

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

MEMORANDUM

TO: Republican Members of the Senate EPW Committee
 FROM: Republican Committee Staff
 DATE: February 4, 2014
 RE: Additional Questions Regarding EPA Negligence in Responding to Beale Fraud

John Beale, a long-time member of the Environmental Protection Agency's (EPA) senior staff, perpetrated fraud against the Agency and against American taxpayers from at least 2000 through his voluntary retirement in 2013, masquerading as a CIA agent in order to take advantage of the Agency's lax internal controls. As the EPA Office of Inspector General (OIG) noted in its Early Warning Report, issued pursuant to U.S. Senate Environment and Public Works Committee Ranking Member David Vitter's (R-La.) request, EPA management did not take timely effective action to address Beale's erroneous retention bonuses and pay in excess of statutory limits.¹ However, "lack of timely effective action" is a generalized statement that fails to adequately reflect actual events surrounding those responsible for managing Beale. In an effort to further inform the public on how Beale got away with his fraud for so long, EPW Republicans have conducted an exhaustive review of materials obtained through its own investigatory efforts to untangle the web of unaccountability that permeated the Agency. This focuses on Beale's most recent manager, Gina McCarthy, to articulate what she knew, when she knew it, and what she did with the information when it became available to her.

Managing John Beale

McCarthy's contact with John Beale began when she assumed management of the Office of Air and Radiation (OAR) in June 2009. Shortly after her confirmation as the Assistant Administrator for OAR, she met Beale for a lunch to discuss his work at the Agency, at which point he represented that he also worked for the CIA.² During her recent interview with the OIG, McCarthy represented that she had concerns about Beale since the moment he was hired; however, it is not clear from the available facts that she ever acted on her initial concerns.

Despite her stated "concerns," documents and correspondence show that McCarthy took his word at face value and worked closely with Beale, letting him into her inner circle and consulting frequently with him. In the beginning of her term, McCarthy had three Deputy Assistant Administrators, including Beale, and roughly thirty staff in her immediate office. According to calendar appointments, between June 2009 and June 2010, McCarthy and Beale

¹ EPA Inspector General Early Warning Report at 14

² Beale Dep. 18:15-18:12 Dec. 19, 2013.

had periodic one-on-one meetings.³ In December 2010, McCarthy sent a note to OAR staff announcing that Beale would be resuming his role as the immediate office's lead for all of OAR's international work, and added that she was "very excited to finally get the opportunity to work closely with him."⁴

Beale continued to take days off for CIA work during this period of time,⁵ during which McCarthy received emails from Beale, like the following in May 2010, "Contrary to what I believed when we spoke last Thursday, I do have to travel out of the country next week. Events last week have made this trip necessary."⁶ In December 2010, Beale sent an email referring to events in Pakistan keeping him away from his responsibilities at EPA.⁷ Throughout this time, evidence suggests that McCarthy did not take any steps to confirm whether Beale was indeed an undercover spy working at the EPA.

Failing to Take Action

EPA staff, including those in OAR as well as the Office of Administration and Resource Management (OARM), began to uncover problems related to Beale's pay in mid-2010.⁸ In an interview with the OIG, McCarthy represented that she was not aware of recommendations made by OAR and OARM staff on how to resolve the retention bonus and statutory pay issues concerning Beale. However, there is a significant body of evidence that suggests she was aware, or had been informed by her staff, but that she declined to take action.

For example, by December 15, 2010, an OAR official was already discussing ways to terminate Beale's bonus:

³ E-mail meeting request from Teri Porterfield, Env'tl. Prot. Agency, to John Beale, Senior Policy Advisor, Env'tl. Prot. Agency; e-mail meeting reschedule notification from Shela Poke-Williams, Env'tl. Prot. Agency, to John Beale, Senior Policy Advisor, Env'tl. Prot. Agency; e-mail Meeting Notification from Cindy Huang, Env'tl. Prot. Agency, to John Beale, Senior Policy Advisor, Env'tl. Prot. Agency; e-mail meeting reschedule notification from Teri Porterfield, Env'tl. Prot. Agency, to John Beale, Senior Policy Advisor, Env'tl. Prot. Agency; e-mail meeting request from Teri Porterfield, Env'tl. Prot. Agency to John Beale, Senior Policy Advisor, Env'tl. Prot. Agency. E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency, to Office of Air and Radiation, Env'tl. Prot. Agency (Dec. 3, 2010 07:44 AM EST).

⁴ E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency, to Office of Air and Radiation, Env'tl. Prot. Agency (Dec. 3, 2010 07:44 AM EST).

⁵ Beale's electronic calendar entries reflect a total 9 days off for "D.O. Oversight" from Jan. 2009 to May 2011.

⁶ E-mail from John Beale, Senior Policy Advisor, Office of Air and Radiation, Env'tl. Prot. Agency, to Gina McCarthy, Assit. Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency (May 8, 2010 07:19 AM EST).

⁷ E-mail from John Beale, Senior Policy Advisor, Office of Air and Radiation, Env'tl. Prot. Agency, to Gina McCarthy, Assit. Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency (Dec. 18, 2010, 02:26 PM EST).

⁸ Office of Inspector Gen., Env'tl. Prot. Agency, Report No. 14-P-0036, Early Warning Report: Internal Controls and Management Actions Concerning John C. Beale Pay Issues, 19 (Dec. 11, 2013).

“I’m writing to ask not about the corrections but about 2011. Specifically, I would like to intervene with the AA now to prevent the bonus from taking effect in 2011. I do not expect the AA to support continuation and in any event the employee has not produced any bona fide offer that I’m aware of.”⁹

Later that month, the OAR official issued a memo, which instructed that unless Beale met criteria for a retention bonus, it should be stopped for 2011.¹⁰ On January 12, 2011, the official sent McCarthy a memo informing her that Beale’s salary exceeds the statutory threshold and that he and the Office of General Counsel recommended she cancel Beale’s bonus.¹¹ Documents obtained by EPW Republicans show that at that time, the OAR official also prepared a draft letter under McCarthy’s name requesting information to stop the bonuses. Despite these recommendations, McCarthy did not follow through with any actions to stop the bonus payments for 2011. In fact, EPW Republicans learned that McCarthy was “reluctant to finalize [cancellation of Beale’s bonuses] unless OARM [Assistant Administrator] Craig [Hooks] gives her the okay that the White House is aware and there will not be any political fallout.”¹² Moreover, it remains unclear whether McCarthy or someone else at EPA took an affirmative action to reauthorize the bonus for 2011, as Agency protocols normally require certification that the circumstances necessitating the bonus still existed.

According to the OIG, McCarthy deferred to OARM on how to handle the situation, but according to McCarthy she “was advised to stand down on the matter since it was a criminal matter and that [OARM] would refer it to the IG.” Documents and correspondence show that EPA staff viewed the Beale pay situation as a human resources matter and never as a criminal matter, and Hooks has denied ever characterizing the matter as a criminal one. These conflicting statements do not explain why McCarthy would have made such a representation to the OIG that is inconsistent with what was perceived by her coworkers at the time. This hands-off attitude is also reflected in her response to an OAR official asking, “Has Craig [Hooks at OARM] gotten back to you about the pay issue yet? I’m eager to move ahead with canceling the bonus.” McCarthy replied, “No he hasn’t. It’s now in his hands as far as I am concerned.”¹³

In addition to the questions regarding Beale’s pay, it appears that at the same time McCarthy put Beale in charge of OAR’s international portfolio, she was also on notice that Beale’s claim to be a CIA operative was highly questionable. According to an OIG interview

⁹ Email from Scott Monroe, Dir. Of Human Res., Office of Air and Radiation, Env’tl. Prot. Agency, to Susan Smith, Office of Admin. and Res. Mgmt, Env’tl. Prot. Agency (Dec. 15, 2010, 11:58 AM EST).

¹⁰ Memorandum from Scott Monroe, Office of Human Res., Office of Air and Radiation, Env’tl. Prot. Agency (Dec. 20, 2010).

¹¹ Memorandum from Scott Monroe, Office of Human Res., Env’tl. Prot. Agency, to Gina McCarthy, Assistant Adm’r, Office of Air and Radiation, Env’tl. Prot. Agency (Jan. 12, 2011).

¹² E-mail from Susan Smith, Env’tl. Prot. Agency, to Karen Higginbotham, Env’tl. Prot. Agency (Feb. 1, 2013 01:09 PM).

¹³ E-mail from Gina McCarthy, Adm’r, Office of Air and Radiation, Env’tl. Prot. Agency, to Scott Monroe, Dir. of Human Res., Office of Air and Radiation, Env’tl. Prot. Agency (Jan. 27, 2011 08:24PM EST).

with Deputy Administrator Bob Perciasepe, McCarthy and Hooks approached him in early 2011 and asked whether Beale worked for the CIA. Documents obtained by EPW Republicans show that Perciasepe informed them at that time that EPA had no CIA employees – almost two years before anyone at EPA took steps to verify his claim.

Beale's Lingering Retirement

On May 4, 2011, McCarthy approved a draft email to be sent to all OAR staff announcing Beale's imminent retirement from the Agency:

I'd like to express my appreciation to JB for managing OAR's international efforts these past months while we worked through an important period of leadership transition.... John will now turn his attention to a few projects where his expertise and experience can continue to add significant value. As you know - John has been a vital part of EPA and the OAR leadership for more years than he cares to remember. He is beginning to look forward to his retirement in the near future - but thankfully has agreed to work on some key efforts in the near term.¹⁴

This arrangement, with an indefinite termination date, allowed Beale enough ambiguity to continue his fraud. According to Beale's sentencing memorandum, beginning in June 2011, and for the next 18 months, "the scale of his fraud and deception became even more egregious."¹⁵ On September 22, 2011, McCarthy and others attended his retirement party. However, he never officially retired and instead continued to report his time to his assistant, was paid his salary plus bonus, and continued to use his EPA blackberry.

On March 29, 2012, an OAR official raised concerns about Beale's expanded fraud when he asked McCarthy about the status of Beale's retirement. McCarthy responded that she "thought he had retired,"¹⁶ then turned to OARM to take action.¹⁷ Despite being aware of the fact in March 2012 that one of her employees was collecting his paycheck without providing any work product, this arrangement continued for seven more months before McCarthy contacted Beale in November 2012.

Around this same time frame, according to documents obtained by EPW Republicans, officials at EPA began to investigate whether Beale was actually an undercover CIA agent. On

¹⁴ E-mail from Gina McCarthy, Assistant Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency, to John Beale, Deputy Assist. Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency (May 04, 2011 12:00 EST).

¹⁵ Sentencing Memorandum of John C. Beale, *United States v. John C. Beale*, Cr. No. 13-247 ESH (D. D.C. Filed Dec. 9, 2013).

¹⁶ E-mail from Scott Monroe, Env'tl. Prot. Agency to Gina McCarthy, Assist. Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency, (Mar. 29, 2012 09:59 AM EST); E-mail from Gina McCarthy, Assist. Adm'r, Office of Air and Radiation, Env'tl. Prot. Agency, to Scott Monroe, Env'tl. Prot. Agency (Mar. 29, 2012 05:48 PM EST).

¹⁷ E-mail from Gina McCarthy, Assist. Adm'r Office of Air and Radiation, Env'tl. Prot. Agency to Craig Hooks, (Apr. 02, 2012 10:53 AM EST).

December 12, 2012, McCarthy was informed by staff at EPA's Office of Homeland Security that it was highly unlikely that Beale was a CIA agent, even though Perciasepe had already told her the same thing. With the knowledge that Beale is likely not CIA and had been collecting a paycheck for over a year while performing no EPA-related work, McCarthy met with Beale, over a year after attending his retirement party, who informed her that because the real estate market tanked, he was no longer planning on retiring.¹⁸ Two more months passed before McCarthy on February 5, 2013, informed Beale that she will be cancelling his retention bonus as she had "found no documentation from you or elsewhere that would support reauthorization" – information she had been aware of for nearly two years. Even after this series of events, the OIG did not receive notice of concerns with Beale until February 11, 2013.¹⁹ On April 30, 2013, McCarthy allowed Beale to voluntarily retire with full benefits.

Troubling Inconsistencies

When asked, "In your opinion, is it possible that this fraud could have gone undiscovered if it were not for Administrator McCarthy's actions?" Patrick Sullivan with the OIG testified that, "I think it's highly likely that had not been Ms. McCarthy raising the alarm, this never would have been discovered."²⁰

Sullivan's statement ignores the work performed by OARM and OAR officials who spent months pressing McCarthy to take action on Beale's undeserved bonus income. Moreover, the OIG glosses over the fact that Beale did not show up for work at the EPA for six months, while continuing to receive full pay and benefits, before OAR officials alerted McCarthy to the fact. It took another eight months before EPA began to inquire the veracity of Beale's status as a CIA operative.

The testimony of Perciasepe has also misled the characterization of McCarthy's role. When asked to explain the delay for reporting Beale to the OIG, Perciasepe responded:

"When the- when Assistant Administrator McCarthy who I want to point out once again, no one ever questioned this for over a decade. This question is, the first thing she wanted to do and the first thing she wanted to see was whether or not this person had any of these relationships that-that are being discussed or she asked in the General Counsel and the Office of Resource Management where our personnel-our folks are, they asked the Office of Homeland Security who has relationships with the intelligence community. And when nothing could be found

¹⁸ Early Warning Report, *supra*, note 1.

¹⁹ Elkins testimony before OGR, p. 5. *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Arthur A. Elkins Jr., Inspector General, Env'tl. Prot. Agency).

²⁰ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Patrick Sullivan, Assist. Inspector General for Investigations, Env'tl. Prot. Agency).

there, I think it was quickly-and confirmed then quickly as Mr. Sullivan just mentioned, it was quickly referred to the Inspector General.”²¹

Much of the confusion stems from the EPA OIG’s focus on Beale’s status as a CIA agent and when officials were first suspicious of his cover story, which allowed him to perpetrate his massive fraud. But the fact remains, Beale was tried and convicted for stealing time and money from the Agency, not for impersonating an undercover CIA operative.²² His actions were fraudulent, regardless of the circumstances surrounding his CIA status. These actions were known within EPA as early as 2010, but senior officials, including McCarthy, did not take action until the problem grew so large it could no longer be ignored.

²¹ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm’r, Env’tl. Prot. Agency).

²² Statement of the Offense, *United States v. John C. Beale*, Cr. No. 13-247 ESH (D. D.C. Signed Sept. 27 2013).

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MEMORANDUM

TO: Republican Members of the Senate EPW Committee
FROM: Republican Committee Staff
DATE: February 5, 2014
RE: Additional Questions Relating EPA Negligence in Responding to Beale Fraud (Perciasepe)

Background

On February 4, 2014, the Committee on Environment and Public Works (EPW) Republicans issued a memorandum sharing previously undisclosed information about Environmental Protection Agency (EPA) Administrator Gina McCarthy's response to questions raised internally about former senior EPA official, John Beale, a felon convicted of stealing upwards of a million dollars from the Agency. The memorandum highlighted the fact that McCarthy was slow to react to reports that Beale was being paid a 25% bonus without appropriate documentation and certifications, warnings that his pay was in excess of the statutory threshold, and information that seriously called into question Beale's claims to be an undercover CIA agent. The purpose of this memorandum is to share additional information EPW Republicans have obtained regarding EPA Deputy Administrator Bob Perciasepe's role in the Beale saga.

Perciasepe's Relationship with Beale

It appears that Bob Perciasepe first developed a relationship with Beale during his tenure at EPA under the Clinton Administration. In 1998, President Clinton appointed Perciasepe to serve as the Assistant Administrator (AA) for the Office of Air and Radiation (OAR), at which point he worked with and supervised John Beale. According to documents obtained by EPW Republicans, Beale's long-term personal assistant recalled that then-AA Perciasepe often had closed-door meetings with Beale.¹ During a recent Congressional hearing after Beale's fraud was exposed, "It's painful for me to go through this. But this was a person who had a reputation-a positive reputation in the federal government, both inside EPA and outside EPA in that time period."²

¹ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, Interview with Addie Johnson 3 (Apr. 10, 2013).

² *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 73 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Env'tl. Prot. Agency).

As Beale's supervisor, Perciasepe provided the final approval for the reauthorization of Beale's Retention Incentive Bonus in June 2000.³ According to the EPA Office of Inspector General (OIG), this bonus provided Beale an annual 25% raise that should have expired in 2003, but continued uninterrupted until 2013, accruing nearly \$500,000 in excess pay to Beale.⁴ In August 2000, Perciasepe also approved Beale's promotion to Senior Leader (SL), a position equivalent to Senior Executive Service that exponentially increased Beale's salary. According to Beale, Perciasepe was an advocate for the promotion, "In the '98 – '99 time period there were discussions about a promotion for me, and Bob Perciasepe and then Administrator Carol Browner, and we had a number of discussions and go-arounds about that."⁵ Once Beale was appointed to SL, he held an equivalent title as his colleague and close friend Robert Brenner, Deputy Assistant Administrator, and Perciasepe became his direct supervisor.⁶

Problems with the Retention Bonus

As the OIG has reported, Beale received improper payments as a result of the bonus Perciasepe authorized in 2000.⁷ According to Perciasepe, the problem with the bonus was the failure to stop the bonuses, not with his original authorization:

One was based on the original one and one was based on the one that I did. Those are legitimate years that he could have gotten a retention bonus under the rules of the agency. The problem we have is it was nothing that stopped it. It just kept going.⁸ (emphasis added)

Perciasepe reiterated this point later:

The problem is not in the original rationale for that back in the '90s. The problem is that it kept getting re-certified without any re-certification process. So it went on through the time period that, I think, the Inspector General was talking about, so the issue was that when he was at work and not at work or not during the initial granting of the retention.⁹

However, evidence has emerged that suggests there were serious flaws with the bonus Perciasepe authorized in 2000. According to the OIG, "A written offer is not required although most packages do have a written offer attached. What is required, the supervisor recommending the

³ Memorandum from Bob Perciasepe, Assist. Adm'r, Office of Air & Radiation to Romulo Diaz, Assist. Adm'r, Office of Admin. & Res. Mgmt. 1-2 (June 22, 2000).

⁴ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 2 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Env'tl. Prot. Agency).

⁵ Beale Dep.39:20-40:1 Dec. 19, 2013.

⁶ Beale Dep.59:1-59:5.

⁷ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 2 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Env'tl. Prot. Agency).

⁸ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 74 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Env'tl. Prot. Agency).

⁹ *Id.* at 51.

incentive bonus has to assert that he or she did due diligence to confirm there was an offer.”¹⁰ In the case of Beale’s bonus application in 2000, Perciasepe’s due diligence should have included taking steps to confirm – in writing – that Beale had in fact received an outside offer of employment. Yet, the OIG has confirmed that no such documentation exists and Beale conceded he had not received any written offer of employment to support the bonus in 2000.¹¹

Also, Beale’s deposition raises important questions about and Perciasepe’s due diligence in approving the 2000 bonus. Under oath, Beale stated that he could not recall anyone at the EPA asking him for either a phone number or a written letter to confirm that he in fact had a tangible offer.¹² Beale elaborated:

A: My recollection is that all the other offers were verbal, and although I kind of listened to them initially, they never got to the seriousness where I would have had to talk to the ethics folks about it.

Q: And no one ever asked for proof of an outside offer. It was just generally known; is that correct?

A: To the best of my recollection, that’s correct. I can’t say for sure, but that’s my recollection.¹³ (emphasis added)

Accordingly, there are serious unresolved questions regarding the due diligence that Perciasepe performed prior to authorizing Beale’s 2000 retention bonus.

In addition to a lack of due diligence, it appears there is a material falsehood contained within the application itself. By signing the document, both Perciasepe and Robert Brenner affirmed that Beale had not received previous bonuses, in response to question 10e.¹⁴ Brenner, having been the previous requestor of Beale’s 1991 bonus knew this statement was untrue, but Perciasepe has maintained that he “had no knowledge of any previous [bonus] at this particular moment.”¹⁵ The penalty for forging or falsifying official government records or documents carries ranges from written reprimand to removal.¹⁶ While evidence suggests that a document was falsified knowingly, no one at EPA has been held accountable.

In addition to the problems identified with the 2000 bonus, it looks as if Perciasepe was also a barrier to resolving questions that arose in 2010, when EPA administrative staff discovered that Beale was continuing to receive a 25% bonus, without appropriate certifications.

¹⁰ *Id.* at 69 (Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Env’tl. Prot. Agency).

¹¹ Beale Dep. 38:12-38:15.

¹² Beale Dep.38:3-39:3.

¹³ Beale Dep.38:12-38:15, 38:21-39:3.

¹⁴ Memorandum from Bob Perciasepe, Assist. Adm’r, Office of Air & Radiation to Romulo Diaz, Assist. Adm’r, Office of Admin. & Res. Mgmt. 1-2 (June 22, 2000).

¹⁵ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 73 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm’r, Env’tl. Prot. Agency).

¹⁶ Internal Memorandum, Env’tl. Prot. Agency, *EPA Conduct and Discipline Manual* 17.

In a memorandum released on February 4, 2014,¹⁷ EPW staff revealed that McCarthy failed to take action with regard to Beale's bonus in large part because she had deferred that responsibility to the Office of Administration and Resource Management (OARM).¹⁸ The Committee has also obtained documents which demonstrate that part of the obstacle to OARM resolving the bonus issue was in fact Perciasepe. An email to an OARM official on December 15, 2010, further illustrates this point:

RE: the OAR employee we've discussed who is receiving the retention bonus, I understand that you may not yet have all the information needed to address past overpayments. I'm writing to ask not about the corrections but about 2011. Specifically, I would like to intervene with the AA now to prevent the bonus from taking effect in 2011. I do not expect the AA to support continuation and in any event the employee has not produced any bona fide offer that I'm aware of. I have not spoken to the AA about this. What do I need to do to stop the bonus?¹⁹ (emphasis added)

To which the OARM official replied on February 2, 2011:

I checked with Karen Higginbotham, ERD Director, and she said that Craig Hooks asked to meet with Kim Lewis, OHR Director, on this matter and Karen provided Kim with info from my briefing document. Since Bob P. signed the last retention bonus memo, it is Karen's understanding that Craig was going to speak with him about this employee before advising OAR.²⁰ (emphasis added)

This email was followed by a note in an OAR official's memorandum dated February 9, 2011, stating, "I'm waiting for OARM to tell me it's OK for Gina to sign the memo to end the incentive."²¹ These emails reveal that EPA staff wanted to clear the matter with Perciasepe first before advising McCarthy to take corrective action.

Perciasepe Inconsistencies on CIA story

Conflicting evidence has also emerged regarding when Perciasepe learned about Beale's CIA cover story. This is particularly relevant because it contradicts the timeline of when McCarthy reported her suspicions of Beale to the OIG, supposedly as soon as she was aware that there was a problem.²² According to OIG, "The first executive that ever questioned him working

¹⁷ Memorandum from Republican Members of S. Env't. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Feb. 4, 2014).

¹⁸ *Id.*

¹⁹ E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env'tl. Prot. Agency to Susan Smith, Env'tl. Prot. Agency (Dec. 15, 2010 11:58 AM).

²⁰ E-mail from Susan Smith, Env'tl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air & Radiation, Env'tl. Prot. Agency (Feb. 1, 2011 01:50 PM).

²¹ Notes of Bill Spinazzola, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Scott Monroe, (Nov. 12, 2013).

²² The IG states that McCarthy notified the OIG on February 11, 2013; *See Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform, 113th Cong. 5 (2013)* (Written Testimony of Hon. Arthur A. Elkins, Jr., Inspector Gen., Env'tl. Prot. Agency) (discussing the timeline for when McCarthy notified the OIG).

for the CIA was in fact Gina McCarthy. Beyond her suspicions, everyone else we interviewed flat-out believed he worked for the CIA.”²³ Perciasepe echoed this narrative, stating that he first heard about Beale’s claim to be a CIA agent in mid-2012 – around the same time McCarthy first became suspicious.²⁴

Meadows: Thank you, Mr. Chairman. Mr. Perciasepe, I'm intrigue by your testimony because you said earlier that Mr. Beale never represented to you that he worked for the CIA. So is that to follow up that you were-you never heard of him working for the CIA? Because there's a difference. Right, when this unfolded.

Perciasepe: Right, when this unfolded.

Meadows: Before it unfolded. Had you ever heard of that because-so no one ever shared what he was doing?

Perciasepe: No, I didn't see Mr. Beale for 13 years. I don't know what went on from 2001 to -- 2000 till I came back to the agency.²⁵

However, when Perciasepe was interviewed by EPA OIG, he informed investigators that he first became aware of problems with Beale in 2011, when McCarthy and Craig Hooks at OARM came to him asking whether Beale worked for the CIA.²⁶ At that time, Perciasepe informed both of them that “there are no CIA employees working for EPA, so it was important to find out.”²⁷ Additionally, Perciasepe viewed Beale’s status as a CIA operative as a Human Resources or Personnel matter, and treated it as such. This decision allowed Beale to increase the scale of his fraud in the years to come.

Conclusion

As the Deputy Administrator, and then the Acting Administrator at EPA during the height of Beale’s fraud, Perciasepe was in the unique position to shine a light on Beale’s activities and to act on the concerns that were brought to his attention. However, instead of demonstrating leadership, he has publicly shared a confusing narrative of what he knew and when he knew it, while simultaneously characterizing McCarthy as a hero for finally questioning Beale’s outrageous claims. Most recently, he extolled her role in a memorandum to EPA staff:

By now you are most likely aware that the end of this episode was brought about by the alertness and diligence of current Administrator McCarthy -- in her former role as

²³ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 45 (2013) (Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations).

²⁴ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 45 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm’r, Env’tl. Prot. Agency).

²⁵ *Id.*

²⁶ Notes of Robert Adachi, Office of Inspector Gen., Env’tl. Prot. Agency, on Interview with Bob Perciasepe 3 (Nov. 18, 2013).

²⁷ *Id.*

Assistant Administrator for the Office of Air and Radiation -- and the careful work of many professional staff and investigators.²⁸

The evidence presented in this memorandum questions Perciasepe's leadership and management competence at EPA, as shown through his years of deflecting responsibility and failing to be alert and diligent as Beale's supervisor, even when the cracks in Beale's story became clearly evident.

²⁸ E-mail from Bob Perciasepe, Assist. Adm'r, Env'tl. Prot. Agency, to Bob Perciasepe, Assist. Adm'r, Env'tl. Prot. Agency (Dec. 20, 2013 4:28 PM).

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DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

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BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

MEMORANDUM

TO: Republican Members of the Senate EPW Committee

FROM: Republican Committee Staff

DATE: February 6, 2014

RE: Additional Facts Regarding EPA Negligence in Responding to Beale Fraud
(Robert Brenner)

Background

On February 4, 2014, the Committee on Environment and Public Works (EPW) Republican Staff issued a memorandum sharing previously undisclosed information about Environmental Protection Agency (EPA) Administrator Gina McCarthy's response to questions raised internally about former senior EPA official, John Beale, a felon convicted of stealing upwards of a million dollars from the Agency. The memorandum highlighted that McCarthy was slow to react to reports that Beale was being paid an annual 25% bonus without appropriate documentation and certifications; warnings that his pay was in excess of the statutory threshold; and information that seriously called into question Beale's claims to be an undercover CIA agent.¹ On February 5, 2014, EPW Republican staff issued a second memorandum highlighting inconsistencies in the public record with regard to what Deputy Administrator Bob Perciasepe knew and how he responded to information regarding Beale.² This memorandum will focus on additional information the Committee has obtained regarding the role former Deputy Assistant Administrator Robert Brenner played in the Beale fraud, which suggests that Beale could not have accomplished the magnitude of his fraud without the assistance, either knowing or unknowing, of his best friend Brenner.

¹ Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Gina McCarthy) (Feb. 4, 2014).

² Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Bob Perciasepe) (Feb. 5, 2014).

Beale's "Best Friend" Robert Brenner

When the opportunity arose to help develop the new Clean Air Act, I was able to convince my best friend from those days, John Beale M.P.A. '77 to join me in the effort - Robert Brenner³

Everyone in life has a best friend. For nearly four decades, Robert Brenner and John Beale have — in their own words — been “best friends.”⁴ Beale and Brenner met and became friends as classmates in graduate school at Princeton University’s Woodrow Wilson School of Public and International Affairs in 1975.⁵ In 1977, they both graduated with Master’s Degrees in Public Affairs,⁶ but remained very close even as Brenner stayed employed with Princeton’s Center for International Studies and Beale pursued a law degree.⁷ Over the course of Beale’s “nomadic” post-graduate work experience,⁸ he and Brenner maintained close contact. In 1983, they purchased a two-bedroom vacation home in Cape Cod from Beale’s parents, which had been in the Beale family since the 1960’s.⁹ While Beale has claimed he and Brenner only used the home as a rental,¹⁰ Brenner has explained that until about 1989, the two vacationed at the home roughly once a year.¹¹

³ *Robert Brenner Graduate Alumni Profile*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC AFFAIRS, <http://wws.princeton.edu/qzalumni/testimonials/brenner/> (last visited Sept. 9, 2013) (on file with Committee).

⁴ *Compare Robert Brenner Graduate Alumni Profile*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC AFFAIRS, <http://wws.princeton.edu/qzalumni/testimonials/brenner/> (last visited Sept. 9, 2013) (documenting Brenner referring to his “best friend from those days, John Beale M.P.A. ‘77.”), with Email from Robert Brenner to John Beale (June 1, 2011, 04:34 EST) (on file with Committee) (“Back in ‘88, I thought I’d get to spend 2 or 3 years working with you on a pretty cool political/policy project. I still can’t believe it turned into 23 years of working with my best friend to try to make some good things happen--I lucked out.”).

⁵ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (testimony of Robert Brenner) (“John and I met in graduate school . . .”); *id.* (statement of Patrick Sullivan) (“Mr. Brenner and Mr. Beale had attended graduate school together at Princeton University from 1975 to 1979 . . .”); Transcript of John C. Beale Deposition at 11–12, H. Comm on Oversight & Gov’t Reform, 113th Cong. (Dec. 19, 2013) [hereinafter Deposition of John C. Beale], available at <http://oversight.house.gov/wp-content/uploads/2014/01/Beale-Deposition.pdf> (“We [Beale and Brenner] had been friends. We were in graduate school together and had known each other since about 1975.”).

⁶ See Sentencing Memorandum of John C. Beale at 4, *United States v. Beale*, No. 1:13-cr-00247-ESH (D.D.C. Sept. 27, 2013); John C. Beale, Application for Vacancy Announcement Number EPA-00-SL-OAR-6174 (Apr. 13, 2000); *2013 Brenner Alumnus Profile* (mentioning “John Beale M.P.A. ‘77.”); *Alumnus Profile: Robert Brenner*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC & INTERNATIONAL AFFAIRS, <http://wws.princeton.edu/alumni/stay-connected/what-alumni-are-up-to/brenner-robert> (last visited Jan. 29, 2014).

⁷ See Sentencing Memorandum of John C. Beale, *supra* note 4, at 4; John C. Beale, Application for Vacancy Announcement Number EPA-00-SL-OAR-6174 (Apr. 13, 2000); *Welcome to the NYU Law Alumni Online Community!*, NYU LAW, <https://securelb.imodules.com/s/1068/GroupLaw/index.aspx?sid=1068&gid=3&pgid=8&cid=46&logout=1> (search “Beale”) (last visited Feb. 5, 2014) (listing John Beale as a 1979 alumnus).

⁸ Deposition of John C. Beale, *supra* note 3, at 12 (“I tended not to hold jobs for a very long period of time. I tended to be a very nomadic type of person.”).

⁹ Search for Property Records of John C. Beale (LEXIS); see also *Search for Property Records of John C. Beale*, MASSACHUSETTS LAND RECORDS, <http://www.masslandrecords.com>.

¹⁰ See Deposition of John C. Beale Deposition, *supra* note 3, at 32.

¹¹ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (testimony of Robert Brenner) (“[F]rom the early 1980’s

It was well known within EPA that Brenner and Beale “spen[t] a lot of time together outside of work going out to eat, playing golf and going on vacations together.”¹² This fact is corroborated by several email exchanges obtained by the Committee. For example, in one email exchange from November 2011, Brenner says Beale:

It would be great to see you Saturday night-- we'll have the Razor episode queued up and ready to roll! Do I remember correctly--Nancy is travelling[sic]?¹³

This email was forwarded to Beale with a renewed request for the pleasure of his company by Brenner's wife:

John! You're here? Please come over...I'll make brownies. Barb¹⁴

Beale and Brenner also scheduled regular breakfasts and lunches that continued through the end of their tenures at EPA and continued into 2012, after Beale had allegedly retired from EPA.¹⁵ In an email sent on February 14, 2012, Beale wrote Brenner this note:

We made it back and had a great time. If you have the time breakfast would be great. Is there a morning that works best for you?¹⁶

In another email sent on April 7, 2012, Beale asked Brenner, “Would Tues or Wed work for y to have breakfast?”¹⁷ Moreover, Beale, Brenner, and their respective wives socialized frequently, arranging get-togethers ranging from frequent dinners¹⁸ to Valentine's Day celebrations¹⁹ to volunteering for the Obama presidential campaign.²⁰ For example, in an email exchange starting on December 15, 2011, Beale asks Brenner, “Are you and Barb able to do a Friday night this

until about 1989, we [Brenner and Beale] saw each other about once a year at a vacation home we co-owned in Massachusetts”).

¹² See, e.g., Memorandum of Interview of Addie Johnson from Off. of Inspector Gen, U.S. Env'tl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).

¹³ See E-mail from Barbara Brenner to John Beale (Nov. 29, 2007, 14:49 EST) (on file with Committee).

¹⁴ *Id.*

¹⁵ See, e.g., Email from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Feb. 14, 2012, 12:32 EDT) (on file with Committee); E-mail from John Beale to Robert Brenner (Jan. 25, 2012, 04:22 EDT) (on file with Committee); Email from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Nov. 5, 2011, 08:51 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Oct. 29, 2008, 02:41 EST).

¹⁶ E-mail from John Beale to Robert Brenner (Feb. 14, 2012, 00:32 EST) (on file with Committee).

¹⁷ E-mail from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee).

¹⁸ See, e.g., E-mail from John Beale to Robert Brenner (Dec. 16, 2011, 11:35 EST) (on file with Committee); E-mail from Robert Brenner to John Beale (Nov. 6, 2008, 10:02 EST); Email from Robert Brenner to John Beale (Sept. 25, 2008, 14:08 EST) (on file with Committee); E-mail from Robert Brenner to John Beale (July 20, 2008, 01:49 EST) (on file with Committee); E-mail from Barbara Brenner, wife of Robert Brenner, to John Beale (Nov. 29, 2007, 14:49 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Nov. 6, 2006, 09:27 EST) (on file with Committee).

¹⁹ See Email from John Beale to Robert Brenner (Feb. 14, 2012, 12:32 EST) (on file with Committee).

²⁰ See E-mail from Nancy Kete to Robert Brenner, John Beale, and Barbara Brenner (Nov. 4, 2008, 11:30 EST) (on file with Committee).

weekend?”²¹ to which he responds: “I forgot--Friday night does not necessarily mean Friday night! But in this case it’s the case that works best for us.”²²

After working at the EPA together for more than two decades—an experience that Brenner described to Beale as having “lucked out” by spending “23 years of working with my best friend to try to make some good things happen”²³—the two planned a joint retirement party in September 2011,²⁴ which was paid for on Brenner’s wife’s credit card.²⁵ Along with Beale and Brenner, another career EPA official from the Office of Air and Radiation, Jeffrey Clark, decided to retire with them.²⁶ In reference to the retirement party, Beale explained that he, Brenner, and Clark had “kind of all been like the three Musketeers on the Clean Air Act.”²⁷

Brenner Looked out for Beale at EPA

Evidence suggests that Beale and Brenner worked closely together for much of their career, during which time Brenner served as an advocate for Beale. Not only did Brenner hire Beale to his first position with the Agency, but he also requested the EPA pay him at an abnormally high rate. In 1988, when Brenner became the Director for the Office of Policy Analysis and Review (OPAR) within the Office of Air and Radiation, he landed Beale a job as a full-time consultant to the OPAR team.²⁸ By June 1989, Brenner hired Beale as “a permanent, career EPA employee with the position of Policy Analyst in OPAR.”²⁹ At the time, Brenner prepared an “Advance in Hire” memorandum that stated Beale would not accept the position unless he started at the GS-15 Step 10³⁰ — the maximum general service pay level.³¹ It is extremely rare to start at this pay grade.³² In addition, the OIG revealed that Beale’s initial application for employment included falsified information that Brenner relied on in hiring

²¹ See E-mail from John Beale to Robert Brenner (Dec. 16, 2011, 11:35 EST) (on file with Committee).

²² See *id.*

²³ E-mail from Robert Brenner to John Beale (June 1, 2011, 04:34 EDT) (on file with Committee).

²⁴ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

²⁵ See E-mail from Staff, Off. of Inspector Gen., U.S. Env’tl. Protection Agency, to Republican Staff, U.S. Senate Comm. on Env’t & Pub. Works (Nov. 15, 2013, 14:08 EST) (on file with Committee).

²⁶ See Deposition of John C. Beale, *supra* note 3, at 191.

²⁷ *Id.*

²⁸ Sentencing Memorandum of John C. Beale, *supra* note 4, at 5.

²⁹ *Id.* at 7. However, the OIG asserts that Beale was hired as a Senior Policy Advisor. *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

³⁰ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

³¹ See OFF. OF PERSONNEL MGMT., RATES OF PAY UNDER THE GENERAL SCHEDULE EFFECTIVE THE FIRST PAY PERIOD BEGINNING ON OR AFTER JANUARY 1, 1989, *available at* http://archive.opm.gov/oca/pre1994/1989_Jan_GS.pdf (documenting the General Schedule for the year Beale was hired). Grades beyond GS-15, Step 10 were eliminated in 1978. See Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended at 5 U.S.C. ch. 11 (2006)).

³² See U.S. MERIT SYSTEMS PROTECTIONS BOARD, IN SEARCH OF HIGHLY SKILLED WORKERS: A STUDY ON THE HIRING OF UPPER LEVEL EMPLOYEES FROM OUTSIDE THE FEDERAL GOVERNMENT (2008), *available at* <http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=323118&version=323564&application=ACROBAT> (documenting how rarely civil servants are hired at the higher pay grades).

Beale.³³ Accordingly, the OIG has questioned his initial employment offer and pay level, and has subsequently initiated an audit into the vetting process for new employees at EPA.³⁴

In addition to hiring Beale and offering him a generous salary, Brenner also nominated Beale for several awards and bonuses — both during the time Brenner served as his direct supervisor, as well as when he was Beale’s equal.³⁵ While it does not appear that fraud was involved in the facilitation of every bonus award, the facts do give rise to serious concerns for Beale’s 1991 and 2000 retention incentive bonus. Specifically, Brenner’s recommendation for Beale to receive the 1991 bonus indicated that Beale had received outside offers of employment, yet the OIG uncovered that Beale in fact, had received no written firm offer from an outside company.³⁶ While the OIG has explained that written documentation is not required for such bonus requests, a supervisor submitting the bonus request must perform due diligence to ensure an outside offer exists.³⁷ Brenner has testified that he was not able to recall how he verified that Beale had an outside offer, but explained that, “I either talked to the employer or have received a letter. But I know that without one of those two things being in place, there is no way it could have been approved.”³⁸

However, Beale’s own testimony contradicts his best friend, as he claims that no one at EPA ever asked him for proof that he, in fact, had a job offer. Beale revealed that he never even asked for the bonuses. According to the exchange below, the retention bonuses were just provided to him without his prompting:

Q Okay, did Mr. Brenner or anyone else at EPA ever offer -- or ask for concrete proof from you of these job offers in '91, '94 or 2000, like documentation of an offer?

A These offers during this period of time would come in, or people would approach me several times a year with things, and it was common knowledge because I talked to people about it. I was thinking about leaving. I'm not -- I'm always amazed I've been in Washington this long. So my recollection is that we had a concrete letter of offer from my law firm, my former law firm. My recollection is that all the other offers were verbal, and although I kind of listened to them initially, they never got to the seriousness where I would have had to talk to the ethics folks about it.

³³ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

³⁴ *Id.* (statement of Arthur Elkins).

³⁵ *Id.* (statement of Patrick Sullivan).

³⁶ *Id.* (testimony of Patrick Sullivan) (“Mr. Brenner’s recommendations that Mr. Beale receive the bonuses indicated that Mr. Beale had received outside offers of employment. However, supporting documents available for the six years that Mr. Beale may have been eligible to receive the bonuses did not include written proof of such offers. Mr. Beale conceded in an interview with the OIG on June 14, 2013, that he had not, in fact, received any written offers of employment to support either bonus. Rather, he said, he had received only oral offers for outside employment.”).

³⁷ *Id.*

³⁸ *Id.* (testimony of Robert Brenner)

Q Did you ever ask Mr. Brenner or any other EPA official to recommend you, submit applications or authorize you to receive a retention bonus, or were they always extended to you?

A I never asked.

Q You never asked. And no one ever asked for proof of an outside offer. It was just generally known; is that correct?

A To the best of my recollection, that's correct. I can't say for sure, but that's my recollection.³⁹

Accordingly, it appears likely that Brenner requested Beale's retention bonus without conducting appropriate due diligence.

EPW Republicans have uncovered additional concerns with representations made in the 2000 bonus application, which failed to disclose the fact that Beale had previously received a retention bonus.⁴⁰ While it does not appear that then Assistant Administrator Perciasepe had knowledge of Beale's prior bonus history, Brenner certainly did. The penalty for forging or falsifying official government records or documents carries a range of penalties from written reprimand to removal.⁴¹ While the evidence suggests that this document was falsified, no one at EPA has been held accountable.

Around the same time Brenner requested a reauthorization of Beale's bonus, Brenner also recommended Beale for a promotion to Senior Leader ("SL") status, a designation equivalent to Senior Executive Service for technical professionals in the federal government pay system.⁴² As such, less than two months after Beale received the reauthorization for his Retention Incentive Bonus, on August 23, 2000, Beale received the promotion to SL, making Beale among the highest paid, non-elected federal government employees.⁴³ Notably, the promotion and bonuses Brenner requested eventually elevated Beale's salary to exceed the statutory threshold for employees at his pay grade for four years.⁴⁴

Thereafter, Brenner and Beale were equal in rank, but Brenner continued to advocate for his best friend. For example, in 2004, Brenner nominated Beale for a Superior Accomplishment

³⁹ Deposition of John C. Beale, *supra* note 3, at 38–39.

⁴⁰ See Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Bob Perciasepe) (Feb. 5, 2014).

⁴¹ Env'tl. Protection Agency Order 3120.1, *Conduct and Discipline*.

⁴² *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

⁴³ Statement of the Offense at 2, *United States v. Beale*, No. 1:13-cr-00247-ESH (D.D.C. Sept. 27, 2013).

⁴⁴ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan) ("Based upon his Senior Leader status and retention incentive bonuses, from 2000 to 2013, Mr. Beale was paid, on average, \$180,000 per year, an amount that exceeded statutory pay limits for federal employees at his grade for four of those years – 2007, 2008, 2009 and 2010.").

Recognition Award, which was accompanied by a \$2,250 payment.⁴⁵ In 2005, Brenner also nominated Beale for the Meritorious Executive Rank Award, a category of the Presidential Rank Award, which carried a \$28,201 payment.⁴⁶ While it does not appear that fraud was involved in the facilitation of these awards, the facts illustrate that Brenner was directly involved in Beale's lavish income as a federal employee.

Brenner Covering for Beale

In 1994, while Brenner was Beale's supervisor, Beale assumed the false identity of a CIA agent. According to Beale, he perpetrated this lie to "puff up the image of [himself]."⁴⁷ For a period of this time, public records indicate Beale lived with Brenner at his home in Arlington, Virginia for over a year between 1995 and 1996.⁴⁸ This time together perhaps gave Brenner insight into Beale's comings and goings. It might also help to explain why EPA staff looked to Brenner to confirm Beale's stories. According to Deputy Assistant Administrator Beth Craig, she specifically recalled asking Mr. Brenner if Mr. Beale worked for the CIA and was told "yes."⁴⁹ She accepted Brenner's statement as confirmation of Beale's claim.⁵⁰

Beginning in 2000, the same year Brenner promoted Beale to SL and requested a reauthorization of Beale's bonuses, Beale admittedly "began to engage in a pattern of time and attendance fraud in violation of 18 U.S.C. §641," by taking one unauthorized day off each week for "D.O. Oversight."⁵¹ "D.O." refers to the Directorate of Operations, which is responsible for covert operations at the CIA.⁵² "Beale did not submit request for annual leave for this time, and did not inform his supervisors, [including Brenner], as to the reason for his absences,"⁵³ but was never reprimanded for his time out of the office.⁵⁴ According to EPA's Conduct and Discipline Manual, failure to report to duty for more than five consecutive days is a fire-able offense.⁵⁵ However, according to notes from an interview with Beth Craig, she said it is important to understand that everything was corroborated by Robert Brenner about John Beale. When she had asked Mr. Brenner questions about Mr. Beale's attendance and health, she would be told that John will be in tomorrow... he is feeling better.⁵⁶

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*; see also Transcript of John C. Beale Deposition, *supra* note 3, at 27 (indicating that Beale invented the CIA lie based on his "fantasy").

⁴⁸ See Search for Property Records of John C. Beale (LEXIS); Search for Property Records of Robert Brenner (LEXIS).

⁴⁹ Memorandum of Interview of Elizabeth Craig from Off. of Inspector Gen, U.S. Env'tl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).

⁵⁰ *Id.*

⁵¹ Sentencing Memorandum of John C. Beale, *supra* note 4, at 16.

⁵² *Id.*

⁵³ Statement of the Offense, *supra* note 46, at 2.

⁵⁴ See *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).

⁵⁵ Env'tl. Protection Agency Order 3120.1, *Conduct and Discipline*.

⁵⁶ Memorandum of Interview of Elizabeth Craig from Off. of Inspector Gen, U.S. Env'tl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).

Starting in June 2008, Beale also failed to report to work at EPA for about six months.⁵⁷ During this period of time he never submitted a leave request and continued to receive his EPA salary.⁵⁸ Throughout his absence, he claimed to be working on the research project or spending time working for “Langley” on candidate protection for the CIA.⁵⁹ However, the record suggests that Brenner was privy to the fact that Beale was not on a special mission. Rather, Beale was in the Washington, D.C. area, meeting regularly with Brenner. For example, in email exchanges dated August 5, 2008, and October 29, 2008, the two make plans to get together for breakfast,⁶⁰ and on September 25, 2008, the two made plans for dinner and to watch the Presidential debate.⁶¹ In light of Beale’s claim to be on assignment protecting presidential candidates, it is odd that Brenner failed to question Beale’s availability on the evening of the presidential debate. Even more, Beale and Brenner had plans to meet on election night, as evidenced by a note from Brenner to Beale:

No problem--we’ll eat whenever you arrive. And hopefully it will be time to break out the champagne by shortly after the 8:00 polls close. See you tonight, Rob.⁶²

Despite these frequent visits during Beale’s extended absence at EPA, there is no evidence that Brenner raised any concerns at EPA over the missing employee.

Brenner’s Failure to Cooperate with Congress

Even after Beale’s fraud was exposed, it appears Brenner still has his best friend’s back. To date, Brenner has refused to be interviewed by EPA’s OIG and has been as equally uncooperative in his dealings with Ranking Member Vitter. In response to a series of questions posed in a letter from Ranking Member Vitter,⁶³ Brenner responded with only short, perfunctory answers to a few of the questions, frequently citing his prepared statement for the House Committee on Oversight and Government Reform hearing, and repeatedly asserting that he was “unable to recount” or “recall” the answers to the fairly easy questions.⁶⁴ When Ranking Member Vitter requested specific answers from Brenner, he followed up with a letter announcing his refusal to cooperate with the Senate investigation.⁶⁵

⁵⁷ Statement of the Offense, *supra* note 46, at 4.

⁵⁸ *Id.*

⁵⁹ See Deposition of John C. Beale, *supra* note 3, at 146 (“I did make up this story that I was going to be working on a special process for the agency on executive protection.”).

⁶⁰ E-mail from John Beale to Robert Brenner (Oct. 29, 2008, 02:41 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Aug. 5, 2008, 18:15 EST) (on file with Committee).

⁶¹ Email from Robert Brenner to John Beale (Sept. 25, 2008, 14:08 EST) (on file with Committee).

⁶² E-mail from Robert Brenner to John Beale (Nov. 4, 2008, 09:24 EST) (on file with Committee).

⁶³ See Letter from the Hon. David Vitter, Ranking Member, S. Comm. on Env’t & Pub. Works, to Robert Brenner (Sept. 9, 2013).

⁶⁴ See Letter from Justin Shur, Counsel to Robert Brenner, to Kristina Moore, Senior Counsel for Oversight, S. Comm. on Env’t & Pub. Works (Oct. 4, 2013) (citing *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 113th Cong. (Oct. 1, 2013) (statement of Robert Brenner)).

⁶⁵ Letter from Justin Shur, Counsel to Robert Brenner, to Kristina Moore, Senior Counsel for Oversight, S. Comm. on Env’t & Pub. Works (Nov. 8, 2013).

Conclusion

As this memorandum demonstrates, Robert Brenner and John Beale were tied at the hip in both their professional lives and personal lives. Evidence suggests that Brenner played a pivotal role in enabling Beale's fraud, whether that fraud was accepting unearned bonuses, stealing time from EPA, or impersonating a CIA official, Brenner's actions both enabled and covered for John Beale. It is unclear whether Brenner's actions were done with the intent of aiding and abetting Beale's crimes or out of willful ignorance. Either way, Brenner should be called on to account for his actions.

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

MEMORANDUM

TO: Republican Members of the Senate EPW Committee
FROM: Republican Committee Staff
DATE: February 7, 2014
RE: Questions Relating to EPA Negligence in Responding to Beale Fraud (Additional Individuals)

Background

The Committee on Environment and Public Works (EPW) Republican Staff issued a series of memoranda identifying and sharing previously undisclosed information about the actions, or more often inaction, of Environmental Protection Agency (EPA) officials who had an opportunity to prevent John Beale from perpetrating his fraud at the Agency. The memoranda raise questions over EPA Administrator Gina McCarthy's decision to wait over three and a half years after she first grew suspicious to probe Beale's claim to be a CIA agent, and why she was slow to stop payment on Beale's unearned bonuses.¹ In the case of EPA Deputy Administrator, Bob Perciasepe, EPW staff revealed additional facts that raise questions as to his involvement in Beale's 2000 bonus and receipt of unearned pay, as well as the delay in cancelling Beale's bonus.² Then, EPW staff detailed the close relationship between another top EPA official, former Deputy Assistant Administrator Robert Brenner and John Beale, which raised important questions about Brenner's culpability in Beale's fraud.³ This memorandum will present information involving additional EPA officials who played a prominent role in shaping EPA's response to Beale's fraud. Specifically, EPW Republicans have put into context the actions of Deputy Assistant Administrator for the Office of Air and Radiation (OAR) Beth Craig, Assistant Administrator for the Office of Administration and Resources Management (OARM) Craig Hooks, and Director of Human Resources within OAR Scott Monroe.

Beth Craig

Beth Craig was a Deputy Assistant Administrator (Deputy AA) in the Office of Air and Radiation at EPA from 2000 to 2010.⁴ In this position "she worked very closely with [John]

¹ Memorandum from Republican Members of S. Evt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (McCarthy) (Feb. 4, 2014).

² Memorandum from Republican Members of S. Evt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Perciasepe) (Feb. 5, 2014).

³ Memorandum from Republican Members of S. Evt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Brenner) (Feb. 6, 2014).

⁴ . Notes of Bill Spinazzola, Office of Inspector Gen., Evt'l. Prot. Agency, on Interview with Elizabeth Craig 2 (Nov. 12, 2013).

Beale and [Robert] Brenner ... having daily meetings with the two men.”⁵ Among Craig’s responsibilities, she reviewed and approved Beale’s travel vouchers.⁶ Additionally, Craig had a role in the approval of Beale’s timecards, even when he was out of the office for long periods.⁷ In the ten year period in which she served as Deputy AA, she has admitted that she “held [him] to a different standard.”⁸

Indeed, Craig approved Beale’s travel vouchers even when the vouchers requested reimbursement for excessive costs, contained personal charges, and sometimes did not have completed itineraries.⁹ Craig approved one voucher that exceeded \$37,000,¹⁰ and she routinely approved vouchers that “exceeded ... \$20,000 for a single trip.”¹¹ According to Beale’s administrative assistant, “Craig would ask if Beale could get some of the expenses ... cheaper ... but Craig would still allow the expenses to be processed and approved.”¹² In fact, Craig admitted that she handled Beale’s vouchers “differently than others” and essentially did not review them.¹³ Instead she “relied on the administrative staff to review specific trip details and receipts”¹⁴ However, when Beale’s Executive Assistant raised concerns over “the excessive and abusive nature of Mr. Beale’s travel expenses,” Craig told her “not to question the expenses, which were authorized because Mr. Beale was a senior level official.”¹⁵

Craig also had the authority and responsibility to approve Beale’s timecards.¹⁶ Documents obtained by the Committee suggest that she approved and instructed staff to record and approve Beale’s hours, even during the period of time when he did not report to EPA offices for six months.¹⁷ Beale’s administrative assistant was instructed at different times by both Beale and Craig “to put Beale in for eighty (80) hours of work each pay period unless instructed otherwise.”¹⁸ When Beale’s assistant brought her concerns about Beale’s absences and the time entries to Craig, Craig explained to her that “Beale worked for EPA, but from a different

⁵ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Elizabeth Craig 1 (Mar. 7, 2013)

⁶ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Elizabeth Craig 1 (June 18, 2013).

⁷ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Omayra Salgado 3 (May 13, 2013).

⁸ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Elizabeth Craig 2 (June 18, 2013).

⁹ *Id.* at 1–2.

¹⁰ *Id.* at 2.

¹¹ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Addie Johnson 3 (Apr. 10, 2013).

¹² *Id.* at 2.

¹³ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Elizabeth Craig 3 (June 18, 2013).

¹⁴ *Id.*

¹⁵ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 6 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Env'tl. Prot. Agency).

¹⁶ Beale Dep. 139:1–140:7 (Dec. 19, 2013).

¹⁷ Beale Dep. 144:21–145:13

¹⁸ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env'tl. Prot. Agency, on Interview with Addie Johnson 1 (Apr. 10, 2013).

location.”¹⁹ Additionally, the former director of Human Resources within OAR Omayra Salgado stated:

Beth Craig ... knew Beale was not around and that time cards were getting approved. Salgado told Craig that she (Salgado) was approving timecards for Beale, but because he was often absent, Salgado did not understand why she was continuing to approve his timecards. Craig told her that Beale worked for the CIA and Salgado never asked anyone else about it because Craig explained things and Salgado felt that was enough.²⁰

Accordingly, it is apparent that Craig bent several of EPA’s rules to accommodate Beale because of their close relationship and because she believed in his CIA cover story.

Craig Hooks

In an effort to justify her slow response to Beale’s fraud, Administrator Gina McCarthy has maintained that she relied on OARM’s advice in determining how to respond to the questions surrounding Beale, and that in her opinion, “the Beale matter was not a high priority for” OARM.²¹ A review of the facts suggests that the public narrative regarding Hooks’ role oversimplifies the decision making process that occurred between the time Beale’s pay issues were first discovered in July 2010 and April 2013, when Beale was allowed to voluntarily retire. At the time, Craig Hooks was the Assistant Administrator for OARM and thus was McCarthy’s peer. According to Hooks, “[he] had to give deference to Beale as a result of his position and reputation within EPA and OAR. Beale was a Deputy Assistant Administrator with a history of good work and that no actions were going to be taken without the facts to support them.”²²

According to documents obtained by the Committee, Hooks first learned of Beale’s pay issues in mid-2010.²³ Thereafter, OARM consulted with OAR on the issue of Beale’s bonuses and independently began an inquiry into whether or not Beale had adequate documentation for the bonuses. In January 2011, Hooks told McCarthy he wanted to consult with Deputy Administrator Perciasepe because he was the last official to sign off on Beale’s bonus in 2000. It appears that Hooks also raised the issue of Beale’s pay and absences to the Inspector General in a senior staff meeting. He was advised by Elkins at that time that the issue appeared to be a personnel issue and that the agency should handle it.²⁴ Elkins has corroborated these statements.²⁵ Finally, Hooks reviewed Beale’s personnel file and found there was nothing in Beale’s folder that would suggest he was CIA, though there was an SF-52 document signed by

¹⁹ *Id.* at 2.

²⁰ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Env’tl. Prot. Agency, on Interview with Omayra Salgado 3 (May 13, 2013).

²¹ Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Env’tl. Prot. Agency, on Interview with Gina McCarthy 2 (Nov. 18, 2013).

²² Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Env’tl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 3 (Nov. 18, 2013).

²³ *Id.* at 2.

²⁴ Notes of Kevin Collins, Auditor, Env’tl. Prot. Agency, on Interview with Susan Kantrowitz 2 (Nov. 13, 2013).

²⁵ Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Env’tl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 2 (Nov. 18, 2013).

the Administrator, which was very unusual and lead him to believe the CIA story might be true.²⁶ According to OARM officials, Hooks was also checking “that the White House is aware and there will not be any political fallout” from canceling Beale’s bonus.²⁷

However, in early 2011, Nancy Dunham with the Office of General Counsel (OGC) instructed employees in OARM to not use Beale's name in any documentation and to stop sending emails and other correspondence until they could confirm whether or not Beale had a “relationship with the CIA or intelligence community.”²⁸ Pursuant to Dunham’s instructions, OGC further instructed OARM “to keep hands off the Beale issue until further notice.”²⁹ An OARM official stated that based on instructions from OGC “her office stopped all work on the issue.”³⁰ Following OGC’s instructions, Hooks also told McCarthy to “hold any information exchange” with Beale.³¹ According to Hooks, he “did not want to get in Beale’s way or to compromise national security issues. That is why the matter was referred to the Office of General Counsel (OGC), Nancy Dunham in particular.”³² Thereafter, the “OGC never got back to Hooks, and ... Hooks” decided that until OGC advised him otherwise, he would not take further action.³³ For several months, no action was taken. When Beale announced his plans to retire in May 2011, it appears everyone thought the problem was solved.

When Scott Monroe discovered that Beale was still on payroll in March 2012, McCarthy immediately contacted Hooks. At the time, Hooks was surprised the situation had not already been handled. However, per the previous instructions by Nancy Dunham, Hooks deferred to OGC. According to Nancy Dunham, the Beale matter, “was considered a routine question involving pay and that it was not until the facts determined that he was not a CIA employee that the matter was referred to the OIG in Feb. 2013.”³⁴

Until this point, the question that was being raised was about the retention bonus. Therefore, there was no sense of urgency about the situation. The problem was lack of paperwork surrounding the bonus. After November 2012, the lack of attendance also became an issue.³⁵ (emphasis added)

In the end, it appears that Hooks was doing his job, but experienced significant interference from the OGC, as well as misguided advice from the OIG. Despite his efforts, Hooks should not be excused for the nearly two year delay in handling Beale’s pay issues, but

²⁶ *Id.*

²⁷ E-mail from Susan Smith, Env'tl. Prot. Agency, to Karen Higginbotham, Env'tl. Prot. Agency (Feb. 1, 2011 01:09 PM).

²⁸ Notes of Kevin Collins, Auditor, Env'tl. Prot. Agency, on Interview with Susan Kantrowitz 2 (Nov. 13, 2013).

²⁹ *Id.*

³⁰ *Id.*

³¹ E-mail from Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Env'tl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env'tl. Prot. Agency (Jan., 17, 2011 01:31 PM).

³² Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Env'tl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 2 (Nov. 18, 2013).

³³ *Id.*

³⁴ Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Env'tl. Prot. Agency, on Interview with Brenda Mallory 2 (Nov. 18, 2013).

³⁵ *Id.*

questions remain as to what direction, if any, he received from Dunham, Perciasepe or other senior officials in early 2011.

Scott Monroe

Scott Monroe became the Director of Human Resources in the Office of Air and Radiation in 2008.³⁶ In this role, Monroe was responsible for overseeing Beale's timecards, and dealing with general personnel matters regarding OAR employees.³⁷ Monroe began to "notice that Beale was never in the office" soon after he starting at OAR.³⁸ In 2008, Beale was not in the office for six months, but continued to collect his full salary plus bonus.³⁹ During this time Monroe approved Beale's timecards as part of a "mass approval to the [employee] group Beale was in."⁴⁰ According to Monroe, he gave mass approval to the group because there were too many to do individual approvals.⁴¹

In 2010, Monroe became aware that Beale's retention bonus was causing his salary to exceed statutory limitations.⁴² Acting on this information, Monroe sent an email to Beth Craig on July 16, 2010, with a report detailing the extent of the problems with Beale's retention bonus and salary.⁴³ He then reviewed "Beale's file and saw that the last retention bonus recertification was in 2000[,] but that the file contained no evidence of an offer that would have justified the retention bonus."⁴⁴ Monroe "did not know why the bonus was continued without recertification."⁴⁵ On December 15, 2010, Monroe contacted OARM, looking for ways to stop payment on Beale's retention bonus.⁴⁶ On January 12, 2011, Monroe raised the issue of Beale's retention bonus with McCarthy and recommended that she take action to cancel the bonus.⁴⁷ McCarthy responded asking Monroe to "put on hold any information exchange re: John Beale and payroll issues..." per Craig Hooks' request.⁴⁸ Monroe checked in with McCarthy on January 27, 2011, to see if she had heard back from Hooks as he was, "eager to move head [sic] with

³⁶ Notes of Bill Spinazzola, Office of Inspector General, Env'tl. Prot. Agency, on Interview with Scott Monroe 2 (Nov. 12, 2013).

³⁷ *Id.* at 2-3.

³⁸ *Id.* at 3.

³⁹ Beale Dep. 139:1-140:7.

⁴⁰ Notes of Bill Spinazzola, Office of Inspector General, Env'tl. Prot. Agency, on Interview with Scott Monroe 3 (Nov. 12, 2013).

⁴¹ *Id.*

⁴² *Id.*

⁴³ E-mail from Scott Monroe, Dir. Human Res., Office of Air & Radiation, Env'tl. Prot. Agency, to Beth Craig, Deputy Assist. Adm'r, Office of Air & Radiation, Env'tl. Prot. Agency, (July 16, 2010 10:02 AM).

⁴⁴ Notes of Bill Spinazzola, Office of Inspector General, Env'tl. Prot. Agency, on Interview with Scott Monroe 4 (Nov. 12, 2013).

⁴⁵ *Id.*

⁴⁶ E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env'tl. Prot. Agency to Susan Smith, Env'tl. Prot. Agency (Dec. 15, 2010 11:58 AM).

⁴⁷ Memorandum from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env'tl. Prot. Agency, to Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Env'tl. Prot. Agency, Regarding John Beale Retention Pay (Jan. 12, 2011).

⁴⁸ E-mail from Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Env'tl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env'tl. Prot. Agency (Jan., 17, 2011 01:31 PM).

canceling the bonus.”⁴⁹ McCarthy replied, “No he hasn’t. It’s now in his hands as far as I am concerned.”⁵⁰ Monroe never got the clearance he was seeking to cancel Beale’s bonus.

After Beale’s retirement party in September of 2011, Monroe noticed that Beale was still filing time cards and collecting pay.⁵¹ On March, 29, 2012, Monroe notified McCarthy that it appeared Beale was not retired and still collecting his salary.⁵² For several months, it appears Monroe’s concerns were put in abeyance as McCarthy stalled on contacting Beale to inquire his status. Then, on November 8, 2012, Monroe sent an email to McCarthy detailing that Beale had been “report[ing] an 8-hour regular schedule.”⁵³ Subsequently, McCarthy contacted Beale and eventually the Office of General Counsel, which ultimately led to reporting to the OIG and unraveling Beale’s fraud.

Conclusion

It is evident that there were widespread failures at EPA, across several offices (OAR, OGC, OARM, OIG and the Office of the Administrator) that allowed Beale’s fraud to continue unquestioned for so long. While John Beale is ultimately responsible for his crimes, his lies, and his abuse of his coworkers’ trust, it has become increasingly clear that there is a culture at EPA that is willing to ignore the rules, ignore all protocols, and even ignore all common sense when it came to protecting one of their own. While mistakenly trusting a coworker and a friend is not a crime, and on some level is even understandable, it does not excuse those individuals who looked the other way, who failed to do their due diligence, and who failed to act when the obvious facts were before them. After all, the public trust was broken, not just by John Beale, but by all those at EPA who failed to act when the facts before them should have compelled corrective action.

⁴⁹ E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env’tl. Prot. Agency, to Gina McCarthy, Assist Adm’r, Office of Air & Radiation, Env’tl. Prot. Agency (Jan. 27, 2011 05:56 PM).

⁵⁰ E-mail from Gina McCarthy, Adm’r, Office of Air and Radiation, Env’tl. Prot. Agency, to Scott Monroe, Dir. of Human Res., Office of Air and Radiation, Env’tl. Prot. Agency (Jan. 27, 2011 08:24PM EST).

⁵¹ Notes of Bill Spinazzola, Office of Inspector General, Env’tl. Prot. Agency, on Interview with Scott Monroe 4 (Nov. 12, 2013).

⁵² E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env’tl. Prot. Agency, to Gina McCarthy, Assist Adm’r, Office of Air & Radiation, Env’tl. Prot. Agency (Mar. 29, 2012 09:59 PM).

⁵³ E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Env’tl. Prot. Agency, to Gina McCarthy, Assist Adm’r, Office of Air & Radiation, Env’tl. Prot. Agency (Nov. 8, 2012 05:27 PM).

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

MEMORANDUM

TO: Republican Members of the Senate Committee on Environment and Public Works
FROM: Republican Committee Staff
DATE: March 4, 2014
RE: Additional Facts Relating to Beale Controversy and OIG Investigations

In the aftermath of the John Beale conviction, the Environmental Protection Agency (EPA) and the EPA Office of Inspector General (OIG) have seemingly treated the case closed following two OIG early warning reports on Beale's pay and travel issues and Beale's 32-month sentencing in December 2013. Concurrently, the Agency and the OIG have praised Administrator McCarthy's "leadership" on "uncovering" Beale's fraud in her former position as Beale's supervisor, and made representations to the public that Beale was an isolated incident - ostensibly to mitigate any concerns over McCarthy and the Agency's ability to confront waste, fraud and abuse.

Despite these efforts to characterize Beale as an isolated incident, Senate Committee on Environment and Public Works (EPW) Republican staff have learned that time and attendance fraud is widespread at the Agency. Moreover, EPW Republicans now understand that McCarthy was not exactly the hero in this case, and since becoming Administrator she has exacerbated a growing tension between Agency officials and the OIG. These concerns were shared with the OIG in a February 18, 2014, letter and email from Ranking Member Vitter to Inspector General Arthur Elkins. On February 24, 2014, the OIG provided a response letter to Senator Vitter, as well as a briefing to EPW Republican staff.

Subsequently, information provided by the OIG response letter and briefing, as well as additional non-public information obtained by EPW Republican staff, has prompted additional questions about EPA officials. These queries focus on officials in the OIG, Office of General Counsel (OGC) and Office of Homeland Security (OHS), and their role in the Agency's weak response to concerns over Beale, delayed reporting of such concerns to the OIG, and failure to cooperate with the OIG's subsequent investigation and audit. In an effort to keep EPW Republican Members fully informed on these matters, this memorandum synthesizes public information, including recent correspondence from the Agency and OIG, as well as non-public information obtained by EPW Republican staff.

Concerns with Nancy Dunham and the Office of General Counsel

Nancy Dunham, a staff attorney in the EPA's Office of General Counsel (OGC), was a pivotal player in EPA's response to the Beale fraud. In addition, she has become embroiled in a separate but related controversy dealing with the OIG's ability to conduct criminal investigations. It appears McCarthy personally selected Dunham to provide her counsel on the Beale case after McCarthy became aware of Beale's retention incentive bonus problems,¹ possibly in early 2011,² and in doing so gave Dunham full access to her emails related to Beale.³ However, in an interview with the OIG, Dunham claimed she was first made aware of problems related to Beale when human resources contacted the OGC on November 9, 2012.⁴ The OIG has since revealed in a letter to Ranking Member Vitter, that this statement was false and explained that Dunham may have been aware of Beale months and possibly years prior to November 2012.⁵ This admission challenges both the OIG and EPA public assertions that McCarthy first reported her concerns to the OGC, and specifically to Dunham, on the Beale case "on or around November 1, 2012."⁶ Importantly, the OIG is unable to provide any physical evidence, either in the form of email or memorandum, to support this later claim. Rather, the OIG relied on three interviews with EPA officials, including Dunham's deceitful interview and McCarthy's personal account of the facts, to support the narrative that McCarthy was the first to uncover Beale's fraud.⁷ Notably, in forming this conclusion, none of the interviews discuss any date close to November 1, 2012.

New information also gives rise to additional questions about EPA and the OIG's official story on when McCarthy reported her concerns to the OIG. Since McCarthy selected Dunham, who specialized in national security issues, EPA officials involved believed the Beale case was a national security issue.⁸ This determination was communicated to the Office of Administration

¹ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Gina McCarthy at 3 (Feb. 27, 2013) ("McCarthy stated that after finding out about the continued payment of the retention incentive to Beale, McCarthy sought legal counsel from Nancy Dunham").

² See Memorandum from Scott Monroe, Office of Human Res., Office of Air & Radiation, Evtl. Prot. Agency, to Gina McCarthy, Assistant Adm'r, Office of Air & Radiation, Evtl. Prot. Agency (Jan. 12, 2011) (notifying McCarthy of lack of documentation supporting Beale's retention incentive bonus, noting "OGC advised that EPA should not continue to pay the allowance...").

³ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Gina McCarthy at 3 (Feb. 27, 2013).

⁴ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013).

⁵ Letter from Hon. Arthur Elkins, Inspector Gen., Evtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works at 4 (Feb. 24, 2014) ("OA later developed information through other interviews which indicates that Ms. Dunham may have been aware of Mr. Beale's pay issues several months or even a year prior to what she told OI during her interview").

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013) ("Dunham stated that she has worked in EPA OGC since 2003

and Resource Management (OARM) and impeded their efforts to settle issues with Beale's pay and bonuses because they "did not wish to get in Beale's way or to compromise any national security issues."⁹ In treating the case as a national security issue, on November 16, 2012, Dunham referred her concerns to Senior Intelligence Advisor Steve Williams at OHS.¹⁰ In this position, Williams is the Agency's liaison with the intelligence community,¹¹ and pursuant to Intelligence Community Directive 304,¹² Williams would have been made aware of any EPA officials jointly employed by the intelligence community. In fact, under Directive 304, which was effective in March 2008, three Agency officials, including the Senior Intelligence Officer, the General Counsel and the Administrator, should be notified of employees with classified relationships with the intelligence community.¹³ Accordingly, Dunham's decision to delay notification to Williams of her concerns regarding Beale's status as a CIA agent is worrisome as Williams was one of the individuals who would have been aware of other CIA operatives at the Agency, pursuant to Directive 304.

Despite Dunham's delayed consultation with OHS, according to new evidence obtained by EPW Republicans, it appears Dunham continued to meddle with the Agency's handling of the matter by taking on an investigatory role herself. Specifically, on the same day she contacted Williams, Dunham spoke with Karen Higginbotham of OARM regarding Beale's lack of documentation, and on December 3, 2012, Dunham interviewed Scott Monroe in the Office of Human Resources within the Office of Air and Radiation, questioning his knowledge of Beale's CIA work.¹⁴ Approximately a week later, Williams informed Dunham that Beale never had a security clearance and it was highly unlikely he worked for CIA.¹⁵ Thereafter, Dunham shared her findings with McCarthy.¹⁶ On January 28, 2013, Dunham reported her concerns of Beale directly to the EPA OIG General Counsel Al Larsen, one of the most senior officials in the OIG.¹⁷ Oddly, the OIG has continued to assert it was not made aware of the Beale matter until

as an Attorney Advisor specializing in employment litigation and national security matters"); *see also* Interview Notes from Office of Inspector Gen., Evtl. Prot. Agency, Interview with Craig Hooks (Nov. 14, 2013).

⁹ Interview Notes from Office of Inspector Gen., Evtl. Prot. Agency, Interview with Craig Hooks (Nov. 14, 2013) ("Hooks said that he did not wish to get in Beale's way or to compromise any national security issues. That is why the matter was referred to the Office of General Counsel, Nancy Dunham in particular. OGC never got back to Hooks and until Hooks heard anything, no actions were going to be taken").

¹⁰ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013); Sworn Statement of Steve Williams at 2 (Mar. 29, 2013).

¹¹ *See* Evtl. Prot. Agency, Office of Homeland Security, Our Responsibility, <http://www.epa.gov/ohs/responsibilities.htm> (last visited Feb. 28, 2014).

¹² OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE, INTELLIGENCE COMMUNITY DIRECTIVE NO. 304 (effective Mar. 6, 2008), <http://www.fas.org/irp/dni/icd/icd-304.pdf>.

¹³ *Id.*; *see also* Sworn Statement of Steve Williams at 3 (Mar. 29, 2013).

¹⁴ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Nancy Dunham at 1-2 (Mar. 28, 2013).

¹⁵ Sworn Statement of Steve Williams at 3 (Mar. 29, 2013).

¹⁶ *Id.*

¹⁷ Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Evtl. Prot. Agency, Interview with Nancy Dunham at 3 (Mar. 28, 2013).

February 11, 2013, when McCarthy finally reported the matter.¹⁸ Incidentally, McCarthy was accompanied by Dunham at the meeting with the OIG to discuss concerns over Beale.¹⁹

Dunham herself has served as an obstacle in resolving questions about the delay in reporting the Beale matter to the OIG. When the OIG conducted an audit, pursuant to Ranking Member Vitter's August 27, 2013, request,²⁰ she refused to be interviewed, citing recent issues between Agency and OIG officials.²¹ There is little precedent for a current EPA employee to refuse to cooperate with an OIG audit, yet Dunham has done so with apparently no penalty. Moreover, at the time of her refusal, Dunham's decision was maintained by Acting Principal Associate General Counsel Kevin Minoli in an email and memorandum to the OIG.²² Specifically, Mr. Minoli stated:

I write to inform you that Nancy Dunham has determined she will not make herself available for a second interview with the Office of Inspector General (OIG) regarding the Beale matter, until the agency's efforts to resolve the issues between the OIG and EPA employees who work on national security issues are completed... Ms. Dunham is now concerned that she is in fact the target of an OIG investigation regarding this matter, rather than merely a helpful witness.²³

The Committee has learned that one of the issues Dunham cited in her refusal to cooperate spawned from an altercation between OHS and OIG employees to which Dunham was a witness.²⁴ In response to that heated exchange, McCarthy wrote to both the OIG and OHS ordering them to stand down from an investigation of both the incident, as well as the underlying investigation.²⁵ Troublingly, this letter suggests that the Inspector General is a subordinate to McCarthy and not the Presidential appointee of an independent entity within the Agency. Moreover, in his letter to the OIG, Deputy Administrator Bob Perciasepe characterized McCarthy's stand down letter as having no relation to the Beale matter.²⁶ However, such

¹⁸ Letter from Hon. Arthur Elkins, Inspector Gen., Env'tl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works at 2 (Feb. 24, 2014).

¹⁹ Memorandum from Douglas Zmorzenski, Special Agent in Charge, Office of Inspector Gen., Env'tl. Prot. Agency, to Patrick Sullivan, Assistant Inspector Gen., Office of Investigations, Office of Inspector Gen., Env'tl. Prot. Agency (Feb. 12, 2013) ("The employee investigation was reported to you during a meeting with Gina McCarthy, EPA, Assistant Administrator, Office of Air and Radiation and Nancy Dunham, EPA, Attorney, Office of General Counsel").

²⁰ Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works, to Hon. Arthur Elkins, Inspector Gen., Env'tl. Prot. Agency (Aug. 27, 2013).

²¹ Notes from Office of Inspector Gen., OGC Staff Member – Refusal of Interview (Nov. 26, 2013).

²² *Id.*

²³ Email from Kevin Minoli, Acting Principal Assoc. Gen. Counsel, Office of Gen. Counsel, Env'tl. Prot. Agency, to Robert Adachi, Office of Audit, Office of Inspector Gen., Env'tl. Prot. Agency (Nov. 21, 2013, 06:32 AM EST).

²⁴ Briefing by Office of Inspector Gen., Env'tl. Prot. Agency for Republican Staff, S. Comm. on Env't & Public Works (Feb. 24, 2014).

²⁵ Letter from Gina McCarthy, Adm'r, Env'tl. Prot. Agency, to Arthur Elkins, Inspector Gen., Env'tl. Prot. Agency & Juan Reyes, Acting Assoc. Adm'r, Office of Homeland Security, Env'tl. Prot. Agency (Oct. 28, 2013).

²⁶ Letter from Bob Perciasepe, Dep. Adm'r, Env'tl. Prot. Agency, to Arthur Elkins, Inspector Gen., Env'tl. Prot. Agency (Feb. 27, 2014).

assertion ignores the fact that Dunham herself has personal knowledge of McCarthy's handling of the Beale matter and that Dunham refused to cooperate with the OIG on the Beale matter. Despite the claim of being unrelated to the Beale matter, it appears that the stand down letter is centrally related to the OIG's ability to obtain full information about the Beale matter. Further, it appears that McCarthy's letter shields Dunham from her obligation to cooperate with the OIG. Overall, Dunham's unwillingness to cooperate reveals a lack of transparency and accountability at the Agency as gaps in the story on Beale remain.

Concerns with Steve Williams and the Office of Homeland Security

The Committee has obtained evidence that suggests Steven Williams and other employees in EPA's Office of Homeland Security, a small office comprised of just five EPA officials, have potentially hindered investigations undertaken by the EPA OIG. On November 16, 2012, Nancy Dunham referred concerns over Beale's CIA status to Williams.²⁷ Despite the fact that Williams, pursuant to Intelligence Community Directive 304, should have already known whether or not Beale was jointly employed with the CIA, Williams reached out the CIA to determine whether or not Beale actually worked with an intelligence agency.²⁸ On November 26, 2012, Williams asked his colleague in OHS, John Martin, to contact the CIA regarding Beale's status.²⁹ The CIA informed Williams on December 3, 2012, that "CIA had no knowledge of a relationship or agreement with Mr. Beale" and "such a relationship was highly unlikely."³⁰

On December 12, 2012, Williams, along with Dunham, relayed this information to Gina McCarthy at an in-person meeting.³¹ The next day Williams met with Beale, but failed to challenge Beale's CIA claims.³² Rather, Williams sought "to reassure [Beale] ... that [his] offer was to help,"³³ and over the next two months as Beale deflected William's inquiries, no one at EPA pushed back on his claims.³⁴ In fact, it was not until June 2013 that Beale finally admitted he did not work for the CIA.³⁵ Thus, it appears that Williams not only "tipped off" Beale that the Agency was suspicious of his CIA identity, but his efforts appear to have delayed the OIG investigation, which could have aggravated Beale's fraud.

²⁷ Sworn Statement of Steve Williams at 2 (Mar. 29, 2013).

²⁸ *Id.* at 3.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.* at 4

³⁴ *Id.* at 4-5

³⁵ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. On Oversight and Government Reform*, 113th Cong. (Oct. 1, 2013) (Testimony of Patrick Sullivan, Office of Inspector Gen., Env'tl. Prot. Agency).

Williams has also been at the center of recent disruptions to OIG investigations. It appears that Williams routinely “issued non-disclosure agreements to EPA employees that prevented these employees from cooperating with OIG investigations.”³⁶ Further, EPW Republicans have learned that on several occasions Williams’ interactions with OIG investigators have impeded the OIG from carrying out their responsibilities.³⁷ In one instance involving Williams and an OIG agent, Williams effectively caused an unnecessary delay as Administrator McCarthy subsequently put a hold on the OIG’s investigation.³⁸ Notably, John Martin, the OHS official who contacted the CIA regarding Beale on Williams’s behalf, was also involved in this incident. Specifically, the incident occurred as an OIG agent attempted to get Martin, to sign a customary non-disclosure form required of those interviewed in the course of an OIG investigation.³⁹ However, it appears no one has been held accountable for these issues. Indeed, following Administrator McCarthy’s stand down letter to the OIG and OHS, the Acting Associate Administrator for OHS, Juan Reyes, retired, thus excusing Mr. Reyes from subsequent OIG questioning.⁴⁰ Accordingly, it seems the OHS has continued to hinder transparency and a timely resolution of Agency investigations into potential misconduct.

Concerns with Office of Inspector General

Aside from the issues described in this memorandum, it is important to note that the OIG’s February 24, 2014, letter to Ranking Member Vitter included additional discrepancies. First, the statement that EPW Republican staff request for a January 12, 2011, memo to Gina McCarthy was simply an “oral” request that led to confusion is false. The request was submitted in writing and specifically identified by date and description the subsequently disclosed memo.⁴¹ Following the letter, OIG staff has apologized for this misunderstanding, but has failed to update their response letter.

Second, the OIG’s assertion that Inspector General Elkins never considered the Beale case a human resources matter appears to be an effort to parse words as the OIG notes from an

³⁶ Letter from Arthur Elkins, Inspector Gen., Env’tl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env’t & Pub. Works at 5 (Feb. 24, 2014).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Briefing by Office of Inspector Gen., Env’tl. Prot. Agency, for Republican Staff, S. Comm. on Env’t & Public Works (Feb. 24, 2014).

⁴⁰ *Id.*

⁴¹ Email from Republican Staff, S. Comm. on Env’t & Public Works, to Staff, Office of Inspector Gen., Env’tl. Prot. Agency (Dec. 13, 2013, 10:52 AM EST) (“...January 12, 2011 memorandum to Gina McCarthy advising that she stop Beale’s retention bonuses, as well as the emails referenced in the report”); Email from Republican Staff, S. Comm. on Env’t & Public Works, to Staff, Office of Inspector Gen., Env’tl. Prot. Agency (Dec. 16, 2013, 11:47 AM EST) (“[T]he January 12, 2011, memorandum to Gina McCarthy was not included in the documents...”); Email from Staff, Office of Inspector Gen., Env’tl. Prot. Agency, to Republican Staff, S. Comm. on Env’t & Public Works (Dec. 16, 2013, 11:56 AM EST) (“Auditor Bob Adachi has confirmed that there is not a memorandum of that date to Gina McCarthy”).

interview, to which IG Elkins attended, with Assistant Administrator for OARM, Craig Hooks, plainly stated that Elkins viewed the issue as an administrative matter:

Hooks mentioned that he had discussed the Beale matter and his involvement in the CIA with Arthur Elkins, EPA IG, after one of the Senior Staff meetings. Elkins mentioned that Hooks never mentioned anything about the CIA. Hooks corrected himself that he asked about any employee attendance matter and that Elkins told him that it seemed like an administrative matter that should be handled by Agency management. Elkins agreed with Hooks recollection (emphasis added).⁴²

Despite this account, OIG staff has asserted that Elkins could not remember such conversation, hinting that either Hooks' interview may not have been fully accurate or the OIG staff preparing the notes did not accurately record IG Elkins recollection of events.

Conclusion

These new facts further weaken the public narrative offered by the OIG and the EPA. Rather, they indicate that the public did not receive the full account of the case in an apparent effort to shield high ranking EPA officials from accountability. Accordingly, EPW Republicans will continue its investigation and probe for more information from the OIG and Agency to bring transparency to the biggest scandal at the EPA.

⁴² Interview Notes from Office of Inspector Gen., Env'tl. Prot. Agency, Interview with Craig Hooks at 2 (Nov. 14, 2013).