

PATRICK J. LEAHY, VERMONT, CHAIRMAN

DIANNE FEINSTEIN, CALIFORNIA
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE HIRONO, HAWAII

CHARLES E. GRASSLEY, IOWA
ORRIN G. HATCH, UTAH
JEFF SESSIONS, ALABAMA
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
JEFF FLAKE, ARIZONA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KRISTINE J. LUCIUS, *Chief Counsel and Staff Director*
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

November 17, 2014

Transmitted Electronically

Mr. John T. Rymer
Inspector General
Department of Defense
4800 Mark Center
Alexandria, VA 22350

Dear Inspector General Rymer,

I have concluded my oversight review of actions taken by former Acting Inspector General (IG) and current Principal Deputy Inspector General (PDIG) Lynne Halbrooks on her direct management of the Release of Department of Defense (DOD) Information to the Media, also known as the Zero Dark Thirty (ZDT) report.

I undertook this inquiry because I received reports from whistleblowers who were concerned that PDIG Halbrooks deliberately suppressed the report for two reasons: (1) to protect senior officials from disciplinary action or prosecution and (2) in the process, to further her candidacy for nomination to be the next DOD IG.¹ Senior officials, including former Central Intelligence Agency (CIA) Director and DOD Secretary Leon Panetta and Under Secretary for Intelligence (USDI) Michael Vickers, were accused of allegedly making unauthorized disclosures of highly classified information on the Osama bin Laden raid. These alleged disclosures could have placed DOD Special Operations personnel and their families in harm's way. Concurrent with the ZDT investigation, PDIG Halbrooks was being vetted for the DoD IG nomination. The convergence of these potential conflicts-of-interest needed scrutiny. My main concern was that she may have handled these conflicts in ways that could compromise the integrity and independence of the Inspector General's Office (OIG).

To address and resolve these questions, my staff examined evidence and documents provided by whistleblowers and official sources. In addition, they interviewed a number of witnesses who were directly involved in the management, preparation, and review of the report. After an in-depth evaluation of the information presented, my staff identified nine potential red flags or trouble spots in the handling of the ZDT report by top management in the Office of the Inspector General (OIG).

These areas of potential concern fall into four broad categories: 1) Impairment of IG independence and lack of commitment to the spirit and intent of the IG Act; 2) Weak leadership; 3) Mismanagement; and 4) Waste of time and money. The major red flags are as follows:

¹ Anonymous, "sitting on report" email message to Senator Grassley's staff, December 14, 2012; Whistleblower, interview by Senator Grassley's staff, September 13, 2014.

- There are unexplained delays in publishing a controversial report on alleged misconduct by the Secretary and Under Secretary of Defense;
- There may have been improper contacts with targets of the ongoing investigation;
- Senior management failed to promptly implement a “long-standing Department policy” mandating the removal of sensitive information from the report prior to publication;
 - That policy required that all derogatory information pertaining to unauthorized disclosures by senior officials be removed from the report;
 - The removal of this information essentially gutted the report and rendered it unfit for publication;
 - Neither the requirement for nor the impact of this policy was ever communicated to the staff responsible for producing and editing the report;
 - Senior management allowed the draft report and media talking points to be prematurely circulated externally before completing the mandated edits;
 - Since the preparation of the press package is typically the last and final step in the report review process before release, this misstep caused widespread turmoil and confusion;
 - This series of missteps caused the investigative and support staff to mistakenly believe that the report was ready for issue;
 - When the report was not released promptly, whistleblowers contacted my office to report a suspected cover-up and leaked the report to POGO;
- An official was assigned to lead the project, who lacked relevant professional experience, and then top management failed to exercise due diligence over his day-to-day work and progress on the report to ensure that he followed established protocols;
- Precious time and money was wasted producing a report of questionable value due, in part, to a failure to conduct effective coordination with counterparts at the CIA OIG to resolve jurisdictional issues before the investigation started;
- The Director of Whistleblowing and Transparency was accused of making false statements without proper justification or credible evidence, which might have led to his termination were it not for your intervention;

These areas of potential concern were boiled down to nine conclusions. These are laid out in the attached staff report along with the underlying rationale for each one. Some corrective action, including an appropriate measure of accountability, appears to be justified. If misconduct and/or mismanagement occurred in the handling of the ZDT report, then PDIG Halbrooks and Deputy IG James Ives, both of whom led the ZDT review, would appear to be chiefly responsible for whatever happened. Also, my staff raises a legitimate point about whether the “long-standing practice” of removing sensitive information from reports should be applied to senior officials like the Under Secretary of Defense for Intelligence. This practice needs independent review and possible modification.

In summary, proof of weak leadership, mismanagement, and lack of independence are reflected in the end-product: the highly-sanitized ZDT report that was finally issued on June 14, 2013 – six months after it was finished. It was a second-class report that is not worth the paper on which it was written. The ZDT project was an unmitigated disaster spawned by a series of top-level missteps and blunders. All this wasted energy produced nothing better than confusion, turmoil, dissent, and more alleged misconduct. In addition, a valued employee with unique and unparalleled knowledge of whistleblowing and a rock-solid commitment to fair treatment of whistleblowers would have been fired were it not for your intervention.

The Inspector General's office needs strong leadership. Those leaders must have the courage to tell it like it is and to report promptly to the agency head and Congress with recommendations for corrective action. This is especially true when it comes to reporting alleged misconduct of top officials, like the Secretary and Under Secretary of Defense. They must find a way to strike a fair balance between shielding alleged misconduct of top officials while honoring the taxpayer's right to know how senior officials are spending their money.

When top government officials, like the Secretary and Under Secretary of Defense, stand accused of misconduct, there should be some accountability to the public. Thus far, in this matter, there has been none. By comparison, former Deputy Secretary of Defense and CIA Director Deutch mishandled highly classified information and got hammered for doing it. He lost his clearance for six years and came close to prosecution. Unlike the Zero Dark Thirty leaks, that matter was dealt with effectively and aired in public. Those lessons seem to have been forgotten.

The ZDT model was wasteful of the taxpayers' money and harmful to the perceived independence of the IG's office. It should be used as an educational tool to teach OIG employees how not to conduct sensitive investigations of alleged misconduct by senior officials.

IG Rymer, your patience with and support of this oversight review is deeply appreciated. The report prepared by my staff is attached. It is offered for further review and consideration.

Your attention to these matters would be appreciated.

Sincerely,


Charles E. Grassley
Ranking Member

Attachments

- A. Staff Report
- B. Sensitive information removed from the report

Attachment A: Staff Report

Synopsis

The ZDT report was energized by the “hemorrhage of leaks”² of highly classified information by senior officials after the Osama bin Laden raid in May 2011. Congressman King, Chairman of the Committee on Homeland Security, formally requested an investigation of the alleged leaks. His letter to the DOD and CIA IG’s dated August 9, 2011, expressed grave concern about a news report suggesting that Hollywood filmmakers were given “top-level access to the most classified mission in history.”³ He was seeking an assessment of potential damage to intelligence collection and covert operations. The King letter triggered two investigations – one by the CIA IG and the other by the DOD IG. The focus of this report is the DOD OIG inquiry. It was assigned to the directorate for Intelligence and Special Program Assessments (ISPA) and was ultimately led by Mr. James Ives and managed directly by Acting and Deputy IG Halbrooks.⁴

On December 16, 2011, the DOD OIG announced that the ISPA review would begin “immediately” and would be “coordinated” between the two IGs.⁵ ISPA prepared a report. After it was declared unclassified by the Pentagon Security Office on November 9, 2012, a “coordination package” was developed, which included a publicly-releasable version, talking points for reporters, and transmittal memos to the Defense Secretary and Chairman King.⁶ This package was circulated internally for “final review and clearance.”⁷ The next and final step was submission to PDIG Halbrooks as a request for release. By some measures, the report was ready for issue in November-December 2012.⁸ However, in fact, it was not ready. There was a major foul-up. The report review process was bungled from start to finish. All the derogatory information on unauthorized disclosures of highly classified information by the senior officials, including Secretary Panetta, listed in Attachment B still had to be stripped from the report before it could be published. This Draconian measure, which gutted the report, was mandated by a “long-standing Department policy” – guidance well known to both Halbrooks and Ives.⁹ They should have applied it to the report at the front-end of their review in July-August 2012. Both failed to communicate this need to the investigative team and others who needed that information to execute the policy and do their jobs. The result was wasted time and money. There appears to be no reasonable explanation for what happened.

² Draft of DOD OIG report 2013-092, issued by POGO on 6/4/13, p.2.

³ King letter to DOD and CIA IG’s, August 9, 2011.

⁴ Mr. Jon Rymer was confirmed as DOD IG on September 17, 2013.

⁵ DOD OIG Memo signed by DIG ISPA Brannin, December 16, 2011.

⁶ Whistleblower, affidavit presented to Senator Grassley, May 5, 2014; ██████████ DAIG ISPA, interview by Senator Grassley’s staff, September 4, 2014; James Ives, DIG, interview by Senator Grassley’s staff, September 10, 2014; DOD IG ISPA Timeline, provided to Senator Grassley’s staff, September 9, 2014.

⁷ Whistleblower, affidavit; Ives, interview; ██████████ interview; DOD IG ISPA Timeline.

⁸ Ives, interview; ██████████ interview.

⁹ Lynne Halbrooks, PDIG, interview by Senator Grassley’s staff, June 2, 2014; Ives, interview.

Deputy Ives finally began the mandated “substantive review” in mid-December and finished it by early January 2013.¹⁰ However, the report did not regain forward motion until after Secretary Panetta retired on February 27, 2013.¹¹ Halbrooks’ claims she did not receive it until March 25, 2013.¹² The three-month delay in reaching her desk and subsequent delays until June remain substantively unexplained.¹³ Aside from a few minor edits, there is no record of significant edits between mid-December and publication in June 2013.¹⁴ These facts create the perception that the review process was slowed by PDIG Halbrooks and others at her direction to shield DOD officials from scrutiny and perhaps to help her gain the IG nomination. These facts, when combined with her contacts with targets of the investigation, raise issues about IG independence. Similarly, the possible misuse of the policy requiring the removal of misconduct allegations from reports points to another facet of the perceived independence issue. In addition to creating confusion at the working-level, it may have caused whistleblowers, who thought the report was ready for issue, to perceive a cover-up and leak what they believed to be a final version to the Project on Government Oversight (POGO). About a week after the report appeared on the POGO web site, the IG’s office finally issued a highly sanitized version of the report and subsequently launched an internal inquiry to find the leaker, but none was found.

Conclusion # 1 - Lack of effective coordination with the CIA IG wasted time and money

The need for coordination was crystal clear. First, the inquiry crossed the lines of jurisdiction between two major agencies. Second, the alleged misconduct of the principal subject, Mr. Panetta, occurred while he was CIA Director and reportedly could not be investigated by the DOD IG, a fact relayed to Senator Grassley’s staff on several occasions during my investigation. In addition, the investigation into the leaks did not begin until after he had resigned his post with the CIA to become Secretary of Defense. Clearly, coordination was essential to untangle these thorny jurisdictional issues.

While some coordination occurred between the DOD and CIA OIGs, based on contradictory statements, it is difficult to determine how much actually took place. The August 8, 2014, letter from the DOD IG stated: “Based on the structure of Chairman King's questions, consultation and coordination between DOD OIG and CIA OIG about which office would answer specific questions was not required and did not occur.”¹⁵ That letter also states, however, that at least one meeting was held between the PDIG Halbrooks and CIA IG Buckley in August 2011.¹⁶ It was agreed that each organization would exchange a copy of its initial correspondence to King and that members of the ISPA investigative team would interact at the staff level with members of CIA OIG at various points to exchange information related to field work. Regardless of how much coordination ultimately occurred, the failure on the part of Halbrooks to anticipate the need for coordination up-front had disastrous consequences.

¹⁰ Ives, interview.

¹¹ DOD IG ISPA Timeline.

¹² Halbrooks, interview; DOD IG ISPA Timeline.

¹³ DOD IG Jon Rymer, letter to Senator Grassley, August 8, 2014.

¹⁴ DOD IG ISPA Timeline.

¹⁵ DOD IG Jon Rymer letter, August 8, 2014.

¹⁶ DOD IG Rymer, letter.

On September 18, 2012, just as the DOD OIG report was being readied for classification review, a final decision was made to refer the Panetta allegations back to the CIA OIG. According to DIG ISPA Ives, who was in charge of the project, a preliminary decision to do this had been made as early as August 3rd, 2012.¹⁷ This decision meant that all the information relative to the alleged misconduct of the Secretary and that of his Chief of Staff, Jeremy Bash, had to be stripped from the report. That included an interview by DOD OIG personnel of Chief of Staff Bash whose actions occurred while still an employee at the CIA. When that sanitization process was completed three months later, there was very little of substantive value regarding leaks left in the report.

A more positive attitude about the need for coordination on the part of Deputy Halbrooks might have helped to avoid this wasteful exercise by at least ten DOD IG employees and also helped to bring the DOD OIG's responsibilities into much sharper focus much sooner. The alleged misconduct by USDI Vickers should have been the sole focus of the report. Addressing the alleged misconduct by Secretary Panetta and his Chief of Staff Bash was the responsibility of the CIA IG. This matter should have been resolved right up-front.

Conclusion # 2 – Ives appointment to oversee the project was inappropriate

Mr. James Ives, a Deputy Director in the Defense Criminal Investigative Service (DCIS), a Senior Executive Service (SES) position, was selected to succeed Deputy IG (DIG) for Intelligence and Special Program Assessments (ISPA), Ms. Patricia Brannin, who retired on June 29, 2012. Mr. Ives assumed her management responsibilities as a detailee in the position of Acting DIG ISPA on July 1, 2012. Those included leadership of the ZDT investigation. Mr. Ives' previous experience included 20 years of service with DCIS as a Special Agent and senior manager. According to Mr. Ives, after learning of Ms. Brannin's pending retirement, he actively sought this temporary assignment with the assistance and support of DIG Halbrooks.¹⁸

The selection of Mr. Ives for this unique assignment is cause for concern.

While his investigative experience in the DCIS arena is impressive and he conducted himself with competence and professionalism during the interview, he was not well-qualified to lead a leak investigation of a top agency official like the Secretary or Under-Secretary of Defense.¹⁹ As IG Rymer pointed out during the Ives interview, the ISPA directorate has a specialized mission. It conducts evaluations, which are very different from criminal investigations – Mr. Ives' specialty.²⁰ It is unclear how Mr. Ives could be expected to readily adapt to the ISPA mission and lead the project with no relevant ISPA experience. Nor is it easy to comprehend how his selection over a project being conducted by evaluators and auditors would be mutually beneficial.

¹⁷ Ives, interview.

¹⁸ Ives, interview.

¹⁹ Ives, interview.

²⁰ Ives, interview.

During her interview, Halbrooks even referred to the ZDT team as a “junior team” doing sub-standard work and lacking a highly qualified top-level manager.²¹ [REDACTED] but at that point, it may have been too late.²²

Further, at the time of Mr. Ives’ selection, it was the understanding of the Office of General Counsel (OGC) and PDIG Halbrooks, through their interpretation of applicable law, that due to federal law enforcement service requirements, he could only remain as a detailee in this position for four months.²³ In July, at the start of his appointment, the ZDT investigation was ongoing and had reached critical mass. A preliminary draft report was about ready for review. However, the likelihood of Ives being able to see this project through to the end was not high if he was to be limited by a four-month detail. To further complicate the selection of Mr. Ives, despite the OGC’s interpretation of the law, Ives returned to his full time duties of Assistant IG of Investigations *but continued to oversee* this major report as a secondary responsibility.²⁴

All of these shortcomings occurred under the direct supervision of PDIG Halbrooks.

The appointment of Ives to this project as a four-month detailee, through no real fault of his own, was a recipe for disaster. PDIG Halbrooks should have recognized the shortcomings of appointing Ives from the beginning. The four-month limitation on his appointment, as interpreted by the DOD OIG OGC, should have been an automatic disqualifier. A project of this importance and sensitivity demanded a highly-competent, full-time manager with institutional knowledge of and experience with evaluations. Above all, the project needed a manager who would be able to see the project through to a successful conclusion.

Conclusion #3 – Ives mismanaged the report review process

Once Mr. Ives assumed his position over ISPA, he stated that his priority was to get the report out before his temporary assignment ended.²⁵ During his interview, Mr. Ives repeatedly expressed an overriding desire to keep the project moving forward, to expedite the process, and finish it before he left.²⁶ This blind desire allowed for innumerable problems to surface. He lost sight of his primary responsibilities in the report writing process. He failed to follow established report-writing procedures and failed to communicate effectively with his staff. In the final analysis, this may be the reason the report was ultimately leaked to POGO.

One of the first meetings Mr. Ives attended as the Acting DIG was on August 3rd, 2012.²⁷ According to Ives, during this meeting at which PDIG Halbrooks was present, a decision was reached to make referrals on two senior officials involved, Secretaries Panetta and Vickers.²⁸

²¹ Halbrooks, interview.

²² Halbrooks, interview.

²³ Ives, interview; DOD IG Jon Rymer, letter to Senator Grassley’s, October 14, 2014.

²⁴ Inspector General Jon Rymer, letter to Senator Charles Grassley, August 8, 2014.

²⁵ Ives, interview.

²⁶ Ives, interview.

²⁷ Ives, interview.

²⁸ Ives, interview.

Due to “a longstanding Department policy,” as well as a policy to only investigate those individuals who were within the DOD during the timeframe of the allegations, it was at this point that Ives knew the sensitive information in the report pertaining to open investigations and referrals of alleged misconduct by senior officials would have to be removed before it could be published. However, for reasons that are not fully explained or understood, he waited another five months to implement that policy.

As the staff understands it, the substantive edits consisted primarily of the six pieces of information listed in Attachment B of this report. All six items were declared unclassified by DOD on November 9, 2012. This information appeared in the report published by POGO in June 2013 but not the official version issued a week later. The block of information in Attachment B was the core substance of the report, and culling it out of the report was mandated by standing policy, according to Halbrooks and Ives.²⁹ It was not a big job. He started it on December 14th and finished, “not much past early January.”³⁰

In October 2012, despite having knowledge of the OIG policy, Mr. Ives allowed the report to go outside the agency for classification review with the information about the misconduct of senior officials and associated referrals still present in the draft. Further, once it came back, DIG Ives again allowed the report to go outside ISPA to the OGC and Office of Congressional Liaison (OCCL) for editing even though he had not made his substantive edits. Ives said he did this because he wanted to keep the report moving along.³¹ He was later told by DIG Halbrooks that the process he had used, having OGC and OCCL review and suggest edits first, was reversed and that under standard protocols, he should have reviewed and substantively edited it before it went to those two offices.³² She added to the confusion of my investigation by suggesting that the draft was circulated to OGC and OCCL without Mr. Ives’ knowledge and approval.³³ That was inaccurate, according to Mr. Ives.³⁴

Nonetheless, his actions caused much confusion because he failed to make timely “substantive” edits mandated by DOD OIG’s policies before authorizing the report to be circulated outside ISPA.³⁵ As a result of this misstep, the staff at the DOD IG began working on a press package and talking points on the report in consultation with the various offices concerned with such matters. When the report was not released, whistleblowers contacted Senator Grassley’s Office. They were confused and concerned about the delay. They perceived a potential cover-up. The crafting of talking points and circulation of the report to OGC and OCCL for final review are typically the last steps in the report process before approval for release from the PDIG.³⁶ They mistakenly believed that the report was on the cusp of publication.

²⁹ Halbrooks, interview; Ives, interview.

³⁰ Ives, interview.

³¹ Ives, interview.

³² Ives, interview.

³³ Halbrooks, interview.

³⁴ Ives, interview.

³⁵ Ives, interview.

³⁶ Anonymous, email to Senator Grassley staff, November 9, 2012; Anonymous, email to Senator Grassley staff, November 19, 2012; Whistleblower, affidavit. .

Ultimately, Mr. Ives failed to recognize his responsibility to implement the policy promptly and to communicate that need effectively with his subordinates. He failed to explain to them how the policy guidance requiring a substantive review would remove the misconduct and referral information and thereby fundamentally alter the contents of the report. They needed to understand that requirement in order to accomplish the mission but never got it. Halbrooks failed to effectively manage Ives as he attempted to navigate a novel process. Their combined failures to communicate effectively led to internal confusion and turmoil.

Mr. Ives did not grasp how the creation of those talking points and the premature circulation of an unedited draft constituted a waste of time and money, nor did he see it as a possible cause for the whistleblower leak to POGO.³⁷ While leaking the draft probably violated DOD OIG rules, it is possible this could have been avoided had DIG Ives not lost sight of the objective and failed to follow established protocols and communicated effectively.

Conclusion # 4 - The delayed publication of the report created a perception that Halbrooks compromised the OIG's independence

While there is no conclusive evidence that PDIG Halbrooks deliberately suppressed the report to protect either senior officials or herself, evidence and interviews appear to indicate the report was ready for publication in December 2012 or by early January 2013, six months before it was actually published.³⁸

For whistleblowers, the failure of the DOD IG to publish the report promptly in the December/January timeframe created confusion and some perceived abuse. One whistleblower alleged that Deputy Halbrooks repeatedly stated, "The report will not be published until after Secretary Panetta steps down."³⁹ While no other statements were found to directly support this assertion, there is evidence that appears to confirm it.

Deputy IG Ives, who was in charge of the ZDT project, didn't recall "actually doing substantive efforts much past early January."⁴⁰ However, following the completion of his substantive edits, the report did not appear to regain forward motion until after Secretary Panetta retired on February 27, 2013. According to PDIG Halbrooks, it did not reach her desk until March 25, 2013. Further, according to unofficial timelines provided by the DOD IG, no significant edits occurred between Ives' substantive edits, confirmed on January 30th, and when the OGC made minor edits on March 20th.⁴¹

³⁷ Ives, interview.

³⁸ [REDACTED] interview; Ives, interview; Whistleblower, "it's getting close to final" email message to Senator Grassley's staff, December 6, 2012.

³⁹ Whistleblower, affidavit, May 5, 2014; Anonymous, email, December 14, 2012.

⁴⁰ Ives, interview.

⁴¹ DOD IG ISPA Timeline, provided to Senator Grassley's staff, September 9, 2014.

The three-month delay in reaching Deputy Halbrooks' desk and subsequent delays until June remain substantively unexplained, other than with the reassuring words that a "rigorous and iterative internal review process" filled the void, referenced six times in the last five pages of a letter to me on August 8, 2014. A similar description, without information to back that claim, was given to me again in a letter on October 14, 2014. Aside from a thoroughly discussed 10-word edit on April 8, 2013, involving USDI Vickers, which is disputed,⁴² there appears to have been little significant editorial activity between Mr. Ives' "substantive review," starting in mid-December and publication in June 2013. These facts create the perception that the report process was slowed by PDIG Halbrooks and others working at her direction to shield DOD officials from scrutiny and perhaps to bolster her chances for gaining the IG nomination.

Conclusion #5 – Halbrooks' contacts with subjects of the ongoing investigation raise ethical issues

In the course of the ZDT report editing process, whistleblowers reported to Senate staff that derogatory information related to CIA Director Leon Panetta's leak was removed from the draft report following a Pentagon meeting between PDIG Halbrooks, Secretary of Defense Panetta, Chief of Staff Jeremy Bash, and others on December 18, 2012.⁴³ This information elicited concern over the perceived independence of the Inspector General's office and the appearance that subjects of the inquiry were influencing its content. Having truly independent IG's is vital to protecting taxpayer dollars against waste, fraud, abuse, and mismanagement – a need that is clearly embodied in the spirit and intent of the IG Act.⁴⁴

Since many agencies continue to interfere with and/or impede inspector general audits and investigations in order to hide questionable activities from the public, the timing of the December 18th meeting was called into question. During Ms. Halbrooks' interview, she revealed that such a meeting did take place. The purpose of the meeting, she said, was not related to the ZDT report but she admitted to broaching the topic of the report because of a McClatchy news story that appeared the previous day about the investigation.⁴⁵ She could not remember in detail what was discussed.⁴⁶ While further investigation indicated that the removal of the Panetta information from the report appeared to be unrelated to the meeting on December 18th, Ms. Halbrooks' judgment to discuss an ongoing investigation and report with the Secretary and his Chief of Staff, both targets of investigation, on this and other occasions, continues to be a source of concern and deserves further review.⁴⁷

⁴² Halbrooks suggested Ives overlooked this piece of information in his final review and therefore removed it on April 8, 2013; Ives disagreed, stating he more than likely took it out on or about November 14, 2012, when the Vickers misconduct [REDACTED] according to the DOD IG ISPA Timeline, AI reported on February 13, 2013 that the report as presented to AI, would have no negative impact on its investigation.

⁴³ Whistleblower, email, December 18, 2012; Whistleblower, email to Senator Grassley's staff, April 23, 2014.

⁴⁴ Inspector General Act of 1978, Section 2.

⁴⁵ Halbrooks, interview; Marisa Taylor and Jonathan Landay, "Bin Laden film leak was referred to Justice; leaker top Obama official," *McClatchy Report*, December 17, 2012, available at <http://www.mcclatchydc.com/2012/12/17/177676/bin-laden-leak-is-referred-to.html>.

⁴⁶ Halbrooks, interview.

⁴⁷ Halbrooks, interview.

Conclusion # 6 – Long-standing DOD OIG policy requiring removal of certain substantive information from the report probably made the report irrelevant

Admittedly, removing the sensitive information from the report created a dilemma. It essentially gutted the report. In Ives' words, it left "holes" in the report. The official version did not even reveal that a senior official had made unauthorized disclosures of highly classified information. Instead, it was reduced to a chronological listing of emails and meetings that skirts the core issue, falling far short of addressing and resolving Chairman King's concerns about the "hemorrhage of leaks" by top officials. After nearly two years of hard work by over ten DOD OIG personnel, ISPA was left with a work product of questionable value.

Regarding the value of the gutted report, PDIG Halbrooks stated during her interview: once that information was removed, the report was neither interesting nor important to me and just dropped off my radar screen or words to that effect.⁴⁸ While she may have been correct about the report's face-value, she was dead wrong about her responsibilities as IG for the pending report. At that point, she appears to have lost sight of her goal as IG. This report was requested by the chairman of a House oversight committee. She had a solemn duty to put it back up on her radar screen and keep it there -- front and center -- until it was fixed and up to required standards and presented proudly and enthusiastically to the Congress and Deputy Secretary of Defense and maybe even the public and to do it promptly.

Even on a verbal level, communications about the substance of the report's principal findings were essentially non-existent. In meeting with Chairman King's staff, according to Mr. Ives, he did not even "tell them the Secretary had made unauthorized disclosures," which fits with what Chairman King told McClatchy News.⁴⁹

The OIG's "longstanding practice" of removing sensitive information from reports needs independent examination. The question that needs to be answered is whether this practice should be applied to senior officials like the Under Secretary of Defense. There may be cause, given such a position, that they be held to a higher standard even if alleged misconduct had to be reported in a classified letter due to the sensitivity of the subject matter and an ongoing investigation. When top government officials, like the Under Secretary of Defense, stand accused of misconduct, there should be some accountability to the public. Thus far, in this matter, there has been none. Former Deputy Secretary of Defense and CIA Director Deutch mishandled highly classified information and got hammered for doing it. He lost his clearance for six years.⁵⁰ Unlike the ZDT leaks, that matter was dealt with effectively *and* aired in public.

⁴⁸ Halbrooks, interview.

⁴⁹ Ives, interview; *Id. McClatchy Report, December 17, 2012.*

⁵⁰ CIA OIG, Report on Improper Handling of Classified Information by John M. Deutch, February, 18, 2000 and reports by CNN, February 2009, and ABC News, February 2001.

Conclusion #7 - The final report contained no findings or recommendations for corrective action

That no findings and recommendations were offered appears to be indicative of the report's hollowness. It was gutted during DIG Ives' "substantive review." It contained little or no information of importance or interest, as PDIG Halbrooks put it. Findings and recommendations were simply not justified or necessary or even possible. Producing reports of this caliber is a waste of time and money.

Conclusion # 8 – Halbrooks made inaccurate and misleading statements in response to Senator Grassley's questions

Following a careful review of notes taken at the Halbrooks interview on June 2, 2014, Senator Grassley, on June 18, 2014, submitted a list of follow-up questions to her attention. The response to those questions is dated August 8, 2014. The answers given were largely unsatisfactory. Most answers were not substantive in nature nor did they mesh with other available information. Some appeared to be inaccurate and misleading. Some questions were simply incomplete or ignored. Others were confusing and defied understanding. In preparing this report, a complete list of such discrepancies was compiled but only two are summarized below.

In responding to an interview question on the need for coordination with the CIA IG, for example, Halbrooks stated that she was unaware of any coordination.⁵¹ Then, in the response to the same follow-up question in the letter, she said "coordination was not required and did not occur."⁵² In the very next sentence of the letter, however, she admits that coordination did occur.⁵³ Providing diametrically opposing answers simultaneously to the same question is unsatisfactory and unacceptable. Senator Grassley cited her for identical conduct in testimony she gave in October 2012 [REDACTED] and reported in a letter to IG Rymer dated May 19, 2014.

Similarly, when asked for the dates and agendas for each In-Progress Review (IPR) meeting on the ZDT report, she provided a list of seven meetings between December 2011 and July 2012, stating twice that "predecisional draft reports were not reviewed at IPR meetings." This statement appears to be inaccurate. According to Ives and [REDACTED] there were other IPR meetings where the draft report was discussed and reviewed, and some of these meetings were attended by Halbrooks. If the statements by Ives and [REDACTED] are accurate, then Halbrooks may have been involved in reviewing the report long before the March 25, 2013 date she gave during her interview for when she "first received and saw a draft for the first time."

Interviews with former Deputy Assistant IG for ISPA [REDACTED] and his supervisor, Deputy IG for ISPA, James Ives, helped to clear up most of the confusion created by PDIG Halbrooks' answers to Senator Grassley's questions.

⁵¹ Halbrooks, interview.

⁵² DOD IG Rymer, letter (August 8, 2014).

⁵³ DOD IG Rymer, letter (August 8, 2014).

Conclusion # 9 – Halbrooks’ heavy-handed tactics during internal POGO leak investigation raised concerns about the treatment of whistleblowers

On June 21, 2013, Deputy IG Halbrooks directed the Office of Professional Responsibility (OPR) to conduct an internal investigation to determine who had leaked the ZDT report to POGO. Interviews were conducted. A total of 33,269 emails were examined. In the end, investigators were unable to identify the leaker.⁵⁴ During questioning, however, Mr. Dan Meyer, the DOD OIG Director of Whistleblowing and Transparency, admitted to giving a copy of the report to the two congressional committees having jurisdiction over the matter. His admission triggered swift and decisive action. Mr. Meyer was accused of making false statements, which was followed by an attempt to suspend his clearance. This action had the potential of destroying his career. Fortunately, the new IG, Jon Rymer, intervened on Mr. Meyer’s behalf and successfully blocked those efforts because the case against Mr. Meyer did not rest on a solid foundation.

In the aftermath of the OPR leak investigation, concern was expressed about the way whistleblowers were treated. During her interview, DIG Halbrooks was asked about the treatment of whistleblowers during the OPR review. She attempted to provide assurance that her actions were “harmless,” even though they nearly led to Mr. Meyers’ termination.⁵⁵ In a follow-up question, she was asked to explain how accusing an employee of making false statements and then attempting to suspend that employee’s security clearance – a clearance that was essential to continued employment – could be characterized as harmless. She ignored the question.⁵⁶

⁵⁴ DOD OIG, OPR Report of Investigation, February 19, 2014.

⁵⁵ Halbrooks, interview;

⁵⁶ Halbrooks, interview;

Attachment B: Sensitive information removed from report⁵⁷

“This initial review did not include an interview with the Honorable Leon E. Panetta, Secretary of Defense.” (Page 2, POGO)

Removed prior to January 16, 2013, predecisional working draft in response to acting DIG ISPA review.

“..USD(I) Vickers provided the name of the Special Operations Planner to Mr. Boal and Ms. Bigelow.” (Page 6, POGO)

Removed April 8, 2013 by ISPA team. PDIG Halbrooks’ review of the predecisional working draft presented to her on March 25, 2013, questioned whether the information was related to the referral and ongoing investigation being conducted by the DoD OIG Investigation of Senior Officials.

“June 22, 2011: ASD(PA) Wilson told us he communicated with the White House to request guidance on dealing with Mr. Boal and Ms. Bigelow.” (Page 5, POGO)

Removed prior to January 16, 2013, predecisional working draft in response to acting DIG ISPA review.

June 26, 2011: ASD(PA) Wilson responded to an email from the White House Deputy Press Secretary requesting, “[A] moment to connect tomorrow on Boal.” (Page 5, POGO)

Removed prior to January 16, 2013, predecisional working draft in response to acting DIG ISPA review.

“During this awards ceremony, Director Panetta specifically recognized the unit that conducted the raid and identified the ground commander by name. Director Panetta also provided DoD information, identified by Original Classification Authorities as TOP SECRET//SI/ ...” (Page 12, POGO)

Removed prior to January 16, 2013, predecisional working draft in response to acting DIG ISPA review.

“According to the DoD PAO, the day of the event, the CIA PAO contacted the DoD PAO to state that efforts failed and the ‘Chief of Staff’ directed that the Hollywood executive be given access to the event.” (Page 12, POGO) That information, with the exception of the reference to the “Chief of Staff” is included in the June 14, 2013, publicly released report. Reference to the Chief of Staff was removed prior to January 16, 2013, predecisional working draft in response to acting DIG ISPA review.

⁵⁷ The dates shown on this document as to when each item was removed from the report were provided in a letter from the DOD OIG on August 8, 2014. The date on which item #2 was removed is disputed. Mr. Ives claims he did it on or about November 14, 2012, when Vickers’ misconduct [REDACTED] reported on February 13, 2013, that leaving it in would have no negative impact on its investigation. At least five items were removed during Ives’ “substantive review” in December 2012. All six items were declared unclassified by DOD security review on November 9, 2012 and appeared in the report published by POGO in June 4, 2013.