that behavior isn't outlawed. We don't debar them from working with the government for a year or whatever it is. There are no prosecutions.

It says employees shall not directly or indirectly solicit or accept a gift from a prohibited source, but that apparently doesn't prohibit you from offering so you can continue to try to ingratiate yourself to an employee or bribe an employee, and if the employee says yes you are in. If the employee says no, you are out.

Secretary KEMPTHORNE. Yes. Congressman Miller, what we have discussed and what I would like to initiate is an outreach program so that we do sit down and we go through this with the corporations so that they know exactly what the rules and the requirements are.

Mr. MILLER. They know what the rules are. I have all these companies in my district. They know what ethical behavior is and isn't.

I don't know. I know the chairmen of the boards. They know what ethical behavior is. They just apparently have chosen not to participate in it. We are going to take big, grown up and successful people. We are going to give them ethics lessons. I don't get it.

Secretary KEMPTHORNE. Congressman?

Mr. MILLER. I suspect the prosecution would focus the mind on the ethical problem, as opposed to a DVD. I just don't understand it.

You know, in the Department of Education we go to the Inspector Generals, and millions of dollars went out the back door, went

out in conflicts of interest. People were allowed to move on. People were allowed to retire. People kept the millions of dollars wrongfully found. They kept it. The contracts are in place. They continue to be enriched. I don't get it.

Secretary KEMPTHORNE. Congressman, it is all part of what is being evaluated now based upon the fact that we have received the report last week. As the Inspector General has pointed out, many of these practices no longer happen. They have not happened.

Mr. MILLER. What is the standard of conduct you are developing for the people having contact with the United States Government? What is the standard you are imposing on the contractors?

Secretary KEMPTHORNE. Well, it is to be of the highest of ethical standards.

Mr. MILLER. How do they know that?

Secretary KEMPTHORNE. I think they are knowing that from activities such as this hearing. They are knowing that by seeing that there are——

Mr. MILLER. What is in the contract? You do business with us. How do you conduct yourself? You have a written standard for the employees, but the other guy can keep baiting them and baiting them and baiting them, and I guess they will either love to take it or they will resist or whatever they will do. What about the behavior by the private sector here?

Secretary KEMPTHORNE. Congressman, I think that the private sector is also seeing that there are consequences. There are consequences.

Mr. MILLER. What would those be for the private sector? One company chose not to cooperate. They are still doing business. The other company has cooperated. We appreciate that. The employees are still employees. What is it they are learning from this lesson?

Secretary KEMPTHORNE. Well, they are learning that as we have future activities that we are adhering to a particular set of standards.

Mr. MILLER. What standards are you expecting them to adhere to?

Secretary KEMPTHORNE. Congressman, there are standards of appropriate behavior by businesses, and they are seeing that there are consequences.

Mr. MILLER. Well, the American public would probably be surprised as they watch a meltdown all across the country in the pillars of American society, the financial institutions, where clearly when you started loaning money based upon a liar's loan—that is what it was known as, a liar's loan. You were loaning money to liars who had no ability to pay it back. And we want to talk about ethical standards?

Here you are dealing with a very precious resource in a very delicate program with billions of dollars at stake, and we are telling the companies, "Well, you should learn something because we have transferred some people from one department to another, or what have you, and we have prosecuted a couple government employees, but you don't have to change anything." I don't get it. I just don't get it.

Secretary KEMPTHORNE. Congressman, this is all part of a process that is under review, that is being evaluated and examined so

that there are lessons learned. There are certainly consequences that are being paid by it.

Mr. MILLER. I want to know what are those consequences? We are back to the beginning here.

The same employees are dealing with the MMS. The same representatives are there. The companies have no greater burden imposed upon them. There is no changing of the contractual liabilities or the conditions of employment or engagement of these companies.

Apparently you can't answer the question. I have great respect for you, Mr. Secretary, and your ethical standards are way beyond this. Somehow that has to be transmitted to the private sector.

The private sector has to know you don't get to come around and start offering gifts to people in a program when you have billions of dollars at stake and a little bit of change here and a little bit of change there can be worth a lot.

Secretary KEMPTHORNE. Congressman, I have a great deal of respect for you as well. As I have indicated, all of this is being evaluated as we look at what has transpired so that it does not continue.

Mr. MILLER. I look forward to seeing what standards of conduct will be mandatory with respect to the private sector here because, like many other Americans, I am rapidly losing my confidence that they have any ethical standards.

Thank you.

The CHAIRMAN. The gentleman's time has expired.

The gentlelady from Oklahoma, Ms. Fallin?

Ms. FALLIN. I appreciate both of you gentlemen coming today. Secretary Kempthorne, I appreciate you and your agency taking time to develop new ethical standards to review the process. Inspector General, I appreciate your recommendations.

I will say that I am very disappointed and find the behavior in the Mineral Management Services employees' behavior unacceptable, and so I thank you for what you are doing.

I have a couple of questions to the Inspector General. When you were reviewing the information about the gift giving, did you find any evidence from the people that you reviewed that there was any directive from the top of the oil companies—the CEOs, the leadership—to tell their employees to give gifts to curry favors from the Mineral Management Services?

Mr. DEVANEY. No, there was no evidence of that.

Ms. FALLIN. And how many employees did you say you found that were acting inappropriately within the agency?

Mr. DEVANEY. There was about a dozen.

Ms. FALLIN. About a dozen that you found? OK. Now, you said you began your investigation for a time period of 2002 to 2006. It took two years to conduct this investigation. When was the report finished on this investigation?

Mr. DEVANEY. Well, there were three reports, so they were each finished slightly at a different time.

Ms. FALLIN. And when was your first report finished?

Mr. DEVANEY. It was probably about—I would make a distinction between when the investigation was finished, and then there is a back and forth with the Department of Justice as to what we might prosecute, and what we are not going to prosecute.

Ms. FALLIN. So, when was something available for someone to see on this Committee?

Mr. DEVANEY. On this Committee?

Ms. FALLIN. Or any committee, anybody. When was there a piece of paper that you could say, "Hey, we have a problem here?"

Mr. DEVANEY. Well, we signaled that in a number of testimonies that we had these investigations ongoing.

Ms. FALLIN. And what date was that? Was that March?

Mr. DEVANEY. The report was delivered on September 10 to Congress.

Ms. FALLIN. So, just a couple weeks ago——

Mr. DEVANEY. Yes.

Ms. FALLIN.—for your first inkling that there was a problem, even though you have been investigating this for two years?

Mr. DEVANEY. Oh, no. No.

Ms. FALLIN. OK.

Mr. DEVANEY. Not at all.

Ms. FALLIN. I am just trying to figure out the timeline here.

Mr. DEVANEY. No. The investigation took two years. Like any white collar criminal investigation, we hold that investigation. We don't talk about it. We don't issue updates, if you will.

There can be conversations. For instance, the Secretary mentioned he and I have had conversations. I have been trying to keep him updated. We shared the frustration of how long it was taking.

But nonetheless, "finished" means that all three investigations are finished. All the discussions with the Department of Justice have concluded, and then it goes through the quality control process in my office. It is printed; it is bound, and then it is put out.

Ms. FALLIN. OK.

Mr. DEVANEY. That was September 10.

Ms. FALLIN. I have to ask you. When did you notify this Committee that there was a problem within this agency?

Mr. DEVANEY. I think I alluded in previous testimony that we were conducting a criminal investigation.

Ms. FALLIN. Which is when?

Mr. DEVANEY. Probably the last time I was up here in March.

Ms. FALLIN. March? OK. I guess my point is here we are a week before we are getting ready to go home for the election cycle, but yet we are just now having a hearing on this issue.

And here we have let from March to this time period go that nothing has transpired within this congressional body to look into a major issue of corruption and selling of favors within a few people. You said 99 percent of the people in the agency were not involved.

I guess my question is why are we waiting for this time period a month before an election and a week before the session is over to be discussing this when we should have been dealing with this a long time ago?

Mr. DEVANEY. Well, I have been doing this for 38 years. I have been in Federal law enforcement for that amount of time, and I would venture to say that white collar crime cases with this amount of witnesses to be interviewed and this amount of documents to be looked at and these amount of witnesses that had to

be brought before and given consideration by the Department of Justice, two years is actually not a long time.

But with respect to when the report came out, it came out when all that process I just discussed with you was done—not a day later and not a day sooner—regardless of what time of year it was.

Ms. FALLIN. But you first started telling this Committee and some of the people about it in March. I guess that is what bothers me, Mr. Chairman, is why haven't we had this discussion before this week?

I also heard some talk about the loss of revenue from royalty leases because of the behavioral problems. Could I also ask our Secretary have we lost any revenues for our nation on royalty leases because of the time delays of the lawsuits, the protests over the leases and the applications?

Secretary KEMPTHORNE. I don't see how you would construct that we have lost.

Ms. FALLIN. The time delays that it takes to actually produce a lease once a lease is let. We talked about losses because of corruption. Have we lost any money for our nation because of the time it takes to go through the protests and the lawsuits?

Secretary KEMPTHORNE. I am not aware of that having been quantified.

Ms. FALLIN. OK. I think my time has expired, Mr. Chairman. Thank you.

The CHAIRMAN. As far as this first coming to light, our hearing record is well documented back at the beginning of this Congress, our hearings we have had on this issue and the potential loss of revenue.

We have always known this cozy relationship existed. I would say to the gentlelady we just didn't know how cozy it was until recently.

Mr. KIND. Mr. Chairman, would you yield for a second? I just have a quick question.

The IG's report wasn't concluded until last week. Isn't that right?

The CHAIRMAN. That is correct.

Mr. KIND. So, the Committee is not going to compromise an ongoing investigation by holding hearings until the conclusion of a report.

The CHAIRMAN. Correct.

Mr. KIND. OK. Thank you.

The CHAIRMAN. The gentleman from Massachusetts, Mr. Markey?

Mr. MARKEY. Thank you, Mr. Chairman. You know, Mark Twain always said that history doesn't repeat itself, but it does tend to rhyme.

This isn't exactly like the Powder River Basin scandal during the Reagan Administration when James Watt turned a blind eye to the undersale of $100 million of resources at the Powder River Basin. I was the Chairman of the Oversight Committee of this Committee back then, and I commissioned the GAO report that brought back all of the findings on that scandal, which ultimately led to the resignation of James Watt.

I know this didn't happen on your watch, Secretary Kempthorne. I appreciate that, but this is a blistering, scalding indictment of the

Bush Administration oversight of the Department of the Interior. This is something that is a stain on the Department of the Interior and its operations.

Mr. Devaney, I congratulate you on your work. Chevron did not agree to allow any of their employees to be interviewed by you. Is that correct?

Mr. DEVANEY. It is fair to say, Congressman, that at some point Chevron obtained counsel for five of their employees, and then we began negotiations—"we" being the Department of Justice and our investigators—to try to get those employees in for an interview. It never happened.

Mr. MARKEY. It never happened. So, Chevron has stonewalled this investigation, and Shell has refused to allow one of their employees to be interviewed. Is that correct?

Mr. DEVANEY. I think he is a former employee, and he was exercising, as everybody has, their right to remain silent.

Mr. MARKEY. Now, are you saying he is doing that as an individual, or is that Shell as well?

Mr. DEVANEY. I think he was a Shell employee when the events occurred. My understanding is he is no longer a Shell employee, and he did not afford himself the opportunity to talk to us.

Mr. MARKEY. Are the Chevron employees still at Chevron?

Mr. DEVANEY. I believe they are.

Mr. MARKEY. Are they refusing to testify in conjunction with legal advice from Chevron?

Mr. DEVANEY. No. First of all, let me be very specific about Chevron. We gave subpoenas to all of the companies for documents, and all of them, including Chevron, produced billing records and emails and et cetera, so with respect to documentation requests they were cooperative.

When it came time to do individual interviews Shell, Gary Williams and Hess made their employees available. Chevron obtained outside counsel, who then did not make those employees available.

Mr. MARKEY. So, the lack of cooperation by the Chevron and Shell employees slowed down your investigation?

Mr. DEVANEY. It did.

Mr. MARKEY. It did not allow you to get all of the information which you needed in order to make a definitive and final set of conclusions with regard to what was going on.

Mr. DEVANEY. That is true.

Mr. MARKEY. That is true. Did Chevron then demand that the employees there no longer have any work relationship with the Department of the Interior?

Mr. DEVANEY. I don't know anything about that.

Mr. MARKEY. Should they demand and should the Secretary of the Interior demand that those Chevron employees no longer have any relationship with the Department of the Interior with regard to any of the matters that we are talking about in the leasing area?

Mr. DEVANEY. Well, I would hope that Chevron might do an internal——

Mr. MARKEY. No. I am not asking that. They are not doing it. They are not cooperating. Chevron is not cooperating.

I am asking you what do you think the standard from the Department of the Interior should be with regard to these five em-

ployees? Should they continue to have business as usual in representing Chevron at the Department of the Interior?

Mr. DEVANEY. Well, there are some suspension and debarment possibilities here obviously for the company, which——

Mr. MARKEY. What is your recommendation in terms of keeping an arm's length distance now between these employees and the agency?

Mr. DEVANEY. Well, I am charged with oversight over our employees, and I am satisfied that we are on the right track. I wish I had the same oversight and authorities with outside entities. I don't.

Mr. MARKEY. So, you still don't know the full extent of what is going on at MMS because you haven't been able to do a complete set of interviews of these or existing employees in this case of Chevron?

Mr. DEVANEY. I would say that it is incomplete because they didn't make themselves available. Yes.

Mr. MARKEY. Now, to your knowledge were any oil company executives aware at any point that their company's employees were engaging in these illegal, improper or unethical actions with Interior Department employees?

Mr. DEVANEY. Well, I think that the actual representatives ranged in rank. I don't know where the executive level is, but I don't think it went too high.

I think these are essentially market people that deal with our folks at that level as well. Certainly they are not corporate executives of the corporations.

Mr. MARKEY. The Justice Department has thus far declined to prosecute any of the current Interior employees involved in this scandal. Decisions to not prosecute are based on many factors. One is the culpability of the persons involved, but another is the ability to obtain a conviction.

Do you think that had the companies been more cooperative and not shielded their employees from providing evidence to you that you or the Justice Department might have uncovered something worthy of prosecution?

Mr. DEVANEY. It is hard to tell, Congressman. I don't know.

Mr. MARKEY. But is it not possible?

Mr. DEVANEY. It is possible. Sure, it is possible.

Mr. MARKEY. So, what do you recommend then as a course of action if the basis of your testimony today is that you don't have enough information because the oil companies are not allowing you to interview the witnesses so that you can make a recommendation as to how we make sure that there is proper accountability? What do you recommend?

Mr. DEVANEY. Well, we discussed that whole issue with the Department of Justice. You know, I have been doing this for a long time, and this isn't the first time I have been disappointed by decisions made over there. It probably won't be the last.

Mr. MARKEY. When you say "disappointed," what do you mean?

Mr. DEVANEY. It means that I would have liked a more aggressive approach and I would have liked to have seen some other people prosecuted here, but that is not my decision to make. I get to decide what to investigate. They get to decide who to prosecute.

Mr. MARKEY. So, what is your recommendation with regard to how we now deal with Chevron and their existing employees who you have not interviewed and this former Shell employee that you have yet to interview, given the fact that you don't have to be Dick Tracy to figure out that they are the ones that might have the very information you need in order to make a definitive recommendation as to what type of action should take place? What should happen?

Mr. DEVANEY. Well, first of all there is a discussion about how we would reach out to those companies.

I am probably not the best person to do that, but certainly the Office of Government Ethics is a possibility, maybe some folks from the Ethics Department with Interior, and to make sure and to put our marker down as to what our expectation is not only of our own employees, but with their employees who are doing business with us. I think there are suspension and debarment considerations we could give to the employees.

So, I think there is a variety of things that can be done, and I would think that as the Secretary goes about his "lessons learned" process that some of those issues will come up. I would certainly stand ready to help him with that.

Mr. MARKEY. Well, I have sent a letter to the CEOs of those two companies because I believe that the taxpayers have a right to have these answers from "big oil." I think they have a right to know what happened to the money that rightly belongs to the taxpayers of our country.

This is something that goes right to the heart of accountability in terms of tax evasion, and I don't think that we can rest until we have gotten to the bottom of this.

I thank you, Mr. Devaney, for your work and for all the people who work for you, and with that, Mr. Chairman, I yield back.

The CHAIRMAN. The gentleman from Colorado, Mr. Lamborn? I am sorry. Mr. Sali. The gentleman from Nevada, Mr. Sali?

Mr. SALI. Actually, from Idaho, Mr. Chairman.

The CHAIRMAN. Idaho. I will get it all right here in a minute.

Mr. SALI. Somewhere out west.

The CHAIRMAN. The gentleman from somewhere out west is recognized.

Mr. SALI. First of all, I want to thank both of you for being here today, and I want to try and add a little scope to what is going on here.

Secretary Kempthorne, first of all I know that a number of people have praised you for the job that you have done in handling this situation. Some of them have chosen immediately after that to treat you in a way that I would suggest is disrespectful under the circumstances. I appreciate the fact that you have been here and the temper that you have shown in trying to respond to these questions.

Mr. Devaney, if I understand things correctly, your job as the Inspector General is to deal with the issues that relate to employees of the Department of the Interior.

Mr. DEVANEY. Yes.

Mr. SALI. And if there was a prosecution of anybody from any of the oil companies, that would be outside the scope of your office. Isn't that correct?

Mr. DEVANEY. We would probably be involved in the investigation, but the decision to do that would be at the Department of Justice.

Mr. SALI. And that decision would be solely in that office and have nothing at all to do with you?

Mr. DEVANEY. Right.

Mr. SALI. And if there were going to be a real investigation of any of those oil companies, that would not take place in your office as a primary effort. It would take place in the Department of Justice. Isn't that correct?

Mr. DEVANEY. Yes.

Mr. SALI. And so the notion that somehow you ought to be held responsible for whether people were being held to the right ethical standards or whether they were being prosecuted, that is really unfair to ask people on this Committee to have you make that kind of judgment call. Isn't that correct?

Mr. DEVANEY. Well, it is true that I don't have any authority over those folks.

Mr. SALI. Thank you.

Secretary Kempthorne, the same is true for you. You don't have any control over what the Department of Justice does with people outside of your Department, correct?

Secretary KEMPTHORNE. That is correct.

Mr. SALI. And so the notion or suggestion that somehow you should be responsible for the ethical conduct of those who are outside of your office, that is out of sight of your authority, isn't it?

Secretary KEMPTHORNE. That is correct.

Mr. SALI. All right. Thank you.

I guess I want to note that I am a little dismayed that we have had so much important business that has been before Congress dealing with energy, and a lot of it deals with your Department, Mr. Secretary, and we have not had the opportunity to even have a hearing on those, any of those matters.

We had a bill that we voted on just the other night that was a fairly broad scope energy bill. We didn't even have a hearing on that, and yet we are dealing with a hearing on the issues that are before us. I want to try to get to the scale of what those issues are.

Now, both of you have testified that 99.9 percent of the employees within the Department of the Interior act in a way that I think would be approved by the taxpayers of this country. Do you agree with that? Both of you agree with that?

Mr. DEVANEY. Yes.

Secretary KEMPTHORNE. We agree.

Mr. SALI. And so I have heard the term, "a culture of exclusivity." I think that was your term, Mr. Devaney.

Mr. DEVANEY. Right.

Mr. SALI. When you are talking about one-tenth of one percent—and I know that is a generalization—it may not even be that much. How do you get a culture of anything out of a tenth of a percent?

Mr. DEVANEY. Congressman, I was talking about the culture of that program—the RIK Program. I think, over a period of time, they developed that culture that the rules simply didn't apply to them that the rest of us in government have to follow.

Mr. SALI. But anybody who wants to characterize a culture of corruption within the Department of the Interior specifically, that would be a gross exaggeration, wouldn't it? Both of you agree with that?

Mr. DEVANEY. Yes.

Secretary KEMPTHORNE. I would agree with that.

Mr. SALI. OK. And so I guess when we get to the point of the scale of this, it was a limited number of people, and I think the Chairman had one of the people that was in charge stand up and acknowledge her as a person who did have high ethical standards.

I guess my point is this. If we were going to be concerned about this in terms of scale, it is a limited number of people. Both of you agree with that.

Second, I think both of you have agreed that this is not something that you have a concern that this is a continuing way of doing business either in the RIK Program or anywhere else within the Department of the Interior. Is that correct?

Mr. DEVANEY. I am satisfied that we are on the right track with the RIK Program. It has been put on track.

Mr. SALI. OK. Mr. Devaney, are you telling us that there are issues in other parts of the Department of the Interior that you are concerned about?

Mr. DEVANEY. Like any group of people, so many thousand people, there are always going to be problems.

Mr. SALI. Are you investigating any of those things currently?

Mr. DEVANEY. Of course.

Mr. SALI. That relate to this kind of activity?

Mr. DEVANEY. No. No.

Mr. SALI. All right. So, the kind of activity, as the Secretary has indicated, you have assured him there is no problem with this kind of activity on an ongoing basis? That is a correct statement and you support that, right?

Mr. DEVANEY. Yes.

Mr. SALI. All right. Thank you, Mr. Chairman. I see my time has expired.

The CHAIRMAN. The gentleman from California, Mr. Costa?

Mr. COSTA. Thank you very much, Mr. Chairman.

It has been noted that we acted on an important energy bill this week. While I would have liked to have had the opportunity to have this go through the Subcommittee or the full Committee, and while there has been criticism raised there, I think it is important to note that the Subcommittee has held 14 hearings on energy-related matters, at which the Department and the various agencies within the Department have testified—14 hearings in 2007 and 2008, and at our joint Subcommittee hearings, we have had an additional six hearings this year, in 2008.

So, for the record, let us be clear. We have been trying to do due diligence on a host of issues that involve not just the Minerals Management Service, but the issues of expansion of the Outer Continental Shelf, the potential impacts of seismic issues relating to energy recovery, uranium recovery. The list goes on and on and on.

I will submit that for the record, Mr. Chairman, so that we make the record straight as to our efforts to do our due diligence. We can always do better clearly.

The CHAIRMAN. Without objection. It will be made part of the record.

Mr. COSTA. Mr. Devaney, I am very interested in the area that you talked about. First of all, you talked about the expansion on the investigation. I assume you have the resources to continue that expansion?

Mr. DEVANEY. We have now dedicated a discrete number of auditors and investigators in Denver to provide constant oversight over the Royalty-In-Kind Program.

As I indicated in my opening remarks, I would like, someday in the not too distant future, to expand that oversight over the oil and minerals activity on BLM land and on Indian lands. I don't have the resources to do that right now.

Mr. COSTA. Can you tell us how much resources you would need to deal with that?

Mr. DEVANEY. It is in the vicinity of $2 million probably.

Mr. COSTA. All right. We will pursue that.

Are there other aspects of the Minerals Management Service that you think should be studied by your office, especially as it relates to the potential if we do, as I said in my opening statement, expand the Outer Continental Shelf, which I think we need to do for both oil and natural gas?

Mr. DEVANEY. We intend to provide oversight in areas that we haven't done it before.

We intend to, in the very near future, look at volume—for instance, the Strategic Petroleum Reserve—so we are going to be getting into some areas that we haven't looked at before, but the resources that we have now and the ones I just mentioned should be sufficient.

Mr. COSTA. OK. But I think in terms of further expansion we should have further discussion to ensure that you are able to do your job.

I was appalled, I suspect like many other Members of the Committee, to hear you say that in terms of your investigation on the Royalty-In-Kind Program the contracts were so poor the way they were written that no real audit could be performed. I think your statement was policy contracts were so poor they were unable to be audited.

What has been changed now as we write policy contracts for the Royalty-In-Kind Program?

Mr. DEVANEY. Well, the observation of our office is that all the policies and guidance and procedures that were missing have now been put in place, that those contracts are done in a way that resembles what you would imagine an auction would resemble as opposed to what we found when we looked at it.

Mr. COSTA. Mr. Secretary, is there now a pro forma tightened policy contract that is established for every royalty-in-kind that is transpired on a legal basis between the Department of the Interior through the Minerals Management Service to any of these energy companies that are entering into these new processes so that we don't have a repeat of this?

Secretary KEMPTHORNE. Congressman, we have made a number of changes in policy and procedures.

One of the things I would mention, as well as in my opening testimony, is the fact that we asked seven individuals that were headed by Senators Kerrey and Garn to look at this, the entire program. One of the things that they recommended was the fact that we needed additional transparency, and that is one of the things that we are addressing so that these types of——

Mr. COSTA. I believe the Committee is going to want to see what that transparency is.

I mean, it seems to me I find it hard to imagine that there wasn't a standard contract, a standard contractual procedure. I mean, this is not a program that started yesterday or last week.

Secretary KEMPTHORNE. Right.

Mr. COSTA. I mean, this has been since the late 1990s.

Secretary KEMPTHORNE. Congressman, there are standard contracts that are approved by the Solicitor.

Mr. COSTA. And when have they been approved to be initiated?

I mean, if they were standard contracts, why would the auditor state that, in fact, the policy contracts were so poorly written that they were—I mean, what? Did you just leave things blank? How is it poorly written so that you are unable to have an audit trail?

Secretary KEMPTHORNE. We have required further demonstration to support the contracts, further information to support the contracts.

Mr. COSTA. Under the new procedure?

Secretary KEMPTHORNE. That is correct.

Mr. COSTA. OK. So, everybody now understands what the new rules are as a result of the Kerrey-Garn Commission that you referenced?

Secretary KEMPTHORNE. They have made a number of recommendations, of which some have already been implemented, of which we are moving forward to implement a large number of those.

So, yes, there has been significant improvement. There will continue to be improvement. I don't think this will be a static situation. I think that we will continually seek ways that we can improve and improve transparency and improve an audit trail as well.

Mr. COSTA. Well, America's energy future, as we have all discussed in this debate, truly depends in large part on our ability to provide greater stability through the expansion of our own domestic resources in the near term, especially with regards to our oil and natural gas.

These are America's taxpayers' resources. I think we all acknowledge that. Therefore, we have a fiduciary responsibility, all of us, to ensure that those resources that belong to all of us are used most effectively as we deal with $4 gas prices.

My time has expired, but I would like to have a further discussion with the Department and with the Minerals Management Service, along with the Inspector General, to ensure that the new contracts as we look at, possibly, which I believe will be an expansion of those leases, both onshore and offshore, that everybody clearly knows what the rules are.

My further questioning, Mr. Chairman, and because my time has expired, hopefully in the second round, I will get a chance to get

your sense, Mr. Secretary—given all of your exposure and the time you have spent examining this fiasco—whether or not you would recommend that the Royalty-In-Kind Program continue, or whether we end it and, if we continue it, under what circumstances you would suggest to us that we continue it, and with what reforms.

Secretary KEMPTHORNE. Mr. Chairman, may I respond to that?

The CHAIRMAN. Certainly.

Secretary KEMPTHORNE. Congressman, no. I do believe that we should continue the Royalty-In-Kind Program.

As has been indicated by the testimony of the Inspector General, a number of items did not allow him to identify a variety of information. Procedures have been changed and are in place. The fact that you now have key personnel that were not in the organizational chain of command, that has been corrected so they now are in that position.

So, it is procedures. It is policies. It is personnel that had been put in specific places. It is an enhancement of the communication of what the ethics are. It is not that there was an absence of ethics. It was an absence of the adherence of ethics that existed that much of this investigation is about.

I would also indicate that as the Kerrey-Garn report said, the RIK Program is the appropriate program to carry this out, the responsibilities. They gave us a series of recommendations. A GAO report has given us recommendations.

And so we continue to make improvements and refinements, but I believe great progress has been made.

Mr. COSTA. Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Louisiana, Mr. Scalise, is recognized.

Mr. SCALISE. Thank you, Mr Chairman.

I first want to thank the Office of Inspector General for the investigation, and the report that goes along with it, in giving us a detailed summary of not only the allegations, but of the findings, which are very disturbing. I want to express especially my disappointment and disgust with the activities that took place by the people that are mentioned in this report, the employees of MMS, and the activities that they conducted.

I have some questions to the Secretary first about the severity of the charges. What is your feeling as you have reviewed the report and the various options that are on the table in terms of penalties at the Federal level that exist to deal with the charges that came out in the report?

Do you feel that the penalties that we have, the laws that we have to go after the people who did these things, are they adequate to fit the severity of the crime?

Secretary KEMPTHORNE. Congressman, as has been pointed out, two individuals who have now pled guilty, they await sentencing. I cannot state what the outcome of that will be. The Department of Justice, those were the only two where there was going to be the criminal charges brought to bear.

The other employees that still are within the employment of the Department, they are long-term career employees. I think 1998 is——

Mr. SCALISE. When did Gregory Smith——

Secretary KEMPTHORNE. Pardon me?

Mr. SCALISE.—the program director for the RIK Program. When did he come to the Department?

Secretary KEMPTHORNE. I believe that he came—he is a 20-year employee, I believe. In the 1980s.

Mr. SCALISE. And for the charges that are against him, as you look at what penalties are available and, of course, you wouldn't be the one to do the prosecutions, but as the Secretary of the Department and to us, as the policymakers, do you feel that the penalties that the prosecutors would have if they were able to go after to the maximum extent, does that maximum extent reach high enough to the severity of the charges or should those maybe be increased?

Secretary KEMPTHORNE. Congressman, no. I cannot articulate for you here in this setting if I believe that the severity—I think they have a range of options.

Let me also add that I have to be mindful that because these are career employees there is a due process and so I hope you can understand and appreciate I cannot get into specifics and go by names and talk about who would be considered.

Mr. SCALISE. Right. And we would all hope that that process carries itself out as swiftly as possible and if, in fact, the various people—some have pled guilty and not been charged yet?

Secretary KEMPTHORNE. Right.

Mr. SCALISE. But for the people that are still facing charges, if they are found guilty, I would hope that they would be prosecuted to the fullest extent of the law.

One of my concerns is—is the law that we can prosecute them under severe enough for the violations that they have been charged with if, in fact, they are guilty, or do we maybe need to look at increasing those penalties?

Secretary KEMPTHORNE. Congressman, again that may be something that both the Inspector General and the Department of Justice on the side of the prosecution, they would, I would imagine, have meaningful input for you.

Mr. SCALISE. Yes.

Secretary KEMPTHORNE. With regard to the personnel actions, we are looking for the full spectrum that does include termination, which is the final action that we could take with regard to an employee within the Department.

Mr. SCALISE. And for the Inspector General, is that something that you looked at and something that your office is in the position to make recommendations on?

Mr. DEVANEY. On the potential administrative action?

Mr. SCALISE. And criminal. On both sides.

Mr. DEVANEY. Well, on the criminal side, Congressman, there are a variety of laws that could be brought to bear here.

Mr. SCALISE. And obviously drug laws are involved.

Mr. DEVANEY. Sure. But the Department of Justice decided not to prosecute Mr. Smith. We made a referral. They decided not to prosecute, and he is no longer with the Department so the Secretary does not have the option to take an administrative action against him.

I suspect if he was still there he might be in that category, but he is gone and so, actually, the bottom line here is he is not going

to face criminal prosecution and he is not going to get fired because he retired.

Mr. SCALISE. As far as you know at least, was there any kind of negotiation on his departure that included a waiver from prosecution?

Mr. DEVANEY. No, and that kind of negotiation would have been between the Department of Justice and Mr. Smith, if he had an attorney—not the Department of the Interior.

Mr. SCALISE. And what is the statute of limitations there, and is that something that they can go and revisit at some other time?

Mr. DEVANEY. I suspect if new information came forward we could revisit it, but as of right now the Department of Justice has decided to decline prosecution.

With respect to the administrative sanctions, my view is that sanctions up to and including removal are sufficient. I mean, the highest sanction that the Secretary could impose would be to remove somebody from office. You know, they have their due process and we will see.

Mr. SCALISE. Thank you.

Mr. Secretary, I think it is alluded to in the report about implementing a drug testing policy. Is there currently a drug testing policy, and was there one in place during the time that these allegations occurred?

Secretary KEMPTHORNE. Congressman, there is a drug testing policy in the Department for certain categories. The RIK Program, to the best of my knowledge, at this point does not have a drug testing policy.

I will tell you that drug testing policies are for those who have security clearances that are in the law enforcement agencies within the Department, where an accident has occurred with government property and, therefore, a drug test would be administered.

Mr. SCALISE. And so have you put a new policy in place, or are you developing——

Secretary KEMPTHORNE. It is one that is being evaluated. Yes.

Mr. SCALISE. OK. It is under development as we speak?

Secretary KEMPTHORNE. Yes.

Mr. SCALISE. I look forward to seeing that as we go forward.

Clearly, I think corruption at any level cannot be tolerated. I would encourage continued pursuit of all of the legal avenues that are available, as well as looking to see if we can do some things to increase those, if they warrant.

Secretary KEMPTHORNE. I would just add, Mr. Congressman, that I am subject to random drug tests, and I have no objection to that.

Mr. SCALISE. Thank you for that.

I would hope to see our Committee move more toward not only these types of investigations, but also more hearings on how we can improve our energy policy, create a real strong national energy policy that reduces our dependence on Middle Eastern oil. I think your Department will continue to play an important role in that discussion, as it has already.

Hopefully, we get more aggressive in what we do to put a strong national energy policy in place so that we can actually open up more of our natural resources in this country, in an environmentally safe way, that we can do those things which would, of

course, create more royalties not only for us here but, hopefully, for the states as well that would participate in the solution.

With that, I would yield the balance of my time to Mr. Pearce.

Secretary KEMPTHORNE. Mr. Chairman, may I just add to the comments made by the Congressman?

As you know, we have begun the implementation of a new five-year plan for oil and gas development which will allow the next Administration to have a two-year head start on putting in place a new five-year plan on oil and gas development.

We are also moving aggressively on the alternative and renewable energies, moving aggressively on that, so I appreciate what you are saying.

Mr. SCALISE. Thank you.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from Maryland, Mr. Sarbanes, is recognized.

Mr. SARBANES. Thank you, Mr. Chairman.

Just to step back a minute, the lands and territories where the drilling is occurring from which these royalties come are lands that belong to the American people and the royalties that they yield belong to the American people, so the reason this hearing is so important is because there is a lot of pressure coming from the American people to take advantage of the resources that we have in this country, but they need to be assured that their ownership rights in those resources are going to be protected.

I have a couple of questions. They don't necessarily all relate to one another. I don't understand. I mean, this RIK Program, Royalty-In-Kind Program, is a pretty important program within Mineral Management Service, right?

Secretary KEMPTHORNE. It is very important.

Mr. SARBANES. And the person who headed it up has exited the scene, right, of their behavior?

Secretary KEMPTHORNE. I am sorry? I didn't hear the——

Mr. SARBANES. The person who headed that up is gone——

Secretary KEMPTHORNE. Yes.

Mr. SARBANES.—from the scene because of their behavior.

Secretary KEMPTHORNE. They have chosen to retire.

Mr. SARBANES. Chosen to retire. I mean, there is a suggestion that this was sort of a rogue person, right? But I don't understand how people at higher levels would not have been aware of this.

I was just wondering if you could take me through the chain of command, not naming names of individuals——

Secretary KEMPTHORNE. Right.

Mr. SARBANES.—but just who was the immediate supervisor of the RIK person in title?

Secretary KEMPTHORNE. Yes. Mr. Chairman, if you don't have an objection I would like to ask Randall Luthi, who is the Director of MMS——

Mr. SARBANES. Certainly.

Secretary KEMPTHORNE.—if he could respond to some of these questions.

Mr. LUTHI. Thank you. Thank you, Mr. Chairman, for your indulgence. My name is Randall Luthi, Director of the Minerals Management Service.

Congressman, in terms of the hierarchy——

The CHAIRMAN. Excuse me. Excuse me. I think we need a spelling of that for the recorder, please.

Mr. LUTHI. L-U-T as in Tom, H-I.

The CHAIRMAN. Thank you.

Mr. LUTHI. And thank you, Mr. Congressman. This is just amazingly magically so. I now have a microphone in front of me.

In terms of the period in question again between 2002 and 2006, the RIK Program was headed in our Denver office, and it was reporting directly to the Associate Director of Minerals Management in D.C.

That was one of the points that the Inspector General pointed out that we have a Deputy Associate Director in Denver, and there was questions of why it was reporting directly to D.C. as opposed to through a chain of command.

Upon reading the Inspector General's report—in fact, even before that—we have changed that. It has been effective now—well, it is effective now—that that regular chain of command is back in place.

Mr. SARBANES. Mr. Devaney, that is strange, right, that it would have bypassed the normal chain? I mean, wouldn't that have raised some questions?

Within an organization that is being managed well, wouldn't that raise questions before you got there with your investigation? I mean, what is your opinion of that?

Mr. DEVANEY. Well, my opinion is it is outside of the norm and so, when I saw it and heard about it, I was curious as to what was going on.

I think it is important to note that the Associate Director in Washington is the third party in the case where the two pled guilty. Mr. Smith was running the RIK Program. He decided to retire. That is who he reported to around the Deputy that is here today and we have identified——

Mr. SARBANES. Right.

Mr. DEVANEY.—that maintained her integrity throughout the investigation, so going around the one person in the hierarchy of the organization that has integrity was——

Mr. SARBANES. Well, I am glad you were curious. I don't understand why the organization wasn't curious.

If I am being reported to out of the chain of command, the implication is I have to know something is not right with that, and yet there didn't seem to have been the internal due diligence before you arrived on the scene.

Let me change directions real quick here because I am going to run out of time if I am not careful. We have used the term arm's length, Mr. Secretary, to describe what we would have liked to have seen in terms of the dealings between some of the employees in the Department and representatives of the oil industry, and so forth.

Congressman Miller earlier was talking about what the oil companies should be doing in terms of a hearing on ethical standards. I come out with a slightly different perspective.

I am never going to start from the premise that they will be a shining example of ethical standard in this kind of exchange, so I look at it in terms of how do we protect the personnel inside the

Department from the impulse on the other side of the table to influence them?

From what I understand, they were having a meal-sharing cafeteria, all this other kind of thing, which is symptomatic of them not being protected from the industry that they are trying to monitor, so what I want to know is, how are you protecting these auditors, monitors, other kinds of personnel, from the influence that can be exerted by the industry that they are trying to police, basically, or "oversee?" Oversee is a better word.

Secretary KEMPTHORNE. Congressman, one of the things that we are really putting great emphasis on, and that is for the employees to know exactly, what are the requirements? What are the rules? What are the standards and the thresholds that they can and cannot exceed?

We have the ethics officers. We have truly increased the visibility of that. We are now going to put an attorney ethics advisor that will be out there in that particular office.

One of the things that I stress with all employees, and we have held a series of all-employee meetings, which I don't believe there has been a number of those held in the past, but with this refrain. If in doubt, don't. If you have any question about activities, if you have any question about the proprietary of something, please ask the question. That is what the ethics officer is for.

Mr. SARBANES. Right. And I appreciate that. I would just suggest that you have to structurally put in place some things that maintain distance so that you are not completely relying upon an individual judgment of these personnel because often times they are going to be put in very difficult situations. You have to create a structure.

The other thing—and my time is out—I would just note, I think one way to protect them further is to simplify the formulas by which these royalties are calculated because the more complicated those formulas are, I think, the more potential opportunity there is for deception and manipulation which, even if it is not illegal, may result in something that disserves the American people.

So, we have to create space both in terms of simplifying the process by which these royalties are calculated—and I think that is why we have questions about the RIK Program—and structurally keeping some distance between the people in your Department and these industries that they are supposed to be monitoring.

Thank you.

Secretary KEMPTHORNE. Congressman, I might just add I met with all of the Assistant Secretaries and Bureau Directors of the Department this week. We discussed these investigations.

These reports are on our website, and what I have encouraged our Assistant Secretaries and Bureau Directors to do is to encourage our employees—73,000 people—go look at them because when you read this and you read the nature of this, this was an absolute absence of adherence to ethics by different individuals.

Mr. SARBANES. With all due respect, I am encouraged to read things every day by my staff that I don't get to, so I hope that is not the extent of the message that you are trying to send because people won't, on their own time, decide to do that, so again the structural things are very important.

Secretary KEMPTHORNE. And we have been addressing them.

That is why I believe, and I will not speak for the Interior, but there has been tremendous progress that has been made structurally with regard to an ethical structure and I would term it a new culture of conscience within the Department to be aware of this, to be aware of the atmosphere of ethics and the adherence because there is a public trust and we need to hold that sacred.

The CHAIRMAN. The gentleman from Utah, Mr. Bishop?

Mr. BISHOP. Thank you, Mr. Chairman. It is amazing to see all these cameras here. I don't think I have seen this many Members or cameras before. You would think we were talking about sex and drugs here, or something.

The CHAIRMAN. While we were sleeping.

Mr. BISHOP. Yes. Mr. Secretary, I don't want to sound flippant on this issue because this is extremely—you know, when the twenty-first dollar passed, when the first inappropriate behavior took place, this became serious.

I recognize that both Director Luthi and you, and Secretary Allred, came in after this had all started, but I am going to try as best as I can to stay within the allotted time, and I will give you short questions if you can give me short answers.

Male VOICE. It depends on the question.

Mr. BISHOP. Secretary Kempthorne, I don't need a name, but who first brought the behavioral problem to the attention of the Department and the Inspector?

Secretary KEMPTHORNE. I was first made aware of this by the former Director of MMS.

Mr. BISHOP. Was it another employee, a whistleblower type of thing, that brought these misbehaviors to the attention of the Department?

Secretary KEMPTHORNE. That is my understanding.

Mr. BISHOP. What steps did the Department take, prior to turning this over to the Inspector General?

Secretary KEMPTHORNE. I believe, and the IG can confirm this, but I believe that the Inspector General had received calls or notification from an employee also.

Mr. BISHOP. OK. So, basically, I am taking, Mr. Inspector, that the inspection started at the same time the Department administrators were aware of the situation?

Mr. DEVANEY. Yes.

Mr. BISHOP. Secretary Kempthorne, it took two years, actually, to finish this report. Did that in any way hamper the office's or the Department's efforts to make some kind of remediation action?

Secretary KEMPTHORNE. Within the program? Yes. Both the Inspector General and I were frustrated by the length of time it was taking as, Congressman Bishop, it has been pointed out.

Mr. BISHOP. Was the inability to take action because these are merit employees?

Secretary KEMPTHORNE. We could not interfere with the investigation.

Mr. BISHOP. All right.

Secretary KEMPTHORNE. We didn't know where it would ultimately go.

Mr. BISHOP. So, you needed to wait until the investigation was over?

Secretary KEMPTHORNE. Correct.

Mr. BISHOP. As I understand it, in the three reports, in the first two you have, DOJ has gone after two people who, basically, violated revolving door standards.

Secretary KEMPTHORNE. Yes.

Mr. BISHOP. Then in the next one there are nine employees that had all sorts of behavioral problems. Am I right that none of those were administrative, policy-making positions in those nine?

[No response.]

Mr. BISHOP. And then in the final report there is one individual who is named. That was a policy, administrative kind of position?

Secretary KEMPTHORNE. That individual headed up the RIK Program.

Mr. BISHOP. Was that individual removed from that position prior to the disposition of the investigation?

[No response.]

Mr. BISHOP. In hindsight now, looking from either the Inspector or the Department's, do you think that was probably appropriate behavior when an inspection starts to remove that person temporarily until the disposition of the inspection or the investigation is over is probably an appropriate behavior or appropriate response, especially if it is an administrative position?

Secretary KEMPTHORNE. Under the conditions, Congressman, yes. I am finding myself a little hamstrung because we are talking about a personnel matter.

Mr. BISHOP. Yes.

Secretary KEMPTHORNE. I believe I can say that a determination was made that that individual should not remain in that position until this investigation was complete. The individual chose to retire.

Mr. BISHOP. It would seem to me appropriate that once somebody who has some kind of administrative role or policy-making role, administrative role, that until an investigation is completed no longer staying in that particular position makes sense in some particular way.

Inspector, I understand this so far has cost $5 million roughly to do the investigation.

Mr. DEVANEY. The entire series of cases and audits—some seven, and four others where allegations were unfounded—so we have about 11 cases that were actually opened. Over a period of time, it cost that much money.

Mr. BISHOP. And I understand that the gifts that were illegally taken, procured in some way, run between $5,000 and $10,000?

Mr. DEVANEY. Yes, in some cases. Less in others.

Mr. BISHOP. It would have been cheaper for the taxpayer just to take the gifts than actually do the investigation, wouldn't it?

Mr. DEVANEY. Well, the argument——

Mr. BISHOP. That was not a legitimate question.

Mr. DEVANEY. OK. All right.

Mr. BISHOP. You did say at one time—and I am going to try to hit this before the red light comes on—Mr. Inspector, you did say at one time you thought 99.9 percent of the Department was eth-

ical. This is really something that should never happen. It should be stopped as soon as you find it, but is atypical of the majority of the people that are there.

May I make the assumption that you are probably saying the same thing about the industry that was part of this, too? The majority of those are probably going to be ethical people. This is atypical behavior?

Mr. DEVANEY. I hesitate to venture any guess. I am assuming that most people that work in the industry are, yes. I don't know about 99.9, but yes.

Mr. BISHOP. I think it is an assumption that might be made.

I am somewhat perturbed, and I think everyone else is, that results of this investigation have come to us by way of the media. They still are. Results of expansive investigations come to us by way of the media, first.

Is it the effort of both the Department, as well as the Inspector, to try and make sure that this Committee, or at least Congress, is kept abreast of the results before they get the chance to read about them in some other method?

Mr. DEVANEY. Well, it was certainly my intent, and I believe in actuality, we delivered—both to the Department and to the chairs of the committees that had written and requested it—the reports at the very same moment. The media reports came later.

You know, we always say in our cover letter on those reports that there is personal privacy information in these reports and it must be guarded. It has been my experience that often times it gets out, but it was not leaked by my office and I don't believe by the Department either.

Mr. BISHOP. And I won't even go into where that leads us from that point on, here.

I do have more questions. I realize you have a drop dead time when you have to leave. The red light is on, and I apologize for going over it even slightly.

The CHAIRMAN. Well, of course, the record will remain open for all Members to submit questions in writing, and we would certainly ask the Secretary and the Inspector General be open for those questions and respond.

Mr. DEVANEY. We would be happy to.

The CHAIRMAN. We recognize your timeframes, and we do have a vote on the Floor of the House.

I am going to recognize Mr. DeFazio, but I understand this may be the last round. I am willing to come back, but I understand you two both have planes to catch. Is that correct?

Mr. DEVANEY. Yes. Thank you, Mr. Chairman.

Secretary KEMPTHORNE. I am sorry, sir. Not planes. I am not going to tell you I am leaving town. I will be in town, but I do have a commitment.

The CHAIRMAN. OK.

Secretary KEMPTHORNE. Thank you.

The CHAIRMAN. Mr. DeFazio?

Mr. DEFAZIO. Thank you, Mr. Chairman.

Inspector General Devaney, I just want to pursue. I was puzzled early on in your presentation. You talked about working with the Public Integrity Division of the Department of Justice, and you rec-

ommended prosecution of the two highest ranking individuals involved. Is that correct?

Mr. DEVANEY. Yes.

Mr. DEFAZIO. And what was their response to you?

Mr. DEVANEY. Well, I think after two years of looking at the issue, they declined to prosecute.

Mr. DEFAZIO. Right. But did they give you a particular reason why they wouldn't prosecute?

Mr. DEVANEY. No.

Mr. DEFAZIO. They didn't? OK. Did you pursue that in any way?

Mr. DEVANEY. They understood what my position was, very clearly, on this matter. Yes.

Mr. DEFAZIO. Did you ask the Secretary to perhaps talk to the Attorney General about the issue?

Mr. DEVANEY. No.

Mr. DEFAZIO. No? OK. So, we have two people that you feel should have been prosecuted.

Now, this goes to the Chevron and the stonewalling issue. You subpoenaed records from them. You got records, but then you wanted to interview individuals and they refused. Did the Department of Justice participate in your request for the interviews?

Mr. DEVANEY. Yes.

Mr. DEFAZIO. OK. And did they threaten subpoenas from the Department of Justice?

Mr. DEVANEY. It wouldn't have been a subpoena. I mean, there are a number of options that the Department of Justice can do.

Mr. DEFAZIO. To compel. Did they use all their options to compel?

Mr. DEVANEY. No.

Mr. DEFAZIO. OK. They did not. So, the Public Integrity Division perhaps was a little less than, shall we say, vigorous in the pursuit of this matter. Would that be a fair characterization?

Mr. DEVANEY. As I said earlier, Congressman, I have been at this a long time, and sometimes that is a mystery to me.

Mr. DEFAZIO. OK. All right. Mr. Secretary, do you have the authority to suspend Chevron from bidding because of their stonewalling in this investigation?

Secretary KEMPTHORNE. I do not have an answer to that.

Mr. DEFAZIO. OK. Well, we would like an answer. Let me put it this way. If you don't have that authority, would you like Congress to make it available? Don't you think it would be a useful tool?

I mean, when you said here that the way the corporations would react would be not to offer beyond the $20 because it would put the Federal employees in a tough situation, I just think that is—I mean, having a club might be a little more effective than, "Gee, we will be worried that the people we are partying with here are going to be put in a tough situation if they accept these drugs, sex or money from us."

Secretary KEMPTHORNE. Congressman, if there is a clear violation of law, then I believe that we do have.

Mr. DEFAZIO. Right. But in this case, they were stonewalling the investigation, and it seems to me, at that point, a little bit of a club might have been helpful if you have one and say, "Gee, if you guys aren't going to cooperate, we don't know how big or what the extent

of this was, or how the taxpayers might have been hurt. We are going to suspend you until you find the way in your heart to cooperate with the investigation." I mean, if they want to be good corporate citizens.

Secretary KEMPTHORNE. It is part of our evaluation that we are now conducting.

I will tell you, and again the Inspector General could confirm this, but I was not aware through the investigation process that particular corporations were not responding.

Mr. DEFAZIO. OK. All right. Now I want to go to a different issue. Like Mr. Pearce, I would like to get an answer.

There were two years. First Republicans created a deep water incentive. I didn't think the industry needed deep water incentives. I opposed the bill, but the bill passed. The Republican bill passed and became law during the Clinton Administration. There were two years in which leases were let that didn't have price thresholds on these deep water leases. I would like to know why that happened.

But beyond that I would also like to know why, and this again predates you, Mr. Secretary, for five and a half years the Bush Administration was aware that we weren't collecting those tens of billions of dollars, and they failed to inform this Committee or the Congress, and ultimately it only came out because of a "whoa" story leaked to a newspaper in the *New York Times.*

So, like Mr. Pearce, I would like to understand that whole, what happened both during the Clinton years and during the five-and-a-half years in the Bush Administration. Who knew? Who didn't know? What sorts of discussions went on?

I don't know how we could pursue that, Mr. Chairman, but I certainly would because there the taxpayers have lost tens of billions of dollars.

I would further note that I gave the Congress an opportunity to rectify that with a bill on the Floor of the House in July, and the gentleman from New Mexico voted "No," as did virtually every Republican, I think, with an exception of eight. So, I would like to make the taxpayers whole on that matter, and I would also like to know what went on.

Thank you, Mr. Chairman.

Secretary KEMPTHORNE. Congressman, may I please just make the point that——

Mr. DEFAZIO. Yes.

Secretary KEMPTHORNE.—with regard to current, we now require that a solicitor will go page-by-page over those agreements so that there is not an omission.

Mr. DEFAZIO. If it was an omission?

Secretary KEMPTHORNE. If it was omission.

Mr. DEFAZIO. Yes.

Secretary KEMPTHORNE. Correct. Thank you.

Mr. DEFAZIO. Thank you.

The CHAIRMAN. The gentleman from New Mexico?

Mr. PEARCE. Thank you, Mr. Chairman.

Since a vote of mine was questioned I would——

Mr. DEFAZIO. I didn't question it. I just stated the way you voted.

Mr. PEARCE. And I did, and it is because there is evidence that those were not mistakes; that it was intentional. The Courts have said we are wrong even to go back and ask for them to pay for these royalties when it was intentionally left out of the contract.

Thank you, Mr. Chairman.

Mr. DEFAZIO. Mr. Chairman, if I could further respond?

The CHAIRMAN. The gentleman?

Mr. DEFAZIO. The Courts have not limited our ability to assess a different fee to recapture that money in any way, and that is what my bill would have done.

Thank you, Mr. Chairman.

The CHAIRMAN. The gentleman from Wisconsin, Mr. Kind?

Mr. KIND. Thank you, Mr. Chairman. I will be brief. We have a vote on, but I did want to thank the witnesses for your testimony today.

Mr. Devaney, the work that you and your office did at the IG is very valuable to the Committee's work here, but you can certainly appreciate—and I had a chance to review the reports and see the media coverage of all this—why the American public holds their government in such distaste and distrust and disgust today.

When you have a complete breach of public trust as we have seen now with the MMS office, it is very easy to see where that cynicism is stemming from, but I also think it is very appropriate, Mr. Secretary, to remind ourselves and the American people that the vast majority of people working in our Federal agencies, and in your Department, are the models of public service and doing a good and decent job.

What I am concerned about, and this is my question for both of you, really, is just how confident can we be here today that more of this isn't taking place in other field offices with different responsibilities?

The reason I say that is, in reviewing these reports, and this is getting back to what Mr. Sarbanes was alluding to, is they all seem to have been triggered by some confidential source or confidential informant. We know the power of peer pressure and how difficult it is for one ethical person to stand up and make that phone call and say, "Hey, something is not right here and we have to do something about it."

Whether it was the Lakewood investigation confidential source, whether it was the Smith investigation, whether it was the Business Solutions contract that the IG looked into, it was all triggered by that confidential informant stepping forward.

It is my understanding, listening to your testimony here today, Mr. Devaney, that the IG is not delving into other field offices through MMS to check and see if there might be similar patterns of conduct being done there because you have no basis for it, because nothing has triggered such an investigation.

This does get back to clear, bright line rules, and it is important for those to be in place, but there is only so much we can do to legislate or for the Department to do to put rules in place that is going to instill the proper ethical conduct that we expect of our public employees.

We recognize that we had a problem here in the Congress, and that is why the new Congress last year, one of the first things we

did was pass the toughest ethics reform package in the history of Congress. It took a few bad actors, our colleagues going off to prison, to make us realize we have to tighten up our own rules, but there is only so much you can do in that regard.

Again, can you assure us with the steps that you have taken based on the investigations that you have done that this conduct isn't more permissive in other field offices out there?

We all know how it starts, innocently enough with the oil representatives coming into the office to talk about contract or policy. Rapport is established. A comfort level happens. Friendships are developed, and then that slippery slope occurs. Then we get IG reports like we have before us today. Can either one of you respond?

Mr. DEVANEY. I think this is an aberration, and I think the nature of the work that the RIK Program was doing contributed to that problem. It requires government workers to be in daily, if not hourly, contact with what the government considers to be prohibitive sources—that being somebody that is doing business or wants to do business before the government.

In that circumstance the rules are you can't take over $20 on each occasion. You can't take $50 cumulative in a year. Every government employee hears that at least yearly, signs off on a document. All these people signed documents saying that they understood that those were the rules.

This particular group, because of the nature of their work, felt like they had to party and have drinks and socialize with the industry, to collect market intelligence. Obviously our investigators didn't buy that, and ultimately I think this attitude led to a permissiveness within that program.

I don't think that kind of thinking exists in the rest of the Department of the Interior. If it comes to our attention we will aggressively pursue it, but I have no reason to believe that this isn't an aberration.

Mr. KIND. Mr. Secretary?

Secretary KEMPTHORNE. Mr. Congressman, if I may add to that?

I appreciate what the Inspector General just said, and I appreciate what you said also, sir, the fact that the very vast majority of the public servants are good public servants, but I don't think anybody can sit and assure the Members of Congress that things won't happen.

I think the key is that there are consequences when they do, that we pursue them to the fullest extent, and that is why again this particular inexcusable activity, I can tell you, as I have, that we are looking at the full range that does include termination.

But, the vast majority of the people, it is disheartening to me and it is a sad situation because it hurts their morale when they are working so hard.

Mr. KIND. I would agree. Mr. Secretary, I would just encourage you and your Department, and everyone working for you, that if you feel there is some additional authority that we can provide in order to tighten up the rules and try to guard against this type of conduct, that you come to us and ask us what you need.

Secretary KEMPTHORNE. Absolutely.

Mr. KIND. I am sure you would get the cooperation of this Committee.

The CHAIRMAN. The gentleman's time has expired.

The gentleman from New Mexico?

Mr. PEARCE. Thank you, Mr. Chairman. I request unanimous consent to insert the report to the Royalty Policy Committee as part of the record.

The CHAIRMAN. Without objection, so ordered.

[NOTE: The "Report to the Royalty Policy Committee: Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf" has been retained in the Committee's official files.]

The CHAIRMAN. Mr. Inspector General, Mr. Secretary, thank you so much for your time this morning.

Secretary KEMPTHORNE. Mr. Chairman, thank you very much.

The CHAIRMAN. We appreciate it.

Secretary KEMPTHORNE. Thank you.

Mr. DEVANEY. Thank you, Mr. Chairman.

The CHAIRMAN. The Committee stands adjourned.

[Whereupon, at 12:10 p.m., the Committee was adjourned.]

[A statement submitted for the record by Mr. Grijalva follows:]

Statement of The Honorable Raúl M. Grijalva, a Representative in Congress from the State of Arizona

Thank you, Mr. Chairman, for holding this hearing today to examine the ethical lapses at the Minerals Management Service at Interior.

After reading the testimony submitted for this hearing and the report issued by the Interior Inspector General, I firmly believe it is time to get rid of the scandal-ridden royalty-in-kind program altogether and return to a simple system where oil and gas companies pay royalties in cash for extraction of natural resources on public lands.

This convoluted and nonsensical system of accepting royalties "in kind" was the brain child of the oil and gas industry and seems designed to benefit private industry over taxpayers. It creates a system where federal officials are put into a position of selling oil and gas back onto the market and therefore have to "play the game" within the industry to make friends and influence people.

When the royalty-in-kind program was first created, it was supposed to simplify the collection of royalties but instead it has made it more difficult for auditors to track the payments and it also has allowed oil and gas companies to game the system by charging more for transportation and other costs. In the end, the taxpayer comes up short.

It is still not known how much of a loss to taxpayers this program has resulted in. The very way this program was set up makes it difficult to track the full extent of the cost of administration or marketing and transporting the oil and gas the program takes in instead of cash.

While Interior says it will put safeguards in place to prevent ethical lapses as we've seen here, I'm not convinced, especially given the Bush administration's propensity to favor the oil and gas industry over everyone else. Some oil companies have refused to cooperate with the investigation, slowing down the ability of the Inspector General and Congress to find out what's gone wrong here. As far as we know, the same people who may have provoked some of the ethical lapses, such as providing free ski trips to federal officials, have not been removed and are still tasked to liaison with federal officials.

There is nothing to be done at this point but to defund this program of Interior and shift those employees who have done no wrong into other departments. I personally would like to see more staff devoted to auditing the payment of royalties to ensure that U.S. taxpayers receive exactly what they're entitled to from their public lands. We need more policemen on the beat at the Minerals Management Service.

I hope you and other members of the Committee will join me in calling for an end to this ill-conceived program that has never accomplished what it set out to do and has only resulted in still-unknown financial losses to taxpayers.

Thank you, Mr. Chairman.

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