



HOUSE COMMITTEE ON
NATURAL RESOURCES
REPUBLICANS | RANKING MEMBER ROB BISHOP

Disproving Democrat Allegations of Recordkeeping Wrongdoing at the Interior Department

**Minority Interim Staff Report
Committee on Oversight and Reform
Committee on Natural Resources
U.S. House of Representatives**



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EXECUTIVE SUMMARY

Approximately six months ago, Chairman Elijah Cummings and Chairman Raúl Grijalva initiated partisan investigations into allegations that the Department of the Interior (DOI) was hiding meetings taken by then-Acting Secretary David Bernhardt. These allegations had initially been made and repeated by left-wing special interest groups opposed to Bernhardt and his background. Although the Oversight and Reform Committee has traditionally overseen compliance with the Freedom of Information Act (FOIA) and records management laws on a bipartisan basis, Chairman Cummings opened his investigation without even consulting Republican Committee Members. Likewise, in an unprecedented and overbroad initial document request, Chairman Grijalva requested the entirety of Bernhardt’s calendars and schedules from the date of his confirmation as the Deputy Secretary of the Interior. No Republican Natural Resources Committee Members were consulted by Chairman Grijalva prior to initiating his investigation.

Since then—contrary to Chairman Cummings’s assertion of a “cover-up” on all congressional investigations¹ and Chairman Grijalva’s allegations that Bernhardt treats “congressional requests for information as a nuisance he can ignore . . .”²—Bernhardt and DOI have cooperated extensively with the Chairman’s investigation. DOI has produced tens of thousands of pages of documents, including Bernhardt’s calendars, daily cards, and scheduling emails. DOI has made four employees available for day-long interviews with the Committees. Quite simply, the Committees have a comprehensive record from which to judge DOI’s compliance with federal law.

The record before the Committees shows conclusively that the allegations levied against Bernhardt and DOI are unfounded.

- There is no evidence to suggest that DOI is deleting or altering Bernhardt’s calendars or that Bernhardt is skirting his ethical obligations.
- DOI witnesses explained that Bernhardt’s various calendars and schedules have been preserved and made available to the public.
- DOI witnesses detailed how all of Bernhardt’s external meetings undergo a rigorous ethics review process and are approved by career DOI ethics officials and that there is no indication that Bernhardt has ever sought to depart from his ethical obligations.
- DOI witnesses testified that Bernhardt has personally insisted that DOI political appointees take ethical training regularly.
- DOI witnesses denied allegations that Bernhardt was deleting or altering his calendars to hide his meetings from the American public.
- An independent review by the nonpartisan National Archives and Records Administration—a review that Chairman Cummings requested—also found no evidence of records mismanagement.

¹ See, e.g., 165 Cong. Rec. H4414 (June 11, 2019) (statement of Rep. Elijah E. Cummings).

² Press Release, Rep. Raúl Grijalva, Secretary Bernhardt “Not Losing Sleep” Over Climate Change Concerns Me – and So Does His Lack of Transparency With Congress (May 16, 2019), https://naturalresources.house.gov/media/press-releases/chair-grijalva-secretary-bernhardt-not-losing-sleep-over-climate-change-concerns-me_and-so-does-his-lack-of-transparency-with-congress.

- DOI witnesses testified that they disagreed with the assertion of a “cover-up” on congressional investigations.

Because Chairman Cummings and Chairman Grijalva have already used cherry-picked information to create a false impression about DOI’s FOIA compliance and Bernhardt’s transparency, this interim staff report sets the record straight about the allegations levied against Bernhardt and DOI. The record is clear that contrary to public allegations of wrongdoing, DOI and Bernhardt have acted appropriately and ethically in maintaining and preserving the Secretary’s calendar records, as well as making them publicly available.

FINDINGS

1. *Contrary to allegations, Secretary Bernhardt takes his ethics obligations very seriously.*

Bernhardt places an emphasis on ethics. As Secretary and Deputy Secretary, Bernhardt implemented several new procedures to ensure he complied with his ethics requirements. These procedures exceed any requirements ever implemented for previous secretaries or deputy secretaries.

2. *Contrary to allegations, Secretary Bernhardt is not hiding his meetings from the public.*

The Department publishes Bernhardt's meetings on its official website and makes scheduling documents available on its official website. Although discrepancies may exist between varying types of Bernhardt's scheduling documents, the different purposes of the documents explain such discrepancies. The discrepancies do not evidence that Bernhardt is nefariously hiding his meetings.

3. *Contrary to allegations, Secretary Bernhardt is not using vague meeting labels to hide his meeting participants.*

The Department publishes Bernhardt's meetings, including attendees, each week on its official website. Bernhardt's calendars are created for internal use—not for a public audience. The use of vague meeting labels does not suggest an effort to hide his meetings, and witnesses denied any effort to hide the Secretary's meetings.

4. *Contrary to allegations, Secretary Bernhardt's calendar records are appropriately preserved.*

Bernhardt's calendar records are preserved, have been produced to the Committees, and are available on the Department's official website. Following an independent review, the National Archives determined that the Department has appropriately preserved the Secretary's calendar records.

5. *The Trump Administration has cooperated extensively with Chairman Cummings's and Chairman Grijalva's investigation.*

Contrary to Chairman Cummings's assertions of a "cover-up" on all congressional investigations and Chairman Grijalva's allegation that Bernhardt treats "congressional requests for information as a nuisance he can ignore," the Department has cooperated with this investigation. The Department has voluntarily produced documents and made several witnesses available for day-long transcribed interviews. The Department has been transparent and forthcoming in responding to all of the chairmen's partisan demands.

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BACKGROUND

On April 28, 2017, President Trump nominated David Bernhardt to be the Deputy Secretary of the Interior. Prior to his nomination, Bernhardt worked at a private, Colorado-based law firm, where he specialized in natural resources law. When Bernhardt accepted the position at DOI, he signed an ethics agreement to prevent conflicts of interest arising from any overlap between his former clients and the industries petitioning DOI.³ In his ethics agreement, Bernhardt agreed to comply with all applicable ethics regulations and laws relating to interactions with his former clients.⁴ When Bernhardt started at DOI, he worked with the Department's Ethics Office to fully comply with this agreement. During this process, the Ethics Office developed a recusal card, which Bernhardt carried in his pocket.⁵ Throughout his tenure at DOI, Bernhardt, his staff, and the Department's career ethics officials have gone to great lengths to ensure Bernhardt does not engage in prohibited activity.

On February 7, 2019, Chairman Grijalva insinuated the existence of nefarious manipulation of Bernhardt's calendars to avoid full disclosure of meetings. In Chairman Grijalva's letter to Bernhardt, he requested production of the entirety of Bernhardt's calendars and related scheduling documents.⁶ On March 19, 2019, Chairman Cummings opened an investigation into the alleged unauthorized disposition of records at DOI. In Chairman Cummings's letter to the National Archives and Records Administration (NARA), he asked NARA to inspect records management practices at DOI to determine if "all of the Acting Secretary's meetings are being captured and preserved in accordance with DOI's record schedules."⁷ Nine days after requesting a review by NARA, Chairman Cummings and Chairman Grijalva opened a joint investigation. The chairmen wrote to then-Acting Secretary David Bernhardt to request transcribed interviews with four DOI employees about the preservation and production of records of Bernhardt's daily activities.

As a basis for opening this investigation, the chairmen's letter cited a single, cherry-picked excerpt of an exchange between Chairman Cummings and DOI's Deputy Chief FOIA Officer, Rachel Spector, during an Oversight and Reform Committee hearing to raise questions about whether DOI is "adequately preserving records of [Secretary Bernhardt's] schedule and

³ Letter from David Bernhardt, to Melinda Loftin, Designated Agency Ethics Official, Dep't of the Interior (May 1, 2019), [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/074A50155ADA5362852581190026EE88/\\$FILE/Bernhardt,%20David%20L.%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/074A50155ADA5362852581190026EE88/$FILE/Bernhardt,%20David%20L.%20%20finalEA.pdf) [hereinafter "2017 Ethics Agreement"].

⁴ *Id.*

⁵ Todd Willens Transcribed Interview 35, Jul. 18, 2019 (on file with Committee) [hereinafter "Willens Interview"]. Many of the witnesses interviewed by the Committee also carried a copy of Bernhardt's recusal card with them.

⁶ Letter from Rep. Raúl Grijalva, H. Comm. on Natural Resources, to Hon. David Bernhardt, Acting Sec'y, U.S. Dep't of the Interior (Feb. 7, 2019).

⁷ Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Record Admin. (Mar. 19, 2019).

daily appointments.”⁸ Specifically, the chairmen alleged that Spector testified at the hearing that she was “aware of an issue” concerning the deletion of Bernhardt’s calendars.⁹

However, as Ranking Member Jim Jordan noted in an April 9, 2019, letter to Bernhardt, Chairman Cummings mischaracterized Spector’s testimony. Spector’s statement referred to public allegations that Bernhardt’s calendars had been deleted, not—as the chairmen alleged—the deletion of the calendars.¹⁰ In fact, Spector specifically testified that she “d[id] not know”¹¹ whether Bernhardt’s calendars had been deleted, a fact Chairman Cummings omitted from his letter to Secretary Bernhardt.¹²

On April 10, 2019, to assist Chairman Cummings’s and Chairman Grijalva’s investigation, DOI produced—unsolicited—nearly 27,000 pages of scheduling documents, including meeting request forms, scheduling emails, daily cards, and calendars. Nonetheless, Chairman Cummings sent a series of letters to DOI demanding additional information from DOI, including one letter that threatened to withhold the salaries of DOI employees.¹³

On May 17, 2019, DOI provided a bipartisan briefing to staff from both committees about DOI’s records management and retention policies. At this briefing, DOI officials said the key takeaway from their internal records management review was that records were never destroyed.¹⁴ Still unsatisfied, Chairman Cummings and Chairman Grijalva insisted upon obtaining direct testimony from the four DOI employees.

On June 10, 2019, the Committees interviewed Catherine Gulac, a career Administrative Assistant to the Office of the Deputy Secretary. During the two hour-long interview, Gulac testified that she has never been instructed to delete anything from Secretary Bernhardt’s calendar and was unaware of meetings being deleted during Bernhardt’s tenure.¹⁵ The Committees conducted transcribed interviews of three more DOI officials:

- June 14, 2019: Gareth Rees, Executive Assistant to the Secretary
- June 18, 2018: Samantha Hebert, Director of the Office of Scheduling and Advance
- July 18, 2019: Todd Willens, Chief of Staff

⁸ Letter from Reps. Elijah Cummings & Raúl Grijalva, U.S. Congress, to Hon. David Bernhardt, Acting Sec’y, U.S. Dep’t of the Interior (Mar. 28, 2019).

⁹ *Id.*

¹⁰ *FOIA: Examining Transparency Under the Trump Administration Before the H. Comm. on Oversight & Reform*, 116th Cong. 72 (2019).

¹¹ *Id.*

¹² Letter, *supra* note 7.

¹³ *See generally*, Letters from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Todd Willens, Catherine Gulac, Gareth Rees, & Samantha Hebert, U.S. Dep’t of the Interior (Apr. 17, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Cole Rojewski, Dir. of Cong. & Legislative Affairs, U.S. Dep’t of the Interior (May 7, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. David Bernhardt, Sec’y, U.S. Dep’t of the Interior (May 31, 2019).

¹⁴ Briefing by U.S. Dep’t of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (May 17, 2019). The DOI’s chief records officer even stated that Secretary Bernhardt was one of the most engaged political appointees during records management training and was intimately familiar with records management.

¹⁵ Briefing by Catherine Gulac, Admin. Assistant, U.S. Dep’t of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (Jun. 10, 2019).

These three transcribed interviews totaled more than 22 hours of the witnesses', DOI counsels', and committee staff's time. The testimony from these three witnesses echoed Gulac's testimony.

Based on the voluminous record before the Committees—including nearly 27,000 pages of documents and approximately 700 pages of witness testimony—this report sets the record straight about DOI recordkeeping and public release practices.

FINDING 1: SECRETARY BERNHARDT TAKES HIS ETHICS OBLIGATIONS VERY SERIOUSLY

Myth: Secretary Bernhardt skirts his executive branch ethics obligations.

Fact: Secretary Bernhardt places an emphasis on ethics. As Secretary and Deputy Secretary, Secretary Bernhardt implemented several new procedures to ensure he complied with his ethics requirements. These procedures exceed any requirements ever implemented for previous secretaries or deputy secretaries.

Democrats and liberal special interests have alleged that Bernhardt's calendars are being altered or deleted so that the Secretary can skirt his ethics obligations and secretly meet with oil lobbyists.¹⁶ This allegation is not supported by evidence presented to the Committees, which actually shows the opposite. Every DOI official interviewed by the Committees—both career employees and political appointees—testified that Bernhardt sought to ensure that he is fully complying with his ethical obligations.

Witness testimony shows Bernhardt knows and follows his ethics obligations

Gareth Rees, a career civil servant who has worked closely with Bernhardt since Bernhardt rejoined the DOI as Deputy Secretary in August 2017, explained that Bernhardt was well aware of his ethical obligations. Rees testified:

Q. Are you generally aware what ethics regulations Mr. Bernhardt must comply with?

A. I always have my ethics recusal card with me, so yes.

Q. So you are aware that he is not permitted to meet with certain individuals?

¹⁶ See generally, *U.S. Department of the Interior Budget and Policy Priorities for FY 2020 Before the H. Comm. on Natural Res.*, 116th Cong. (2019); Juliet Eilperin, *Zinke's #2 Has So Many Potential Conflicts of Interest He Has to Carry a List of Them All*, WASH POST (Nov. 19, 2018), https://www.washingtonpost.com/national/health-science/the-man-behind-the-curtain-interiors-no-2-helps-drive-trumps-agenda/2018/11/18/6403eb4c-e9ff-11e8-b8dc-66cca409c180_story.html?utm_term=.207c96334ff0; Jacob Holzman, *Newly Disclosed Meetings with Industry Create Ethics Questions for Interior Secretary*, ROLL CALL (Apr. 8, 2019), <https://www.rollcall.com/news/bernhardt-schedules-undisclosed-contacts-industry>.

A. Certain individuals and companies, yes.

Q. Do you think Mr. Bernhardt generally knows who he can and cannot meet with?

A. I was—I would believe so.

Q. And the recusal card that you showed, does it list all of the individuals [and] groups that he is not allowed to meet with?

A. Yes.

Q. Did you help put this list together? Who created that list?

A. I did not help put the list together. The list was between Mr. Bernhardt and the ethics office. I was just the one who created the easy pocket card for people to carry around.

Q. Does Mr. Bernhardt carry one of those pocket cards around with him?

A. He does.¹⁷

Rees also said that Bernhardt is not afraid to reach out directly to DOI's Ethics Office for ethics guidance. He explained: "[Secretary Bernhardt] will reach out directly to the ethics office. If he has a question, yeah, he will regularly reach out to them and work with them. My previous deputy [secretary] that I worked for I did not experience—experience that. He [Bernhardt] likes to have his weekly meetings with the ethics team."¹⁸

Samantha Hebert, the DOI official who currently maintains Bernhardt's calendar, similarly testified that Bernhardt stresses his ethical obligations "relentlessly." She testified:

He's very much an ethical person because—I think more than anything else I've ever heard David Bernhardt speak about is about Ethics and General Law and how important Ethics is at the Department of the Interior. Everyone there hears him talk about it relentlessly, that we follow all of the Ethics rules and that all of the meetings go through Ethics. It's been a big part of him being there.¹⁹

Hebert confirmed that Bernhardt understands and follows his ethics requirements, explaining:

Q. Do you believe Mr. Bernhardt understands what ethics regulations

¹⁷ Gareth Rees Transcribed Interview 50-51, Jun. 14, 2019 (on file with Committee) [hereinafter "Rees Interview"].

¹⁸ *Id.* at 47.

¹⁹ Samantha Hebert Transcribed Interview 80, Jun. 18, 2019 (on file with Committee) [hereinafter "Hebert Interview"].

he must abide by?

A. Absolutely.

Q. Are you generally aware of Mr. Bernhardt's recusals?

A. I'm generally aware of them, but I also have a card that I keep with me that has them on it.

Q. Do you think Mr. Bernhardt generally knows who he is and is not supposed to meet with?

A. Oh, he absolutely knows.²⁰

Like Rees, Hebert informed the Committees that Bernhardt has a weekly meeting with the Ethics Office.²¹ Hebert also separately meets twice a week with the Ethics Office.²²

At his transcribed interview, DOI's Chief of Staff, Todd Willens, described Bernhardt's character as exemplary, stating:

He's a great guy to work for. Ethical, clear in his direction, consistent in his character. I've worked on the Hill—I've been in Federal service for 20 years. I've worked on the Hill for 16 of those 20. I've been in Federal Government affairs or government affairs for 25 years, and I'd say—and I've worked with a lot of Members of Congress, and they're all good people in their own right, but the level of Ethics, character, that Mr. Bernhardt has is above all of them in my career. I feel I'm at the apex.²³

Bernhardt implemented rigorous procedures to comply with his ethics obligations

According to witness testimony and documents, Bernhardt has implemented several procedures since returning to DOI in 2017 to ensure that DOI career ethics officials review and approve his meetings. In an email to a meeting requestor, Hebert explained the new process as “a rigorous ethics approval process” in which meetings cannot be confirmed “until that process is complete.”²⁴

When he began as Deputy Secretary, Bernhardt worked with the Ethics Office to develop a meeting request form, which collects more information from external meeting requesters than DOI had ever collected for any previous deputy secretary or secretary.²⁵ Rees explained how the

²⁰ *Id.* at 51.

²¹ *Id.* at 49.

²² *Id.* at 109.

²³ Willens Interview at 48.

²⁴ E-mail from Samantha Hebert, Director of Scheduling and Advance, Dep't of the Interior (Feb. 22, 2019, 11:07 AM) (DOI_00011511_0001481).

²⁵ The meeting request form is reproduced as Appendix I to this report.

meeting request form and ethical vetting process developed when Bernhardt became Deputy Secretary. He testified:

Q. So you said that there is a form now that you developed when Mr. Bernhardt became deputy secretary. Is that correct?

A. Yes.

Q. This is the form. Are there other forms that you might have used?

A. This would appear to be the form that we used. I know -- I do know that it has been updated. It was updated at one point last year.

Q. Okay. And just to confirm, you are speaking about Exhibit 1?

A. Exhibit 1 would be the form.

Q. Okay. What are some of the other changes that might have occurred on that initial intake process?

A. The biggest one since [former Obama DOI Deputy Secretary] Mike Connor to David Bernhardt has been that any meeting request from an external party must be reviewed by our Ethics Office.

Q. And can you tell me a little bit—so is this meeting form part of that, Exhibit 1?

A. The meeting form, Exhibit 1, is part of that. This form, somebody will email us or call us requesting a meeting with the deputy secretary, we would send out this form to the company or the individual. They would need to complete that form.

Once that form was returned to us completed, I would have a quick look through it to see if there was any glaring issues that could potentially arise with regard to his recusal list.

And then the process that would take place was that we would make the decision as to whether the deputy secretary would likely take the meeting or not take the meeting, at which point it would be submitted to the Ethics Office for review to see if they would approve it or not approve it.²⁶

* * *

Q. So why did you start using this form?

²⁶ Rees Interview at 18-19.

A. This was a form that the deputy—the deputy secretary wanted to be very careful with regards to his ethics recusals and wanted to have something in place that would catch as much information as possible so we could then work with the Ethics Office.²⁷

Rees testified that if Secretary Bernhardt planned to take a meeting, it was standard practice to send all meeting request forms to the Ethics Office for review and approval.²⁸

Hebert confirmed this rigorous ethics approval process is still in place following Bernhardt's confirmation as Secretary. Hebert testified:

Q. After you receive the form, does the form then go to the Ethics Office?

A. Yes.

Q. And do the schedulers consult with the Ethics Department on every meeting request?

A. Yes. Well, every meeting request that the Secretary is going to accept. We wouldn't send them every single meeting request that comes in, because they don't have time to review hundreds of meeting requests.

Q. So just to confirm, you speak with the Secretary first to determine if he would like to accept or decline the meeting request?

A. Yes.

Q. And then if he would like to accept the request, you send those meeting request forms to the Ethics Office?

A. Yes.

Q. And in your email you say: I cannot schedule it permanently until that process is complete.

Is it true meetings are not scheduled until the request forms are reviewed and approved by Ethics?

A. Yes.

Q. Has this been the practice throughout Mr. Bernhardt's tenure as

²⁷ *Id.* at 19.

²⁸ *Id.* at 57-58.

Secretary?

A. Yes.²⁹

Hebert testified that after Bernhardt became Secretary, all his personal meetings also received vetting through the ethics review process.³⁰

The meeting request form itself reminds the meeting requestor about Secretary Bernhardt's commitment to ethics. The top of the form reads: "To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Secretary is committed to maintaining the highest ethical standards, we need the information requested below before we can agree to schedule a meeting."³¹ When asked about this statement, Hebert explained that it reflected the Secretary's commitment to ethics:

Q. Is this statement consistent with conversations you have had with Mr. Bernhardt about his schedule?

A. Yes.

Q. Do you agree the Office of the Secretary is committed to maintaining the highest ethical standards?

A. Yes.³²

When asked the same question, Willens also agreed that the statement on the form reflected the Secretary's commitment to ethics. He testified:

Q. Do you believe that it is a true statement that the Office of the Secretary is committed to maintaining the highest ethical standards?

A. Yes.³³

The DOI witnesses testified that Secretary Bernhardt was the first DOI official to implement a process to ask the Ethics Office to review and approve meeting requests. Rees testified:

Q. So is Mr. Bernhardt the first Deputy Secretary you worked with who did not make his own determination on recusals or whether to take an internal or external meeting?

²⁹ Hebert Interview at 60-61.

³⁰ *Id.* at 79.

³¹ U.S. Dep't of the Interior, Office of the Sec'y, Meeting Information Request Form (DOI_00011511_00000717 – DOI_00011511_00000718).

³² Hebert Interview at 56.

³³ Willens Interview at 64.

A. Yes.

Q. And he relies solely on the ethics office to make that determination?

A. For the ethics determination that he would rely solely on them.³⁴

Rees acknowledged that the ethics approval process did create “more work for us, but we wanted to make sure that he’s, that any meeting that he takes has been approved and that he doesn’t appear to have any conflicts of interest.”³⁵

In addition to the rigorous ethics approval process for each external meeting, DOI implemented a policy when Bernhardt became Acting Secretary that prohibits meeting requesters from modifying meeting participants on the day of the meeting.³⁶ In an email in response to a meeting request, a DOI scheduling employee told the requester:

Please note, we have a new strict policy for all meeting participants—we need to know their name, title and affiliation at least one business day before the meeting. Unfortunately, *we are no longer able to accept any changes to participants regardless of circumstance on the day of the meeting.*³⁷

Hebert described this policy as seeking to implement a “best practice” in upholding Bernhardt’s commitment to ethics, explaining:

Q. In the very top email . . . the last two sentences in that first paragraph say: Please also send me the final list of participants. Anyone not listed will not be permitted in the meeting.

Is that the policy about the meeting attendees that you were referring to during the last round?

A. Yes.

Q. And you said earlier, there’s a cutoff date. Was the purpose of the statement to notify the requesters of this policy?

A. Yes.

Q. And just to make sure we have the record clear, is the meeting attendee list permitted to change the day of the meeting?

A. No.

³⁴ Rees Interview at 50.

³⁵ *Id.* at 53.

³⁶ E-mail from Leila Getto, Deputy Dir., Office of Scheduling & Advance, U.S. Dep’t of Interior (Feb. 25, 2019 3:40 PM) (DOI_00011511_00001454 – DOI_00011511_00001455).

³⁷ *Id.*

- Q. When was this policy put in place?
- A. Sometime when acting—when Deputy Secretary Bernhardt became Acting Secretary Bernhardt.
- Q. Okay.
- A. I believe it actually came up in one of our Ethics meetings that we had with pretty much the whole hallway, where we were talking about best practices and how do we make sure that we don't put him in a situation he shouldn't be put in, and that was where we came up with the agreement that, you know, these external participants are going to have to understand that there's going to be a cutoff date for when you can add someone to a meeting.
- Q. So would you say—did the Ethics Department play a role in putting this policy in place?
- A. Oh, yes.³⁸

Witnesses testified that Bernhardt is not violating his recusal obligations

Although Democrats and liberal special interests allege that Bernhardt is skirting his ethical obligations by meeting with individuals on his recusal list, Rees confirmed that to his knowledge, Bernhardt has never met with an individual on his recusal list. Rees testified:

- Q. To your knowledge, has Secretary Bernhardt or Deputy Secretary Bernhardt ever knowingly met with an individual he previously represented at his firm?
- A. Not to my knowledge.³⁹

Hebert likewise testified that she was unaware of Bernhardt ever meeting with an individual he represented in private practice. She testified:

- Q. To your knowledge, has Secretary Bernhardt ever knowingly met with an individual he previously represented at his firm?
- A. No, not to my knowledge.⁴⁰

³⁸ Hebert Interview at 61-62.

³⁹ Rees Interview at 52.

⁴⁰ Hebert Interview at 52.

Similarly, the Oversight and Reform Committee staff asked Willens whether he was aware if Bernhardt had met with an individual whom he represented in the private sector. Willens testified:

Q. To your knowledge, has Secretary Bernhardt ever knowingly met with an individual he previously represented while at his firm?

A. No.⁴¹

During the investigation, the Democrats pressed the witnesses on a particular meeting request with Bernhardt on behalf of nine oil and gas companies, including the Louisiana Mid-Continent Oil and Gas Association (LMOGA) and Statoil.⁴² Statoil was listed on Bernhardt's recusal list.⁴³ LMOGA was not.⁴⁴ LMOGA appears to have an association to an entity on Bernhardt's recusal list, U.S. Oil and Gas Association, but it does not appear that this association would require a recusal in all circumstances. In any event, LMOGA had not been identified by career ethics officials at DOI as an entity covered by Bernhardt's ethics agreement.⁴⁵

The meeting—including the list of attendees—was approved by a career agency ethics official.⁴⁶ The applicable ethics requirements allowed Bernhardt to meet in groups with five or more interested stakeholders as long as the meeting did not discuss specific party matters.⁴⁷ In an email sent to Bernhardt's executive assistant Gareth Rees, DOI's Deputy Designated Agency Ethics Official, Ed McDonnell, approved the meeting based on the understanding that there were going to be five or more interested stakeholders attending and an agreement that no party matters were to be discussed.⁴⁸ Statoil did not ultimately attend the meeting, however, the meeting did appear to take place according to the parameters articulated in McDonnell's approval email.⁴⁹

⁴¹ Willens Interview at 55.

⁴² See generally, Willens Interview at 154-164; Hebert Interview at 185-187, 201-203; Rees Interview at 112-117.

⁴³ Memorandum from David Bernhardt, Deputy Sec'y, Dep't of the Interior on Ethics Recusal to Ryan Zinke, Sec'y, et al. (Aug. 15, 2017).

⁴⁴ *Id.*

⁴⁵ E-mail from Edward McDonnell, Deputy Designated Agency Ethics Official, Dep't of the Interior, to Gareth Rees, Executive Assistant, Dep't of the Interior (Nov. 13, 2017, 4:01 PM) (DOI_00011511_00017311 – DOI_00011511_00017320).

⁴⁶ *Id.*

⁴⁷ Memorandum from David Bernhardt, Deputy Sec'y, Dep't of the Interior on Ethics Recusal to Ryan Zinke, Sec'y, et al. (Aug. 15, 2017) (citing 5 C.F.R. § 2635.502 (2002)).

⁴⁸ E-mail from Edward McDonnell, Deputy Designated Agency Ethics Official, Dep't of the Interior, to Gareth Rees, Executive Assistant, Dep't of the Interior (Nov. 13, 2017, 4:01 PM) (DOI_00011511_00017311 – DOI_00011511_00017320).

⁴⁹ Rees Interview at 116.

On Mon, Nov 13, 2017 at 4:01 PM, McDonnell, Edward [REDACTED] wrote:

Hi Gareth,

Under the impartiality regulation and the pledge, David may not participate in any party matter in which any former employer or client is or represents a party. The pledge also prohibits him from participating in any meeting or other communication with a former employer or client unless five or more interested stakeholders are present and no party matters are discussed. Statoil is a former client under the pledge. Technically, given their number, David could at least meet with the listed attendees but no one at the meeting could discuss any party matters, regardless of who the parties to the matter may be. To avoid the risk of inadvertently violating the impartiality regulation and the pledge, however, it would be prudent to take them up on their offer of having any former employer or client sit out the meeting.

Thanks,
Ed

Bernhardt is improving the “anemic” ethics environment of the Obama Administration

Witnesses testified that in addition to implementing rigorous new ethics procedures, Bernhardt and his staff have worked to improve DOI’s commitment to ethics, which had atrophied during the Obama Administration.⁵⁰ Willens stated that DOI’s Ethics Office was “anemic, that it was inconsistent, and that it was severely understaffed.”⁵¹ He described some of the proposed reforms for the Ethics Office. He testified:

But they are seeking more money, we’re seeking employee slots, we’re seeking reorganization, and really being led by our career ethics officer who’s made these recommendations, and we’re in the midst. And our goal is that by the end of this year, we will have that really in place.⁵²

In addition to the work already being done, Bernhardt furthered his commitment to improving DOI’s Ethics Office by issuing Secretary Order No. 3375. This Order seeks to “realign the reporting structure for ethics personnel” and “clarify roles and responsibilities with regards to the ethics program.”⁵³ The accompanying press release noted the work Bernhardt has already completed, including increasing “the number of full-time, career ethics professionals by 162 percent, nearly doubling the total hired during the entire eight years of the previous administration.”⁵⁴

⁵⁰ Willens Interview at 41-42.

⁵¹ *Id.* at 42.

⁵² *Id.* at 51.

⁵³ U.S. Dep’t of the Interior, Secretary Order No. 3375, Improving the Department of the Interior’s Ethics Programs through Consolidation (2019).

⁵⁴ Press Release, U.S. Dep’t of the Interior, Secretary Bernhardt Transforms Interior’s Ethics Program (Aug. 14, 2019).

Witnesses described how the meeting vetting and approval process is currently different than during the Obama Administration. Rees, who also served then-Deputy Secretary Michael Connor during the Obama Administration, detailed the differences in his testimony. He explained:

Q. This is the calendar for then-Deputy Secretary Michael Connor. And in the last round, you were discussing the 10 a.m. meeting he had with the American Wind Energy Association.

A. Uh-huh.

Q. Did this association fill out a meeting request form to have this meeting with Mr. Connor?

A. There was no meeting request form at that time.

Q. Okay. Was this request for meeting sent to the ethics office for their review?

A. Not that I recall.

Q. Was this meeting reviewed by the ethics office in any way?

A. Not that I recall.

Q. Was this meeting approved by the ethics office?

A. Not that I recall.

Q. And could I turn your attention to exhibit 4, please. This is the daily calendar for Mr. Bernhardt, dated September 26, 2018. And in the last round, you were discussing a 2 p.m. meeting with the reps of the American Wind Energy Association?

A. Yes.

Q. Can I ask you, sir, whether this association submitted a meeting request form to meet with Mr. Bernhardt?

A. I believe so. I would need to check my records, but the practice was or is that any externals would have to complete the meeting request form, and that would be submitted to ethics for clearance.

Q. So it is likely this was submitted to ethics then?

A. I would believe so.

Q. And it was reviewed by ethics attorneys?

A. I would believe so.

Q. And it was approved by ethics attorneys?

A. I believe so.⁵⁵

The evidence before the Committees thoroughly disproves the allegation that Bernhardt skirts his executive branch ethics obligations. To the contrary, the evidence before the Committees clearly shows that Bernhardt is living up to his pledge that the “Office of the Secretary is committed to maintaining the highest ethical standards.”⁵⁶

FINDING 2: SECRETARY BERNHARDT IS NOT HIDING HIS MEETINGS FROM THE PUBLIC

Myth: Several versions of Secretary Bernhardt’s calendar exist, suggesting an effort to hide his meetings.

Fact: There may be discrepancies between types of Secretary Bernhardt’s scheduling documents because the documents have different purposes. One document, the daily schedule, is included in the Secretary’s evening briefing book to help him prepare for the following day and is not always updated to reflect last-minute changes to the calendar.

News reports have noted that there appear to be several versions of Bernhardt’s calendars released through FOIA and that there seem to be discrepancies between the documents.⁵⁷ Witness testimony indicates that any calendar discrepancies can easily be explained because Bernhardt maintains different types of scheduling documents for different purposes. Because the Secretary’s schedule is dynamic, any late changes to the Secretary’s schedule may not be reflected on every type of scheduling document.

Witnesses testified that scheduling documents could differ due to the purpose of the document

Bernhardt’s executive assistant, Gareth Rees, testified that when Bernhardt served as Deputy Secretary, Rees created three documents that notated Bernhardt’s daily activities. First, Rees used DOI’s Bison Connect platform to create a Google-based calendar, which Rees stated was used mostly to inform staff when Bernhardt was available and what meeting to attend.⁵⁸

⁵⁵ Rees Interview at 47-48.

⁵⁶ U.S. Dep’t of the Interior, Office of the Sec’y, Meeting Information Request Form (DOI_00011511_00000717 – DOI_00011511_00000718).

⁵⁷ Ellie Kaufman, *Interior Has 5 Versions of the Secretary’s Schedule – But They Don’t Always Match*, CNN (Jun. 5, 2019), <https://www.cnn.com/2019/06/05/politics/david-bernhardt-conflicting-calendars-interior/index.html>.

⁵⁸ Rees Interview at 158.

Second, Rees created a daily card/schedule, which was a printout of the Google calendar to be placed in the front of Bernhardt's daily briefing book. Bernhardt reviewed the daily briefing book the night before his scheduled meetings.⁵⁹ Finally, Rees created a pocket card for the Secretary to carry on his person detailing the time and location for each meeting.⁶⁰

Rees and Hebert both explained that Bernhardt's schedule could change at a moment's notice. Rees testified:

Q. When Mr. Bernhardt was Deputy Secretary, would you say his calendar was dynamic, it could change at any moment?

A. It could change every 5 minutes.

Q. Did you change the calendar to reflect those additions?

A. We did the best that we could to reflect all changes.

Q. And if the meeting was canceled before it occurred, would you delete it off the Google Calendar?

A. Yes.

Q. And when the meeting was canceled, would it send a cancellation notice to anyone who had been invited?

A. Yes, it would.⁶¹

Similarly, Hebert testified:

Q. Would you say Mr. Bernhardt's schedule is dynamic, can change at any moment?

A. Absolutely.

Q. Are these changes reflected in the calendar?

A. They are.

Q. If a meeting does not occur, do you cancel the meeting off of the calendar?

A. Yes.⁶²

⁵⁹ *Id.* at 66.

⁶⁰ *Id.* at 66-67.

⁶¹ *Id.* at 60.

⁶² Hebert Interview at 65.

Rees explained, however, the daily card and pocket card were not always updated to match the Google calendar because while Bernhardt was Deputy Secretary the cards were created the evening before to prepare for the next day's events. Rees explained:

Q. So, since the daily cards were created the evening before, if a meeting would get cancelled or a time would get switched, would those changes then be reflected on the daily card? Would you print a new daily card or –

A. If there was a lot of changes, sometimes, yes. Yeah, if it was just one meeting canceled, then no. We would reflect the changes in the calendar.

Q. So, when the daily cards were preserved, could they have inaccuracies on them due to meeting not happening or –

A. Yes.

Q. And if an additional meeting was scheduled, it could also not be reflected on the daily card?

A. That is indeed possible.⁶³

Q. When were [the pocket cards] created? What time of day?

A. Again, that would be normally the night before for his briefing book.

Q. So the pocket card could also not reflect some meetings that occurred or did not occur, or did you print off a new pocket card for him to keep in his pocket?

A. Again, sometimes, if there were significant changes and, you know, if it was at the end of the day, it would be easier to do. If it was the following day, then we would not.⁶⁴

Q. We have had several daily cards, pocket cards, Google Calendars produced to us from [the Department of the] Interior, as well as they are available online at Interior's website. And sometimes there are

⁶³ Rees Interview at 70.

⁶⁴ *Id.* at 71.

differences between the daily card and the Google Calendar. Do you know why that is? Is that just because maybe the daily card wasn't updated?

A. That is indeed possible. We would make sure that the changes were reflected in the calendar, not necessarily in the daily card.⁶⁵

Hebert also explained that the daily schedule is not always updated, meaning that meetings could appear on the daily schedule but not be on the Google calendar. She testified:

Q. It appears that sometimes there are discrepancies between the daily schedule and the Google Calendar. Do you know why that is? There may be an extra meeting on one that's not on the other.

A. Because he's a Cabinet Secretary. He has a very busy schedule. White House meetings could pop up at any moment. There could be something that staff members find important that they need to meet with him about and a certain meeting has to go away so that he can take that meeting. For all those different reasons, his schedule shifts from time to time and very quickly.⁶⁶

Q. So, ma'am, if there are discrepancies between the two calendars, it's likely some innocent purpose for that, not a nefarious conspiracy to hide calendars?

A. Absolutely. It's because he goes home with it, and maybe he looks at it and he sees that there was a meeting that he meant to tell me that he needed to take with staff that he forgot about and so he comes in the next morning and says, we're going to have to lose this meeting because I got to take this meeting, or whatever . . .

Q. Would you say that changes to the schedule after the daily schedule is created could account for some of the discrepancies between the daily schedule and the Google Calendar?

A. Absolutely.⁶⁷

Willens, DOI's Chief of Staff, testified that the discrepancies between the scheduling documents are not caused by deliberate actions on the part of DOI employees to hide information. He explained:

⁶⁵ *Id.* at 72.

⁶⁶ Hebert Interview at 70.

⁶⁷ *Id.*

Q. It appears that there are some discrepancies between the Google Calendar and the schedule that is placed in his briefing book and a document referred to as a pocket card. We've heard from other witnesses that those discrepancies could come from meetings that have been canceled and that may be noted on his Google Calendar but may not make it onto the other documents because, as you stated, those are done the night before.

Is that correct, to your understanding?

A. That is, yes.

Q. Are the discrepancies between the documents, to your knowledge, caused by deliberate actions on the part of Department employees in an effort to hide information?

A. No.

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the schedule that goes into his briefing book versus what's on his Google Calendar or vice versa?

A. No.

Q. Have you ever instructed staff to put more information on one document versus the other document?

A. No.⁶⁸

Witnesses denied that anyone instructed them to hide information on Secretary Bernhardt's calendars

In addition, Rees and Hebert both clearly stated that they never received instructions from Bernhardt or anyone at DOI to put certain information on the Google calendar and not on the daily schedule or pocket card. Rees testified:

Q. Have you ever been instructed by anyone not to include an event on a daily card that is included on a Google Calendar?

A. Not that I recall.

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the daily card or the pocket card than what's reflected on the Google Calendar or vice versa?

⁶⁸ Willens Interview at 132-133.

A. Not that I recall.⁶⁹

Hebert also confirmed this statement, testifying:

Q. To your knowledge, has staff ever been instructed by Mr. Bernhardt to put more information on the daily card or daily schedule than on the Google Calendar or vice versa?

A. No.⁷⁰

Rees also testified that it was not a problem if the pocket card and daily schedule were not completely synchronized because Bernhardt relied upon Rees to ensure he made his next meeting.⁷¹ While Bernhardt’s daily activities are kept in several different formats, the testimony obtained by the Committees shows that there are very practical reasons for why there are differences in the content of the different scheduling documents.

FINDING 3: SECRETARY BERNHARDT IS NOT USING CERTAIN MEETING LABELS TO HIDE HIS MEETING ATTENDEES

Myth: DOI scheduling staff intentionally used vague “external” and “internal” meeting labels on Secretary Bernhardt’s calendar to hide meeting participants.

Fact: DOI publishes Secretary Bernhardt’s meeting participants each week on its official website. Secretary Bernhardt’s calendars are not created for a public audience. The “external” and “internal” meeting labels used by DOI staff provide enough information for DOI staff to know about Secretary Bernhardt’s schedule.

During the Committees’ investigation, Democrats examined whether DOI’s use of certain meeting labels on Bernhardt’s calendars was an intentional effort to hide his meetings and confuse the public.⁷² Specifically, DOI has adopted a practice of differentiating between types of meetings on Bernhardt’s calendar using the following labels:

- **Internal meeting:** denotes meeting with DOI officials;
- **External meeting:** denotes meeting with nongovernmental parties;
- **Intergovernmental meeting:** denotes meeting with other government officials; and
- **Personal meeting:** denotes personal business.

However, the evidence before the Committees demonstrate that these meeting labels were not implemented to hide Bernhardt’s meetings. In fact, now that Bernhardt is Secretary DOI releases on its official website the list of attendees for all external meetings attended by Bernhardt each

⁶⁹ Rees Interview at 72-73.

⁷⁰ Hebert Interview at 70-71.

⁷¹ Rees Interview at 59.

⁷² See generally, Rees Interview at 142-143, 187, 191-192; Hebert Interview at 24, 75-75,140-141; Willens Interview at 90-94, 119-122.

week.⁷³ Similarly, Sally Jewell used such labels for her calendar while serving as DOI Secretary in the Obama Administration.⁷⁴

Bernhardt's calendars are not created to be public documents, but instead used as an internal method of allocating his time

Witnesses explained to the Committees that the purpose of keeping a calendar of Bernhardt's daily activities is not to inform the public. Rather, it is a method to allocate the Secretary's time between priority items, government meetings, and meetings with stakeholders. For example, during his transcribed interview with the Committees, Rees was asked if he had the public in mind when creating the calendar. Rees explained:

Q. When you create the calendar, who is the primary audience of the calendar?

A. That's really the staff, internal the staff.

Q. Okay. The staff and the principal?

A. So, yeah. The principal can see it, but a lot of the times it's more for those of us who are staffing him.

Q. And the daily cards and the pocket cards, who is the primary audience for those?

A. That would be the Secretary or deputy secretary.

Q. So do you create the daily cards and the pocket cards for the principal or the public? Do you have the public in mind when you are creating them or do you solely have the preferences of the principal in mind?

A. Just the principal.⁷⁵

Hebert had a similar response to this same question. She explained:

Q. Who do you create the calendars for? Who's the audience of the calendar?

A. So the calendar is—I mean, it's Secretary Bernhardt's calendar, but the calendar is really for our office, because the calendar is a way to manage the Secretary's time. You could think about it like a store

⁷³ U.S. Dep't of the Interior, Press Releases of Secretary Bernhardt's Schedule, <https://www.doi.gov/secretary-schedule> (last visited Jul. 3, 2019).

⁷⁴ Hebert Interview at 165-176.

⁷⁵ Rees Interview at 158.

open hours. There are staff members that sometimes need to meet with him, you know, as you've seen with the forms, external parties that want to meet with him. I have to be able to see where his open hours are.

The Secretary, as you might imagine being a Cabinet official, is very busy and his days are very full, so I have to have a way to manage the time so that I can make sure the train is running on time.

Q. So when you create the calendars, do you create the calendar more for the Department of Interior staff, your office, and Secretary Bernhardt, or for the public?

A. No. It's an internal document.⁷⁶

The meeting labels used on Secretary Bernhardt's calendar adequately inform DOI staff about the Secretary's schedule

Time and again, witnesses told the Committees that the various scheduling documents created for Bernhardt adequately inform him of his daily activities. Rees testified:

Q. Did Deputy Secretary Bernhardt understand the meeting labels that you used?

A. I believe so.

Q. Would you say the labels that you used were adequate for getting Secretary Bernhardt where he needed to be when he needed to be there?

A. Yes.⁷⁷

Like Rees, Hebert also said that Bernhardt understood the labels used on his calendar. She testified:

Q. Does Secretary Bernhardt understand the labels you used on his calendar?

A. Yes.

Q. Do staff understand the labels you used on the calendar?

A. Yes.

⁷⁶ Hebert Interview at 63.

⁷⁷ Rees Interview at 158-159.

Q. Are the labels adequate to get Secretary Bernhardt to where he needs to be when he needs to be there?

A. Yes.

Q. Is it adequate for staff to know where he needs to be?

A. Yes.⁷⁸

Todd Willens, Chief of Staff, noted that every scheduler has their own scheduling style. He testified:

I mean, the style that they've used for managing the Secretary or the [Deputy Secretary] on their stylistic—for the calendar hasn't impacted me. And I haven't had anyone complain. I mean, everyone has their own style or whatever they want on information, same as every 435 Members of Congress. No two calendars look exactly the same.⁷⁹

Willens testified that no one has expressed confusion to him about the labels used on Bernhardt's calendars. He stated:

Q. Mr. Willens, are the meeting labels that are used on Secretary Bernhardt's Google Calendar adequate to get him where he needs to go?

A. He has never complained to me.

Q. To your knowledge, has Secretary Bernhardt ever missed a meeting due to his confusion regarding a meeting label?

A. Not according—never that's been brought to my attention.

Q. Has anyone ever expressed confusion to you over the labels used on Secretary Bernhardt's calendar?

A. No.

Q. Has Secretary Bernhardt ever expressed confusion to you regarding labels used on his calendar?

A. No.

⁷⁸ Hebert Interview at 63.

⁷⁹ Willens Interview at 122.

Q. Are you confused by Secretary Bernhardt's calendar?

A. No.⁸⁰

Hebert also testified the DOI's use of "external" meeting labels did not create confusion within DOI about the Secretary's calendars. She stated:

Q. Earlier today, you were discussing . . . public confusion around the Secretary's calendars. Do you recall that?

A. Yes.

Q. Obviously, you can't speak to the state of mind of the American public?

A. Correct.

Q. But are you confused at all by the Secretary's calendars?

A. I'm not.

Q. Do you believe the Secretary's confused by his calendars?

A. I don't.

Q. Do you believe that other senior staff at the Department are confused by Secretary's calendars?

A. No. I haven't had any instances where the Secretary has missed a meeting, where the Secretary has not known who he was meeting with, where—I've never had an instance where staff members didn't show up for a meeting, never had any confusion surrounding where and when people are supposed to be or who they're meeting with when it's on the Secretary's calendar.⁸¹

Taken together, all of the scheduling documents created for Bernhardt—his Google calendar, pocket card, daily schedule, and briefing book—ensure that the Secretary and his staff are prepared for each day's meetings. Hebert said the documents work in tandem to ensure that Bernhardt is equipped with all the necessary information for each meeting. During her interview, Hebert disputed assertions that Bernhardt's scheduling information be in one place because it would be more helpful to the public. She testified:

Q. So I think we're up to six different documents that provide information about the Secretary's daily goings-on. Wouldn't it just

⁸⁰ *Id.* at 131-132.

⁸¹ Hebert Interview at 177.

be more helpful if it was all on his calendar?

A. My job isn't to make it more helpful. I think the fact that we have six different documents that all are available for people to see what the Secretary is doing on a daily basis is quite transparent. There's a lot of information out there.

Q. What do you mean by available?

A. Well, they can see on the website who the external parties are he's meeting for. People can certainly FOIA meeting request forms. We provide thousands and thousands of documents to the committee to review. You've seen the meeting request forms. The trip itineraries, they're on the website. People can look at those and they can see, you know, what he's doing on a trip. There's a lot of information out there.⁸²

Witnesses denied that DOI uses certain meeting labels to hide Secretary Bernhardt's meetings

The Committees have no evidence that DOI uses the "external" and "internal" labels to shield the public from knowing about Bernhardt's meetings. In fact, DOI employees responsible for keeping Bernhardt's schedule when he was Deputy Secretary and now Secretary both expressly testified that the "external" and "internal" labels are not used to hide Bernhardt's meetings from the American public. Rees testified:

Q. And last turn, we talked about the external-internal meetings labels, did you use the external-internal meeting titles to deliberately shield from the public who Mr. Bernhardt was meeting with?

A. No.⁸³

Hebert likewise testified:

Q. And I want to talk a little bit about the external/internal meeting labels. Do you use the external/internal meeting labels or titles to deliberately shield from the public who Mr. Bernhardt is meeting with?

A. No.⁸⁴

Willens, too, confirmed that the labels were not deliberately used to shield information from the public. He testified:

⁸² *Id.* at 107-108.

⁸³ Rees Interview at 60.

⁸⁴ Hebert Interview at 62-63.

Q. We've heard a lot about the external-internal meeting labels and how they are used to distinguish between meetings. Are you aware of whether the external-internal meeting labels are used deliberately to shield the public from knowing who Mr. Bernhardt is meeting with?

A. No, they're not.⁸⁵

In addition, Willens testified that neither he nor the Secretary have ever instructed staff to label meetings in a certain fashion. Willens stated:

Q. Have you ever given any instructions to any Department of the Interior employees on how Mr. Bernhardt's schedule should be kept?

A. No.

Q. And that's including the time while he was Deputy Secretary and Secretary, correct?

A. Correct.

Q. Are you aware of whether Mr. Bernhardt has given any instructions on how his calendar should be kept?

A. No.

Q. Sir, have you ever given any instructions to any employee at the Department on how to label meetings in the Secretary's calendars?

A. No.⁸⁶

Any claim that the DOI uses vague, confusing labels on Bernhardt's calendar to hide his meetings is contradicted by the Committees' evidence. As witness testimony proves, the labels used on the calendar are more than adequate for the purpose the calendars serve.

⁸⁵ Willens Interview at 73.

⁸⁶ *Id.* at 58.

FINDING 4: SECRETARY BERNHARDT’S CALENDAR RECORDS ARE APPROPRIATELY PRESERVED

Myth: Secretary Bernhardt’s calendar records are deleted and therefore not properly preserved pursuant to federal records management laws.

Fact: Secretary Bernhardt’s calendar records are preserved, have been produced to the Committees, and are available on DOI’s official website. The National Archives even determined following an independent review that DOI has appropriately preserved the Secretary’s calendar records.

Committee Democrats and the media have alleged that Bernhardt’s calendar records are not preserved in compliance with federal records laws.⁸⁷ The evidence before the Committees, however, demonstrates that this allegation is meritless. As NARA determined following an independent review, Bernhardt’s calendar records are appropriately preserved pursuant to federal records laws.⁸⁸ NARA called the allegations “unfounded.”⁸⁹

The Department’s career records management staff determined that Secretary Bernhardt’s calendar records are properly preserved

Before he requested transcribed interviews with DOI officials, Chairman Cummings wrote to NARA requesting an inspection of records management practices at DOI to determine if “all of the Acting Secretary’s meetings are being captured and preserved in accordance with DOI’s record schedules.”⁹⁰ NARA, in turn, asked the DOI records office to “investigate this matter to determine if such records are being deleted and whether meeting information is being adequately captured and preserved”⁹¹ Following this internal review, the DOI records officer wrote to NARA that “[t]he records in question were stored, and remain stored, at all times within the agency’s collaboration platform. It is my assessment and the opinion of Department

⁸⁷ See Juliet Eilperin & Darryl Fears, *Acting Interior Chief’s Method of Documenting Meetings Attracts Democrats’ Scrutiny*, Wash Post (Mar. 27, 2019), https://www.washingtonpost.com/climate-environment/2019/03/27/interior-chiefs-unusual-method-documenting-meetings-attracts-democrats-scrutiny/?utm_term=.93f25a6f781f; Ellie Kaufman, *Interior Department-released calendars of Secretary Nominee Differ from his Public Descriptions*, CNN (Apr. 8, 2019), <https://www.cnn.com/2019/04/08/politics/interior-secretary-calendars-public/index.html>; Letter from Rep. Elijah Cummings, Chairman, H. Comm. Oversight & Reform, to Mr. Cole Rojewski, Dir. of Cong. & Legislative Affairs, U.S. Dep’t of the Interior (May 7, 2019).

⁸⁸ Letter from Mr. Laurence Brewer, Chief Records Officer, Nat’l Archives & Records Admin., to Mr. Bruce Downs, Dep. Chief Info. Officer, U.S. Dep’t of the Interior (Jun. 13, 2019), <https://www.archives.gov/files/records-mgmt/resources/ud-2019-0018-doi-open-close-letter.pdf>.

⁸⁹ Nat’l Archives & Records Admin, *Federal Records Management, Unauthorized Disposition of Federal Records* (last visited Jul. 22, 2019), <https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords>.

⁹⁰ Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Mr. Laurence Brewer, Chief Records Officer, Nat’l Archives & Record Admin. (Mar. 19, 2019).

⁹¹ Letter from Mr. Laurence Brewer, Chief Records Officer, Nat’l Archives & Records Admin., to Mr. Bruce Downs, Deputy Chief Info. Officer, U.S. Dep’t of the Interior (Mar. 21, 2019).

counsel that Interior is and at all times has been fully compliant with federal records laws with respect to these records.”⁹²

On May 17, 2019, career DOI records management staff briefed staff from both committees about records management practices at DOI. At this briefing, David Alspach, the Departmental Records Officer, detailed the rigorous records management training that all DOI employees receive. Alspach explained that Bernhardt was the most engaged political appointee to whom Alspach had ever provided training and that during the one-on-one training session, Bernhardt was already very familiar with DOI’s records management process.⁹³ The DOI officials said that their main takeaway from a NARA-requested records management review was that records related to Bernhardt’s daily activities have never been destroyed.⁹⁴

Witnesses testified that Secretary Bernhardt’s calendar records were never illicitly altered or deleted in any manner

In light of this information from DOI’s career records management staff, Chairman Cummings and Chairman Grijalva could have been satisfied that Bernhardt’s calendars were preserved. Instead, the chairmen insisted on conducting transcribed interviews with three DOI officials and a briefing with a fourth DOI employee. All four DOI officials definitively told the Committees that Bernhardt’s calendar records have never been deleted or destroyed.

For example, Catherine Gulac, Administrative Assistant in the Office of the Deputy Secretary, told the Committees that although she had very limited involvement with Bernhardt’s calendar while he served as Deputy Secretary, she had no knowledge about his calendars being altered or deleted.⁹⁵ Gulac explained she was never asked to delete anything from Bernhardt’s calendar.⁹⁶

Gareth Rees, the executive assistant for Bernhardt, also confirmed that he was never asked to delete anything from Bernhardt’s calendars to hide meetings. He testified:

Q. Is it fair to say in your experience with Mr. Bernhardt that you have no awareness of any meetings being deleted from his calendars that did in fact occur?

A. I am not aware of that happening.

Q. Have you ever been asked to delete or destroy a full day’s worth of calendar entries?

⁹² Letter from Mr. Bruce Downs, Deputy Chief Info. Officer, U.S. Dep’t of the Interior, to Mr. Laurence Brewer, Chief Records Officer, Nat’l Archives & Records Admin. (Mar. 27, 2019).

⁹³ Briefing by U.S. Dep’t of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (May 17, 2019).

⁹⁴ *Id.*

⁹⁵ Briefing by Catherine Gulac, Admin. Assistant, U.S. Dep’t of the Interior, to H. Comm. on Oversight & Reform & H. Comm. on Natural Res. Staff (Jun. 10, 2019).

⁹⁶ *Id.*

A. No, not that I am aware of.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Deputy Secretary was meeting with?

A. Not that I am aware of.

Q. Are you aware of other staff being asked or instructed to do so?

A. No, not that I am aware of.

Q. Are you aware of Mr. Bernhardt or Deputy Secretary Bernhardt at the time either destroying or instructing staff to destroy his calendar?

A. Not that I am aware of.

Q. To your knowledge, has Mr. Bernhardt's calendar ever been deleted or destroyed?

A. Not that I am aware of.⁹⁷

Rees testified to the Committees that he was also unaware of anyone deleting the daily cards and pocket cards. He explained:

Q. And for the pocket cards and the daily cards, I guess we can take each one individually, but daily cards, were you ever instructed to destroy a daily card in full?

A. No.

Q. Were you ever instructed to delete any events off of a daily card or any information?

A. Not that I am aware of.

Q. Did Mr. Bernhardt ever instruct you to delete information off of a daily card?

A. Not that I recall.

Q. Did Mr. Bernhardt ever instruct you to fully destroy a daily card?

A. Not that I recall.

⁹⁷ Rees Interview at 65-66.

Q. Now for the pocket card. Have you ever been instructed to not include information on a pocket card?

A. Not that I recall.

Q. Have you ever been instructed to delete information off of a pocket card?

A. No.

Q. Has Mr. Bernhardt ever instructed you to delete information off of a pocket card?

A. Not that I recall.

Q. Has Mr. Bernhardt ever instructed you to delete a pocket card in full?

A. Not that I recall.⁹⁸

Samantha Hebert, who is currently responsible for managing Bernhardt's schedule, testified that she had never deleted or been instructed to delete information from Bernhardt's calendar. She stated:

Q. Have you ever been asked to delete entries from Mr. Bernhardt's calendar?

A. No.

Q. Have you ever been asked to delete or destroy Mr. Bernhardt's calendar in full?

A. No.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Secretary is meeting with?

A. No.

Q. Are you aware of other staff being asked or instructed to do so?

A. No.

⁹⁸ *Id.* at 73-74.

Q. Are you aware of Mr. Bernhardt either destroying or instructing staff to destroy his calendar?

A. No.

Q. To your knowledge, has Mr. Bernhardt's calendar ever been deleted or destroyed?

A. No.⁹⁹

Todd Willens, DOI's Chief of Staff, also testified that he had no knowledge about any deletion of Bernhardt's calendars. He stated:

Q. Have you ever been asked to delete entries from Secretary Bernhardt's Google Calendar?

A. No.

Q. Have you ever been asked to delete or destroy Secretary Bernhardt's calendar in full?

A. No.

Q. Have you ever instructed a Department of Interior employee to delete entries from Secretary Bernhardt's calendar?

A. No.

Q. Are you aware of staff intentionally destroying or altering calendars to shield the public from knowing who the Secretary is meeting with?

A. No.

Q. Have you ever instructed staff to do so?

A. No.

Q. Are you aware of Secretary Bernhardt either destroying or instructing staff to destroy his calendar?

A. No.

Q. To your knowledge, has Secretary Bernhardt's calendar ever been

⁹⁹ Hebert Interview at 65-66.

deleted or destroyed?

A. No.¹⁰⁰

Witnesses testified that Secretary Bernhardt's calendar records were not inappropriately altered prior to public release

The DOI witnesses also clearly stated that Bernhardt's calendars were not altered before their release pursuant to FOIA or their publication on DOI's official website. Rees testified:

Q. Is there any difference between Deputy Secretary Bernhardt's official calendar and the calendar that was released via FOIA?

A. Not that I'm aware of.

Q. To your knowledge, were events deliberately kept off the public calendar because the meetings or events involved former clients or industry lobbyists?

A. Not that I'm aware of.

Q. Were you involved in FOIA requests related to Mr. Bernhardt's daily cards, or pocket cards, when he was Deputy Secretary?

A. Yes.

Q. To your knowledge is there any difference between the daily cards and pocket cards that was produced for Mr. Bernhardt and those that were produced via FOIA?

A. Not that I'm aware of.

Q. To your knowledge were events deliberately kept off of the daily cards or the pocket cards because the meetings or events involved [former] clients or industry lobbyists?

A. Not that I'm aware of.

Q. As I mentioned earlier, several months of Secretary Bernhardt's and Deputy Secretary Bernhardt's calendars, daily cards, and pocket cards have been posted online on the [Department of the] Interior's official website. Do you know how the calendars, daily cards, and pocket cards were collected for posting on the web sites?

¹⁰⁰ Willens Interview at 78.

A. I believe that, yeah, his calendar, we—yeah, we were able to save as PDFs and then do the same thing with pocket cards and they were uploaded.

Q. Did you have any involvement in that process?

A. I was the one who—I believe I was the one who helped pull the calendars together.

Q. And were you ever instructed to alter the calendars or the daily cards or pocket cards for preparation for posting on the website?

A. No.

Q. Had you—were you ever instructed by Mr. Bernhardt, or did you hear him instruct anyone else to alter the calendars, daily cards or pocket cards that were posted on the website?

A. Not that I'm aware of.¹⁰¹

Hebert likewise confirmed that DOI had not altered scheduling documents before release pursuant to FOIA or placement on the DOI website. Hebert told the Committees that the DOI scheduling office now proactively turns Bernhardt's Google calendar into a PDF at the end of the week and sends the file to the FOIA office. She testified:

Q. Several months of Secretary Bernhardt's calendars as well as the daily schedule as well as pocket cards have been posted on Interior's official website. Are you aware of that?

A. Yes.

Q. Do you know how the calendars, daily schedule, and pocket cards are collected for posting on the website?

A. The FOIA office collects them.

Q. And you said at the end of each week, there's a new—or routine where you PDF the whole week's Google Calendar?

A. Right. So a few weeks ago, we decided it would be easier just at the end of every week, we—there's a way in the Google Calendar where you can create a PDF of the calendar, that we would just go ahead and create that PDF and send that over to the FOIA office so they don't have to ask for it anymore.

¹⁰¹ Rees Interview at 78-79.

Q. So you do that proactively now?

A. Yes.

Q. Have you or anyone else ever been instructed to alter the Google Calendar or the daily schedule in preparation for posting on the website?

A. No.

Q. Have you ever been instructed by Mr. Bernhardt or heard him instruct anyone to alter his calendar or daily schedule in preparation for posting on the website?

A. No.¹⁰²

Q. Is there any difference between Secretary Bernhardt's official Google Calendar and the calendar that is released to the public either via FOIA or Interior's website?

A. No.

Q. To your knowledge, are events deliberately kept off of the public calendar because the meetings or events involved former clients or industry lobbyists?

A. No.

Q. Is there any difference between the daily schedule that is given to Mr. Bernhardt and the daily schedule that is released to the public either via FOIA or Interior's website?

A. No.

Q. To your knowledge, are events deliberately kept off of the public daily schedule because the meeting or events involved former clients or industry lobbyists?

A. No.¹⁰³

¹⁰² Hebert Interview at 71-72.

¹⁰³ *Id.* at 73-74.

Finally, Todd Willens also confirmed that there are no differences between Bernhardt's Google calendar and the one produced via FOIA. Willens testified:

Q. Have you or anyone else ever been instructed to alter the Google Calendar or other scheduling documents in preparation for release under FOIA?

A. No.

Q. Have you ever instructed any Department of Interior employees to alter the Google Calendar or other scheduling documents in preparation for release under FOIA?

A. No.

Q. Have you ever been instructed by Secretary Bernhardt or heard him instruct anyone else to alter his Google Calendar or other scheduling documents in preparation for release under FOIA?

A. No.

Q. To your knowledge, is there any difference between Secretary Bernhardt's official Google Calendar and the calendar that is released to the public, either via FOIA or Interior's website?

A. No.

Q. To your knowledge, are events deliberately kept off of the public Google Calendar because the meetings or events involve former clients or industry lobbyists?

A. No.¹⁰⁴

An independent review by the National Archives called allegations of calendar destruction "unfounded"

In June 2019, NARA completed its review of DOI's preservation of Bernhardt's calendar records.¹⁰⁵ NARA determined there is "no basis to believe that there has been an unauthorized destruction of federal records."¹⁰⁶ As a result, NARA determined that the allegations pursued by

¹⁰⁴ Willens Interview at 135.

¹⁰⁵ Letter from Mr. Laurence Brewer, Chief Records Officer, Nat'l Archives & Records Admin., to Mr. Bruce Downs, Dep. Chief Info. Officer, U.S. Dep't of the Interior (Jun. 13, 2019), <https://www.archives.gov/files/records-mgmt/resources/ud-2019-0018-doi-open-close-letter.pdf>.

¹⁰⁶ *Id.*

Chairman Cummings were “unfounded.”¹⁰⁷ Although Chairman Cummings requested the independent NARA review, he appeared reluctant to accept the results and suggested the Oversight and Reform Committee’s investigation would continue.¹⁰⁸ However, the evidence obtained by the Committees to date confirms and reinforces NARA’s findings. The Committees’ evidence shows that the allegations that DOI is destroying Bernhardt’s calendars have no merit. It is clear based on the record before the Committees that DOI is appropriately preserving Bernhardt’s scheduling documents.

FINDING 5: THE TRUMP ADMINISTRATION HAS COOPERATED EXTENSIVELY WITH CHAIRMAN CUMMINGS’S AND CHAIRMAN GRIJALVA’S INVESTIGATION

Myth: The Trump Administration is engaged in a “cover-up” from the “top” on all congressional investigations.

Fact: DOI has cooperated with Chairman Cummings’s and Chairman Grijalva’s investigation at every stage, voluntarily producing documents and making several witnesses available for day-long transcribed interviews. DOI has been transparent and forthcoming in responding to the chairmen’s partisan demands.

For more than two years, Chairman Cummings, Chairman Grijalva and other Democrats have pursued allegations of nefarious conduct within DOI. The Committees’ investigation has demonstrated that these allegations are untrue. The Committees are positioned to make these findings precisely because DOI has cooperated extensively with Chairman Cummings’s and Chairman Grijalva’s investigation. DOI voluntarily produced thousands of documents to the Committees. In addition, DOI arranged for three employees to sit for day-long, bipartisan, transcribed interviews with staff from both Committees and for one DOI employee to provide a non-transcribed briefing.

Chairman Cummings has stated repeatedly that the Trump Administration is engaged in a “cover-up” from the “top” on congressional investigations.¹⁰⁹ Chairman Grijalva alleges that Bernhardt treats “congressional requests for information as a nuisance he can ignore”¹¹⁰

¹⁰⁷ Nat’l Archives & Records Admin, Federal Records Management, Unauthorized Disposition of Federal Records (last visited Jul. 22, 2019), <https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords>.

¹⁰⁸ Jacob Holzman, *Archives: No Wrongdoing in Bernhardt’s Calendar Practices*, CQ NEWS (Jul. 15, 2019).

¹⁰⁹ See generally, Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. William Barr, Attorney General, U.S. Dep’t of Justice (Jun. 3, 2019); Letter from Reps. Elijah Cummings & Mark DeSaulnier, H. Comm. on Oversight & Reform, to Hon. Mitchell Zais, Deputy Sec’y, U.S. Dep’t of Educ. (May 30, 2019); Letter from Rep. Elijah Cummings, Chairman, H. Comm. on Oversight & Reform, to Hon. David Bernhardt, Sec’y, U.S. Dep’t of the Interior (May 31, 2019) (Chairman Cummings wrote, “Now that the Department has indicated that it is no longer blocking its employees from participating in transcribed interviews”).

¹¹⁰ Press Release, Rep. Raúl Grijalva, Secretary Bernhardt “Not Losing Sleep” Over Climate Change Concerns Me – and So Does His Lack of Transparency With Congress (May 16, 2019) https://naturalresources.house.gov/media/press-releases/chair-grijalva-secretary-bernhardt-not-losing-sleep-over-climate-change-concerns-me_and-so-does-his-lack-of-transparency-with-congress (last visited Aug. 13, 2019).

Each DOI employee, however, disagreed with these assertions.¹¹¹ The employees described in detail the considerable time and effort that DOI had invested in responding to the chairmen's investigation. The employees also testified clearly that no DOI officials had sought to discourage them from cooperating with the investigation.

In refuting several of the allegations levied against Bernhardt and DOI, Rees denied any effort to obstruct the investigation. He testified:

Q. Sir, there have been allegations in the public that Mr. Bernhardt is hiding something with respect to his calendars. Do you agree with those allegations?

A. I do not.

Q. There have been allegations that Secretary Bernhardt has skirted his ethical requirements with respect to his calendars. Do you agree with those allegations?

A. I do not.

Q. Are you aware of any concerted effort within the Department to allow Mr. Bernhardt to meet with individuals that he is recused from meeting with?

A. I am not aware of that.

Q. Are you aware of any concerted effort within the Department to delete meetings from Mr. Bernhardt's calendars?

A. I am not aware.

Q. Are you aware of any effort within the Department to hide any [conflicts of] interest that Mr. Bernhardt may have?

A. No.

Q. It has been said that the Trump administration is engaged in a cover up from the top with respect to congressional investigations. Do you agree with that statement?

A. No, I don't.

Q. You are here voluntarily, is that right?

¹¹¹ See generally, Rees Interview at 161-162; Hebert Interview at 81-82; Willens Interview at 85-87.

A. I am here voluntarily so –

Q. I believe several exhibits in front of you reflect emails that have been produced [to] the committee [by] the Department. Is that correct?

A. That is correct.

Q. And just to confirm, sir, no one from the Department has dissuaded you from appearing here voluntarily today?

A. That is correct.¹¹²

Hebert likewise testified that many of the allegations levied against Bernhardt and DOI were unfounded. She, too, denied any awareness of any effort to obstruct Chairman Cumming's investigation. She testified:

Q. Ma'am, there have been allegations in the public realm that Mr. Bernhardt is hiding something with respect to his calendars. Do those allegations have merit?

A. No.

Q. Why is that?

A. Well, we publish, at the end of the week, all the external groups that he met with, we publish the names of the participants in the meeting. There's plenty of information out there. We have the calendar, we have the—people can FOIA things. There's meeting request forms, all of this different information. So if he's trying to hide who he's meeting with, he's doing a terrible job of it.

Q. There's been allegations in the public that Mr. Bernhardt has skirted his ethical requirements with respect to his calendars. Do those allegations have merit?

A. No.

Q. Why is that?

A. Because all of his meetings go through Ethics and General Law. He—if he's going to meet with an external group or person, Ethics and General Law have approved it.

Q. And, ma'am, are you aware of any concerted effort within the

¹¹² Rees Interview at 161-162.

Department to allow Mr. Bernhardt to meet with individuals that he's recused from meeting with?

A. No. It's actually quite the opposite. Everyone spends a lot of time making sure that he's not meeting with anyone, in particular, Secretary Bernhardt, that he's not meeting with anyone that he's recused from.

Q. Are you aware of any concerted effort within the Department to delete meetings from his calendars?

A. No.

Q. Are you aware of any effort within the Department to hide any conflicts of interests that Mr. Bernhardt may have?

A. No.¹¹³

Q. It has been said that the Trump administration is engaged in a coverup from the top with respect to congressional investigations. Do you agree with that statement?

A. No.

Q. Why is that?

A. I'm here cooperating.

Q. You're here voluntarily?

A. Yes.

Q. And the Department has produced documents to the committee—

A. Thousands.

Q. —including documents that you have authored, emails from you?

A. Yes.¹¹⁴

¹¹³ Hebert Interview at 66-67.

¹¹⁴ *Id.* at 81-82.

Willens, DOI's Chief of Staff, also disagreed with the assertion that the Trump Administration is engaged in a cover-up, and similarly refuted many of the allegations lodged against Bernhardt. He testified:

Q. Sir, there have been allegations in the public realm that Mr. Bernhardt is hiding something with respect to his calendars. Do you agree with those allegations?

A. I do not.

Q. Why is that?

A. Disprove a negative? He's not. I mean, there aren't—I can't think of anything that isn't already out there in the public realm, in one form or another, either through FOIA requests or things that we post. We have—we have made every attempt to be transparent, be consistent, and provide that information out there.¹¹⁵

Q. Sir, there have been allegations in the public that Mr. Bernhardt skirted his ethical requirements with respect to his calendars. Do you agree with those allegations?

A. I do not agree.

Q. Are you aware of any concerted effort within the Department to allow Mr. Bernhardt to meet with individuals that he is recused from meeting with?

A. No.

Q. Are you aware of any concerted effort within the Department to delete meetings from Mr. Bernhardt's calendars?

A. No.

Q. Are you aware of any effort within the Department to hide any conflicts of interest that Mr. Bernhardt may have?

A. No.

Q. It has been said that the Trump administration is engaged in a cover-up from the top with respect to congressional investigations. Do you agree with that statement?

¹¹⁵ Willens Interview at 83-84.

A. I do not.

Q. Why is that?

A. I've never received direction, a memo, anything that would—that tells me to do what's being suggested in that question.

Q. And you are here voluntarily today. Is that correct?

A. I am here voluntarily.

Q. And no one from the Department has attempted to dissuade you from appearing here today or to tell you what to say?

A. No.¹¹⁶

According to the witness testimony, DOI remains committed to cooperating with Chairman Cummings's and Chairman Grijalva's investigation. During his questioning by Democrat staff, Willens said that he would bring additional information forward to the Committees if he became aware of any new information. He testified:

Q. But will you commit to talking to the people at the Department who remain employees to try and help us find answers?

A. I do not know anyone who would have the knowledge, because our scheduling team down for the [Deputy Secretary] was Gareth and Cathy, and you've met with both of them. So I don't want to give you the false – I'm not going to mislead you to say – I'll commit, but I'm telling you right now you've already spoken to them.

Q. Would you commit to following up with Gareth and seeing if there's any way he can clear up this confusion, because –

A. I think you would have gotten the truth. You had to hear from him. I haven't spoken to him about any of this because you guys are reviewing it, investigating it, but –

Q. It's entirely possible we asked the wrong questions. So would you commit to –

A. Well, I don't – you guys ask a lot of questions, so I think you guys – don't sell yourself short. But it's – if I see – if, upon reflection, as I go through this, there's an opportunity and I see something that could have been missed, I certainly won't ignore it and I'll let you

¹¹⁶ *Id.* at 85-87.

know. And I'll talk to Gareth if we can provide additional information. But I'm not confident and I don't want to promise you that there's – that I'm going to bring something back to you when I'm not sure and I doubt there is anything there to bring back.¹¹⁷

Moreover, Willens highlighted the level of responsiveness DOI has provided to Chairman Grijalva's and his staff's requests. In fact, based on assurances from Chairman Grijalva's staff, DOI took action to satisfy Democrats' concerns. He testified:

Q. And while we're talking about external meetings, since you moved to the Secretary's office as acting chief of staff and now as chief of staff, have you provided directions to the scheduling office to post the Secretary's external meetings on the Department's website?

A. Just to do it, yes.

Q. Why did you tell them to do it?

A. Well, it was a conversation I had with [Natural Resources Committee Democrat Staff]. . . . We received a letter from –we received – we were in the middle of [the government] shutdown. [DOI] had no staff. [Congress was] still operating. And there was the expectation that we would be able to process FOIAs, which we had no one to do that for. So as a –we received a letter from Chairman Grijalva, expressing concern with disclosure of details of the meetings. And there were a number of items that were in there, they were requesting information. I called [Natural Resources Committee Democrat Staff] and said, All right, what is this? What do you really want out of this? And he and I had a conversation and agreed that what they really wanted to do was transparency on the external meetings, and I said, Okay, we'll publish that on the website, the external meetings, and we'll put that up there if that will satisfy the concerns that you have.

Q. So your instructions to regularly post Secretary Bernhardt's external meetings to the Department website was based on a desire for further transparency, and in consultation with the Natural Resources Committee?

A. Yeah. We thought we were being helpful.¹¹⁸

¹¹⁷ *Id.* at 290-91.

¹¹⁸ *Id.* at 74.

Contrary to Chairman Cummings’s assertion of a “cover-up” from the “top” on congressional investigations, the Committees have no evidence to support that wild accusation. Likewise, Chairman Grijalva’s allegation that Bernhardt ignores congressional requests for information is baseless. Instead, the record before the Committees clearly shows that DOI has cooperated voluntarily—and extensively—with the chairmen’s investigation and that there has been no effort to hide Bernhardt’s meetings from the American public.

CONCLUSION

DOI cooperated extensively and voluntarily with Chairman Cummings’s and Chairman Grijalva’s partisan investigation. Three DOI employees voluntarily sat for day-long transcribed interviews, DOI produced nearly 27,000 pages of scheduling documents to the Committees, and DOI made officials available to the Committees for two separate staff-level briefings. Due to the Trump Administration’s cooperation with Chairman Cummings’s and Chairman Grijalva’s investigation, the Committees have an extensive record of material from which to make these findings.

The Committees’ investigation of the record-keeping practices at DOI conclusively demonstrates that Bernhardt has complied with his ethics obligations and has preserved his calendar records and made documents available to the public as requested. The evidence before the Committees does not support allegations that Bernhardt has sought to hide his meetings from the American public. Instead, the evidence shows that Bernhardt established a robust system to comply with his ethics obligations and to promote an atmosphere of ethical compliance within DOI. As Secretary, Bernhardt even implemented several new procedures for ethics compliance that exceed that of his predecessors and makes more information about his meetings publicly available. In addition, the witnesses told the Committees that records of Bernhardt’s scheduling documents were never altered or destroyed. The witnesses also disputed assertions that the Trump Administration had engaged in a “cover-up” from the “top,” and exemplified how cooperative and responsive DOI has been to congressional requests for information.

The Committees have an important responsibility to conduct bipartisan, good-government oversight of the executive branch. Unfortunately, the Committees’ limited time and resources have been spent all too often in a partisan effort to attack the Trump Administration for political gain. This investigation appears to be one such attempt. Chairman Cummings, Chairman Grijalva, and other Democrats would better serve the American public by moving away from political attacks on the President and his Administration and instead striving for bipartisan, good-government oversight and reform.

APPENDIX I – MEETING INFORMATION REQUEST FORM

U.S. Department of the Interior – Office of the Secretary

Meeting Information Request Form

To ensure that the appropriate individual within the Department of the Interior is meeting with you on a given matter and because the Office of the Secretary is committed to maintaining the highest ethical standards, we need the information requested below before we can agree to schedule a meeting¹.

Please respond to the questions below and send your response to [REDACTED]
 If you have any questions you may contact the Scheduling Office at [REDACTED]

Requesting individual/organization: (Please identify the person(s) (name and affiliation) requesting the meeting, including any background information on the affiliated organization(s).)	
Contact information (Name, Email, Phone):	
Please describe the action sought from the Office of the Secretary:	
Meeting date (if date is flexible please indicate the range): Please explain any time sensitivity that impacts the date of the meeting, such as court-ordered or statutory deadline:	
Proposed meeting location (City, State):	
Expected meeting participants (name, title, and organizational affiliation):	
Are any expected meeting participants registered lobbyists or lobbying organizations, and/or registered under the Foreign Agents Registration Act? (If yes, please identify.)	
Are any expected meeting participants a partisan political candidate, a representative of a political party or a registered political action committee (PAC)? (If yes, please identify.)	

¹Per the Administration Ethics Pledge, the Acting Secretary agreed that he will not for a period of two years from the date of his appointment participate in any particular matter involving specific parties in which a former employer or client of his is or represents a party, if he served that former employer or client during the two years prior to his appointment, absent a waiver under Section 3 of Executive Order No. 13770. This includes recusal from any meeting or other communication with such a former employer or client unless (1) there are five or more different stakeholders present and (2) no particular matters involving specific parties are discussed.

Do any expected meeting participants seek or currently have any business interests with the Department such as permits, contracts, litigation, grants, etc.? (If yes, please identify.)	
Were any of the expected meeting participants previously represented by the Acting Secretary? (If yes, please identify.) Are any of the expected meeting participants currently represented in any matter by Brownstein Hyatt Farber Schreck, LLP? (If yes, please identify.)	
Describe the proposed meeting topic/ agenda, provide available briefing materials, and identify desired outcome(s):	
Will the meeting involve legislation, broad policy options, or other general matters that involve a large and diverse range of persons and interests? (If yes, please describe.)	
Will the meeting involve regulations, rules, or other matters that impact a specific industry, sector of the economy, or group of persons? (If yes, please describe.)	
Will the meeting involve a litigation matter, a permit, a grant, a contract, or any other matter that involves specific parties? <ul style="list-style-type: none"> • If yes, please identify the matter and list the specific parties. • Are any of the parties represented by Brownstein Hyatt Farber Schreck, LLP, in the matter? (If yes, please identify.) 	
With which Bureau or Agency does your agenda most align? Please list all, if more than one.	
If the Acting Secretary is unable to meet, is a surrogate desired? If yes, who specifically?	
Any additional notes or information?	