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CHARLES E. SCHUMER, NEW YORK

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 27, 2005

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

The Honorable Donald H. Rumsfeld  
Secretary  
Department of Defense  
1000 Defense, Pentagon  
Washington, D.C. 20301

Dear Mr. Secretary:

I am writing to inform you that a press release posted on the Department of Defense website allegedly contains false or misleading information.

The press release in question pertains to a former Deputy Under Secretary of Defense for International Technology Security, Mr. John A. Shaw. It is press release No. 765-04 and is dated August 10, 2004. A copy is attached for your information.

The information, which is allegedly inaccurate, is as follows: "The allegations were examined by DOD IG criminal investigators in Bagdad and a criminal investigation was never opened.....Shaw is not now, nor has he ever been, under investigation by the DOD IG."

Mr. Secretary, I ask that you attempt to reconcile the above assertions in press release No. 765-04 with two pieces of crucial information: 1) A memorandum from the Inspector General (IG), Mr. Joe Schmitz to you, dated July 13, 2004, informing you that Mr. Shaw was under investigation by the Defense Criminal Investigative Service (DCIS); and 2) A DCIS Report of Investigation (ROI) #200401207g-13-APR-2004-601Z-B3/E: John A Shaw, and dated August 16, 2004.

The existence of the DCIS ROI on Mr. Shaw appears to indicate that a case was opened. A formal investigation was conducted. The investigation was, in fact, completed and closed and referred to the FBI. How do you square that information with the press release?

Mr. Secretary, what I find most disturbing about this situation is the alleged involvement of the IG, Mr. Schmitz, in this matter. First, there is a paper trail that appears to show that Mr. Schmitz was personally and directly involved in crafting the language in this press release. And second, I understand that Mr. Schmitz was repeatedly warned by his own staff "to take it down" because it was "patently false." Even the FBI weighed in on that score, I am told.

On July 7, 2005, I informed Mr. Schmitz of my intention to conduct an oversight investigation into this and other allegations. In that letter, I requested access to all pertinent investigative files bearing on these matters. To date, there has been no response. However, I have been informed unofficially by sources within the IG's office that "all papers related to Shaw and the other matter were stamped law enforcement sensitive to prevent my access."

Mr. Secretary, I respectfully request that you: 1) examine the accuracy of the press release No. 765-04; and 2) urge Mr. Schmitz to cooperate with my oversight investigation of the allegations outlined in my July 7<sup>th</sup> letter.

Your continued assistance in these matters is appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Grassley". The signature is written in dark ink and is positioned above the printed name and title.

Charles E. Grassley  
Chairman

Attachment



United States Department of Defense

## News Release

On the web:

<http://www.defenselink.mil/cgi-bin/dlprint.cgi?http://www.defenselink.mil/releases/2004/nr2004>

Media contact: +1 (703) 697-5131

Public contact: <http://www.dod.mil/faq/comment.html> or +1 (703) 428-0711

**IMMEDIATE RELEASE**

No. 765-04  
August 10, 2004

### **DOD STATEMENT ON JACK SHAW AND THE IRAQ TELECOMMUNICATIONS CONTRACT**

For several months there have been allegations in the press that activities of John A. Shaw, Deputy Under Secretary of Defense for International Technology Security, were under investigation by the Inspector General of the Department of Defense (DoD IG). The allegations were examined by DoD IG criminal investigators in Baghdad and a criminal investigation was never opened.

Furthermore, attempts to discredit Shaw and his report on Iraqi telecommunications contracting matters were brought to the attention of the DoD IG and were accordingly referred to the FBI.

Shaw carried out his duties in the investigation of Iraqi telecommunications matters pursuant to the authorities spelled out in the Memorandum of Understanding between the DoD IG and the Acting Under Secretary of Defense for Acquisition, Technology and Logistics. Shaw provided a copy of his report to the DoD IG and, at the request of the Coalition Provisional Authority, to the Iraqi National Communications and Media Commission.

Shaw is not now, nor has he ever been, under investigation by the DoD IG. Any questions concerning FBI activities should be addressed to the FBI.

<http://www.defenselink.mil/releases/2004/nr20040810-1103.html>

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COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

August 12, 2005

The Honorable Dan Stanley  
Assistant Secretary for Legislative Affairs  
Office of the Secretary of Defense  
1300 Defense Pentagon  
Washington, D.C. 20301

Dear Mr. Stanley:

I am writing to followup on my letter to Secretary Rumsfeld, dated July 27, 2005, regarding the Defense Criminal Investigative Service (DCIS) investigation of Mr. John A. Shaw, former Deputy Under Secretary of Defense for International Technology Security.

On July 27, 2005, the Inspector General (IG), Mr. Schmitz, informed me that my staff would be granted full access to the DCIS investigative files bearing on this matter. Despite repeated requests through the IG's office of legislative affairs, my staff has yet to be given final approval to begin an examination of those files.

In order to proceed with my oversight investigation in a timely fashion, my staff, including Mr. Charles Murphy and Glen Kessler, would like to interview three Department of Defense officials about the Shaw investigation: 1) Principal Deputy General Counsel Daniel Dell'Orto; 2) Mr. Ray DuBois, who was Acting for the Assistant Secretary of Defense for Public Affairs in July-August 2004; and 3) Mr. Bryan Whitman, Public Affairs. These three officials are said to have knowledge about Press Release No. 765-04, which allegedly contains false or misleading information about the DCIS investigation of Mr. Shaw. My staff would like to conduct these three interviews on Tuesday, August 23, 2005, starting at 10am in SH-135.

In addition, my staff would like to examine the Public Affairs file on the above-mentioned press release, including the media card dated August 6, 2004, and emails as well as all other documents pertaining to the media card and associated press release.

Your cooperation in this matter would be appreciated.

Sincerely,



Charles E. Grassley  
Chairman

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

August 8, 2005

COLAN PAWS, STAFF DIRECTOR AND CHIEF COUNSEL  
RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

Mr. Joe Schmitz  
Inspector General  
Department of Defense  
400 Army Navy Drive  
Arlington, VA 22202

Dear Mr. Schmitz:

I am writing to inform you that my staff has completed a review of all the information and material you have provided in response to my questions about your decision to submit an Inspector General (IG) report to the White House Counsel for review.

The IG report in question is entitled The Management Accountability Review of the Boeing KC-767A Tanker Program, Report No. OIG-2004-171, May 13, 2005.

My staff has reviewed all the material you have provided. Based on that review, my staff has identified several issues as follows:

### Issue #1 - Authority to Submit IG Reports to White House Counsel For Review

The first area of concern pertains to your authority to submit IG reports to the White House Counsel for review.

In your May 19<sup>th</sup> response to one of my questions, you cited Section 4(b)(1) of the IG Act as the source of authority. This provision of law applies to audits of the federal government. The report in question is not an audit. And if it were an audit, it would not have been submitted to the White House Counsel for review. Draft audits are submitted to "responsible officials of the audited program" for review and comment. Responsible audit officials would be lower level Pentagon managers with direct knowledge of the program. While you report that you applied "audit quality standards" to the report in question - and that is commendable, the report does not appear to meet those standards. When an audit is done and complies with all applicable rules and standards, it should contain the following certification: "the audit was made in compliance with generally accepted government auditing standards." The Boeing Tanker accountability review does not appear to contain such a certification.

Mr. Schmitz, the legal authority you cite for submitting an IG report to the White House Counsel for review appears to be inapplicable and invalid.

### Issue # 2 - Decision to Honor White House Protocols

Although you cite Section 4(b)(1) of the IG Act as your authority for submitting an IG report to the White House Counsel for review, your actions in this regard were apparently guided by your decision to "honor and comply with" the so-called White House protocols, as you stated in your June 6<sup>th</sup> letter.

The protocols were an understanding reached between the White House and certain members of the Armed Services Committee regarding the handling of a voluminous quantity of Defense Department (DOD) emails pertaining to the proposed Boeing tanker contract. The understanding was reached on or about July 8, 2004. There is no signed, written agreement. The only hard evidence that the protocols even exist is an email message, dated July 9, 2004, between several Senate staffers. The protocols have no legal standing whatsoever. You were not a party to the protocols. You are not bound by the protocols. Clearly, they do not apply to the IG report itself.

Your decision to "honor" the protocols and submit the IG report to the White House Counsel created several problems as follows:

Scope of the final IG investigative report was limited:

--Large chunks of critical evidence were redacted from the final report;

--DOD emails, which were redacted from the report, were a virtual gold mine of information for investigators; they were instrumental in determining what happened, how it happened, and who is responsible for what happened.

By excluding pertinent evidence from the final report, certain potential targets were shielded from possible accountability;

--Deletion of certain names from the IG report raises a question of fairness and may give the appearance of a double standard; Pentagon officials responsible for improper actions in connection with the proposed Boeing tanker deal are identified in the report as being accountable; However, those DOD officials may have been acting in direct response to guidance and advice from the senior White House officials, whose names were redacted from the final report on your orders; those officials are not held accountable;

### New Issues Raised By Armed Services Committee

During the Committee's hearing on June 7<sup>th</sup>, a number of troublesome questions were asked about the redactions. The Ranking Member on the Committee, Senator Levin, has recently followed up on those issues. In a letter dated August 1, 2005, Senator Levin states: "there is no valid legal basis for your decision to redact [those names] from the report."

In making this point, Senator Levin cited Section 5(d)(e)(3) of the IG Act as follows: "Nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof."

As IG, Mr. Schmitz, you had a statutory responsibility to present a totally independent accountability review of the proposed Boeing tanker deal directly to the Senate Armed Services Committee, including all pertinent facts, in response to its requests of December 2, 2003 and November 19, 2004. The request letter was signed by the Chairman, Senator Warner, the Ranking Minority Member, Senator Levin, and Senator McCain. These letters contained your marching orders. Senator Warner asked that you "pursue the trail of evidence wherever it leads, in accordance with standard IG procedures." To my knowledge, those marching orders were never modified in any significant way.

Mr. Schmitz, I think there may have been a more appropriate way to accomplish your goal. If the report did, in fact, contain sensitive information, you could have worked with the Committee to develop a report suitable for public release. That is customary practice. If the White House had concerns about the public release of certain information in that report, then the Committee surely would have worked with the White House to resolve those issues.

Recent correspondence indicates that the Committee still does not have an unredacted copy of the report. The gaping holes in the final report have created an information gap between what the IG investigators know and what was shared with the Committee in the final report. With big chunks of evidence missing from the final report, how could the members of the Committee fully and completely evaluate the underlying problem and address unresolved issues?

Your decision to submit an IG report to the White House Counsel for review may have hindered the ability of the Committee to conduct effective oversight of this important matter. That decision, in turn, raises questions about your independence as IG. I recommend that you provide an unredacted report to the Committee without further delay.

Mr. Schmitz, this concludes my inquiry of this matter. Your cooperation and prompt response to my questions are appreciated.

Sincerely,

  
Charles E. Grassley  
Chairman

Copies to:  
Senator John Warner, Senator Levin, and  
Senator McCain