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Folder Title:

Office of Special Counsel Reports & Scott Bloch Issues [8]

# Withdrawn/Redacted Material

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| DOCUMENT NO. | FORM   | SUBJECT/TITLE                                                                                           | PAGES | DATE       | RESTRICTION(S) |
|--------------|--------|---------------------------------------------------------------------------------------------------------|-------|------------|----------------|
| 001          | Email  | RE: COS Correspondence: Project on Government Oversight - To: Mary Beth Bakke - From: J. Michael Farren | 2     | 07/21/2008 | P5;            |
| 002          | Letter | [Letter] - To: Fred Fielding - From: Roscoe Howard                                                      | 7     | 08/08/2008 | P6/b6;         |
| 003          | Report | OSC Report on Analysis of Disclosure, Agency Report...                                                  | 54    | N.D.       | P6/b6; b7c;    |

### COLLECTION TITLE:

Counsel's Office, White House

### SERIES:

Fielding, Fred - General Files

### FOLDER TITLE:

Office of Special Counsel Reports & Scott Bloch Issues [8]

### FRC ID:

11293

### RESTRICTION CODES

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- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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U.S. OFFICE OF SPECIAL COUNSEL  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
202-254-3600

August 5, 2005

Dr. Richard von Sternberg  
[REDACTED]

Re: OSC File No. MA-05-0371 and MA-05-0015

Dear Dr. Sternberg:

I have received and reviewed the file material and complaints that you filed with this agency. The U.S. Office of Special Counsel (OSC) is authorized to investigate allegations of prohibited personnel practices and activities prohibited by civil service law, rule, or regulation. 5 U.S.C. §§ 1214(a)(1)(A), 1216(a) and 2302(b). The Special Counsel presents allegations of reprisal for whistleblowing and other prohibited personnel practices to the Merit Systems Protection Board (the Board), which has the authority to hear and adjudicate such matters.

I have carefully considered the information you provided. Based upon my evaluation of the facts and law applicable to your claim, I have made a preliminary determination to close our investigation into your allegations. My decision is not based upon the substance of your allegations; in fact, our preliminary investigation supports your complaint. My decision is founded upon a complicated jurisdictional puzzle and your position as a Research Associate (RA).

The Smithsonian Institution (SI) has taken legal steps to ensure that RAs are not employees of the SI. Our investigation revealed that you are a Title 42 Scientist, employed by the National Institute of Health (NIH). Pursuant to your agreement with the NIH, you are allowed to work 50% of your time at NIH and the other 50% with the SI. This is a common arrangement with both NIH and the SI. While your case was pending the Board decided the *Fishbein v. D.H.H.S.* case. This case exempts Title 42 Scientists from Title 5 protections, which would effectively remove you from the protections granted under the auspices of OSC. OSC's initial investigation supports the SI's contention that you are not an employee, and therefore are not covered under the jurisdictional statutes imposed upon OSC. Further the attorney for the SI has made it clear that the SI will not voluntarily participate in any additional investigation into your complaint. They will legally challenge our jurisdictional authority.

Your complaint alleges that senior members of the SI and the National Museum of Natural History (NMNH) retaliated against you for publishing an article that questioned the validity of evolutionary theory. You claim that your first amendment rights, freedoms of religion and political affiliation, and protection granted for off-duty conduct were violated by very senior members of the SI and NMNH. You further claim they created a hostile work environment in an attempt to pressure you into leaving your position with the SI. The article in question was written by Dr. Steven Meyer, entitled "The Origin of Biological Information and the Higher

Taxonomic Categories." The article summarizes multiple sources from scientists around the world and concludes that conventional evolutionary theory does not adequately explain the change in cellular systems and body plans during the "Cambrian Explosion," and therefore science should consider the possibility of "intelligent design" (ID). Henceforth this will be referred to as the Meyer article. The Meyer article was published in the *Proceedings of the Biological Society of Washington (Proceedings)*, which is a publication of a small non-profit organization called the Biologic Society of Washington (Society). You were the editor of the *Proceedings* at the time of the Meyer article. The Society and the *Proceedings* are not officially affiliated with the SI or the NMNH, yet they maintain a close symbiotic relationship through its leadership and payments made for publications. In fact, the Society for some reason maintains the same business address as the NMNH, and occasionally will use the same letter head.

During our initial investigation, OSC has been able to find support for many of your allegations. However, the SI is now refusing to cooperate with our investigation. OSC is not able to take statements and receive further paper discovery that would allow for final conclusions. The SI may in fact maintain documents that place our current information in a different context. As a consequence, I will detail only our preliminary findings below.

I will also preface my comments by stating that it is clear that the underlying issues and the motivation for much of the actions taken against you involve the political debate between creationism (a belief in a god as creator) and evolution (neo-Darwinism), and more particularly the perception that ID as set forth in the Meyer article is nothing more than a stalking horse for religion or creationism. OSC will not enter this debate or make decisions based upon the substance of this debate. However, if the debate inspires actions that seem to be in violation of the law, OSC will comment on this problem.

### Off-Duty Conduct

Our preliminary investigation was able to confirm that your participation in the *Proceedings* was off-duty activity and not affiliated with your work as a RA with the SI. A talking points memo from the SI public affairs office that was drafted after the publication of the Meyer article admits that the *Proceedings* is a "non-Smithsonian" journal and that your activities as the editor of the *Proceedings* were "non-SI activities." The talking points memo also claims that the Society is not affiliated with the SI or the NMNH. This point was further developed in an email from Nell Payne, an SI public affairs official, written to other SI and NMNH employees. Her email states, "But isn't the Society private and isn't their journal private ????? I don't think we're allowed to control what our people do on their own time, as long as it's legal." Her email was written on 10-05-04, in response to actions against you following publication of the Meyer article. She also summarized her observations by saying, "This is tricky. This looks to me like precisely the sort of management pressure Sternberg is complaining about." She made this observation after reviewing only a small sampling of the emails.

Section 2302(b)(10) prohibits an official with personnel action authority from discriminating for or against any employee or applicant for employment on the basis of conduct

which does not adversely affect the performance of the employee or applicant or the performance of others. The intent of 5 U.S.C. § 2302(b)(10) is to prohibit reprisal for non-job related, off-duty conduct. *Merritt v. Dep't of Justice*, 6 M.S.P.B. 493, 506-08 (1981); *OSC v. Harvey*, 802 F.2d 537 at 551 (D.C. Cir. 1986).

Additional evidence of discrimination and retaliation will be developed below. However, since you are a RA, this section does not grant you protections.

### **First Amendment Violations, Religious and Political Affiliation Discrimination**

Our investigation also shows that there is a strong religious and political component to the actions taken after the publication of the Meyer article. Much of the e-mail traffic after the publication of the Meyer article documented a personal investigation of you and tabbed you as a "creationist." One senior SI employee, when discussing the Meyer article stated, "The paper is a sheer disaster ... We are evolutionary biologist, and I am sorry to see us made into the laughing stock of the world, even if this kind of rubbish sells well in backwoods USA... Under no circumstances should the Institution support the journal with page-charges, which up to this point has been a mainstay of the Society." After the publication when many in the SI were investigating your background, one of the e-mails raised concerns that you had "extensive training as an orthodox priest." Another e-mail stated, "Scientists have been perfectly willing to let these people alone in their churches. But now it looks like these people are coming out and invading our schools, biology classes, museums, and now our professional journals. These people to my mind are only a scale up on the fundies of a more destructive kind in other parts of the world. Depressing. Oh, if we only still had Steve Gould to lead the counter-attack."

An e-mail by a NMNH scientist that was sent to your supervisor sums up the sentiment of the e-mails, as it relates to this issue. It reads, "The whole situation sounds like a pain in the ... neck. Hopefully, the ID folks will get distracted with something else soon. After spending 4.5 years in the Bible Belt, I have learned how to carefully phrase things in order to avoid the least amount of negative repercussions for the kids. And I have heard many amazing things!! The most fun we had by far was when my son refused to say the Pledge of Allegiance because of the "under dog" part..." The e-mail concludes by lamenting that the school teacher was "religious" and it was unfortunate that there was "anti-evolution education" in the schools.

Of great import is the fact that these same SI and NMNH employees immediately aligned themselves with the National Center for Science Education (NCSE). Our investigation shows that NCSE is a political advocacy organization dedicated to defeating any introduction of ID, creationism or religion into the American education system. In fact, members of NCSE worked closely with SI and NMNH members in outlining a strategy to have you investigated and discredited within the SI. Members of NCSE, furthermore, e-mailed detailed statements of repudiation of the Meyer article to high level NMNH officials. In turn they sent them to the Society. There are e-mails that are several pages in length that map out their strategy. NCSE recommendations were circulated within the SI and eventually became part of the official public response of the SI to the Meyer article.

OSC is not making a statement on whether the SI or NMNH was wrong or right in aligning with the NCSE, although OSC questions the use of appropriated funds to work with an outside advocacy group for this purpose. This is only discussed to show that the actions taken on the part of SI employees clearly had a political and religious component. Therefore, it may lend credence to your allegations that your religious and political affiliations were investigated and made a part of the actions taken against you.

You allege in your complaint that SI managers questioned people that they thought to be your friends at the SI, regarding your religion and your political affiliations. According to your complaint, this occurred on at least two occasions. You learned this through direct statements made to you by the individuals that were questioned. As stated above, our investigation has not been allowed to proceed through the interview process. We have not been able to question the individuals involved in the alleged conversations to determine if the facts would support a specified legal conclusion.

Nevertheless, the current investigative file reflects support for your allegations. First, the e-mail traffic does show that there were meetings between the individuals in question during the time frame that you allege in the complaint. For some reason there was no official record kept by the SI of what was stated in the meetings, at least based on what has been provided to OSC to date. Further, a second e-mail drafted by this same manager several months later admits that one of these meetings took place and, more importantly, these issues were discussed. To put this in context, at the same time many other actions were taken during the uproar over the Meyer article your supervisor was questioning your friends about your personal political and religious background.

### **Retaliation**

Our preliminary investigation indicates that retaliation came in many forms. It came in the form of attempts to change your working conditions and even proposals to change how the SI retains and deals with future RAs. During the process you were personally investigated and your professional competence was attacked. Misinformation was disseminated throughout the SI and to outside sources. The allegations against you were later determined to be false. It is also clear that a hostile work environment was created with the ultimate goal of forcing you out of the SI.

The first actions taken against you after the Meyer article were to research your scientific education and writings. This was in conjunction with researching your off-duty professional associations. There are several e-mails that recount the findings regarding your prior work and your professional memberships. Within each are comments that label you as an advocate for ID, or as a creationist, or as one e-mail states a "Young Earth Creationist." The rumor mill became so infected that one of your colleagues had to circulate your Curriculum Vitae simply to dispel the rumor that you were not a scientist.

At this same time, many e-mails from within the management of the SI and from outside sources stated that the only way the Meyer article was published was through "serious editorial oversight." Other managers called it an "egregious instance of editorial incompetence..." They could not fathom that the Meyer article had been peer reviewed and, if it was, it could only have been reviewed by "like minded individuals." In fact, there was a serious effort by some to take the drastic step of piercing the veil of peer review, an unprecedented and unethical act within your field. They also assumed that you violated editorial regulations of the *Proceedings* because you were the primary editor of the article. These comments were made to and by SI and NMNH managers and were published to several outside organizations. It was later revealed that you complied with all editorial requirements of the *Proceedings* and that the Meyer article was properly peer reviewed by renowned scientists. As an aside, the information received by OSC does not indicate that any effort was made to recall or correct these comments once the truth was made known.

During the impromptu background investigation allegations were also made that you mishandled specimens and collections during your scientific research. You have clearly explained how damaging this is for a scientist in your position. This information was also shared outside of the SI. And once again managers later had to admit that the allegations were false. And as with the editorial issue there was no effort, as far as we can tell, to correct this misconception. This allegation may have played into a larger strategy to deny you access to the range and collections at the SI.

There was a strategy by several managers to force you out of the SI. The first thing they did was check your official status with the SI to see if you could be let go for cause for the Meyer article and the information found in your unofficial background investigation. They then tried a more sophisticated strategy by arguing that since your sponsor died shortly before the Meyer article was published that you could be denied access on that basis. Within two weeks of receiving the Meyer article in the *Proceedings*, four managers at the SI and NMNH expressed their desire to have your access to the SI denied. A typical email reads, "...I am almost blown away by this Meyer BS but Sternberg seems to have generated a legion of questionable editorial activities. In my case he was just plain sloppy in letting mss lie without action. I hope we are not even considering extending his access to space. I assume he has no sponsor. As is, I feel like I want my office re-keyed." This was one of several e-mails attempting to deny you space. Unfortunately, instead of correcting this type of e-mail, the response from your supervisor only states, "Aha, Well, this is why I want the space meeting. Need to know what the consensus is ..." In an earlier e-mail he stated, "At present I am not tossing him out because we have the space to accommodate him,..."

Eventually, they determined that they could not terminate you for cause and they were not going to make you a "martyr" by firing you for publishing a paper on ID. They came to the conclusion that you had not violated SI directives and that you could not be denied access for off- duty conduct. This was actually part of the strategy advocated by the NCSE. Undeterred, these same managers then embarked on a new strategy to change your working conditions and create a hostile working environment. Several e-mails complained that you should not be

allowed to "live" on the same working floor with other scientists. Two very senior scientists wanted your supervisor to let you know that "you are welcome to leave or resign."

These are typical e-mails:

"From: [REDACTED]  
To: [REDACTED]  
Date: 9/1/04 8:28AM  
Subject: Re: Life on West Wing 1st floor

It is up to Zoology to sort out this mess. Your RAs obviously receive a lot more privileges than those in other departments (e.g., Paleontology - speaking from my personal experience). These privileges are not based on Smithsonian Directive 205 "Research Associates" (June 7, 2001), and, as a consequence the access and office privileges of a certain RA can be reconsidered with due consideration of [REDACTED] concerns. Why does the RA in question have a master key rather than more restricted access? Why does he have an office when there is space shortage for regular SI staff and visiting researchers? Why does he have unrestricted collection access? You could restrict access to 8:45 AM to 5:15 PM Monday through Friday - the established core hours for Museum staff. [REDACTED] as the senior crustacean expert, has every right to determine the scope of collection access.

One important thing to keep in mind, however, is the equal treatment of all RAs in the section. You must not impose more onerous restrictions on one particular RA than on other RAs in the section [REDACTED]

From: [REDACTED]  
To: [REDACTED]  
Date: 9/1/2004 11:46:24 AM  
Subject: Re: Life on West Wing 1st floor

I believe [REDACTED] could have answered most of his questions by asking around IZ--there was no need to bother you as you no doubt appreciate. As you see, he is presuming most of this rather than asking...there is no space shortage, except insofar as [REDACTED] wants to deny him space. Anyway, on the core point, I obviously am not going to be able to find a sponsor for Sternberg, yet his official status is as a research associate for the next three years. If you don't want to make a martyr of him, I'll sponsor him.

As he hasn't (yet) been discovered to have done anything wrong, particularly compared to his peers, the sole reason to terminate his appt seems to be that the host unit has suddenly changed its mind. If that's OKw NMNH, let me know and I'll send him a letter stating so. However, as you decided originally, the political downside of that is costly.

Outside of pique, [REDACTED]'s main legitimate concern seems to be a fear of guilt by association. In any case [REDACTED] isn't going to shut up about this until he wins (i.e. banishes Sternberg) or gets told to. I'm not going to get bit to death by daily emails. The access and key issues are trivial and can be fixed, if out of line.

The only grounds I see is [REDACTED]'s lack of support. If that isn't sufficient, then I basically have to tell [REDACTED] (again) to shut up (which I am also willing to do). Which do you prefer?

In these e-mails they are concerned about the access given to you prior to the Meyer article. As you can see, they are suggesting several changes. The e-mail traffic that we received indicates that this was all in response to your off-duty activity publishing the Meyer article.

Also, these indicate they are still attempting to find a reason to terminate you. You had not "yet" been found to have committed a terminable offense. They were still looking for a pretext.

>> [REDACTED] 08/31/04 12:09PM >>>

Thanks to both of you for your efforts in dealing with the current situation. Unfortunately the panorama of my work environment continues to be rather blurred. So, in an effort to try to understand what might be going on here in the Crustacea floor at east for the next 2.5 years, let me ask some questions to see if you can supply some answers.

1. We have an SI Research Associate (RA) who was appointed with the support of a curator that is now deceased. Which SI scientist now serves as support staff for this RA now? Can an RA continue to operate without a proper staff support person? If one is needed, who should this RA answer or report to?
2. The RA has access to collections, but SI Directive 205 states: "Access to and use of collections must be approved in advance by the appropriate unit staff member in accordance with established policy and procedures". Who is this staff member? Has any curator been consulted on the research being conducted, or how the collections are being used?
3. I presume this RA has a key to most rooms in the floor (including mine), and the stacks, to allow entry at out of the ordinary business hours, i.e. when no SI staff is here. If true, who authorized this key, and is it at all legal for RAs to have keys on a permanent basis?
4. The recent events are fastly precipitating serious personnel issues as it is clear that tensions are at a high level on the floor. Is this a proper working environment for all the staff that lives on this floor? Does the admin really expect us to live normally in this environment for 2.5 years, and will things really change after that?

[REDACTED]  
CC: [REDACTED]

From: [REDACTED]  
To: [REDACTED]  
Date: 9/9/04 10:45AM  
Subject: Re: Reply [2]

Excuse me [REDACTED] but I thought we were addressing the issue of the integrity of this museum's scientific research. In that respect, you are responsible for the actions of your researchers, as well as those scientists who use the name of this museum in any way related to research or collections [which includes research associates and those of the, euphemistically named, affiliated agencies]. Given the Meyer fiasco, how Sternberg represents himself to the world of science is of some consequence to you. I strongly suggest that you call [REDACTED] and start asking questions rather than waiting until the crisis becomes unmanageable. [REDACTED]

>>> [REDACTED] 09/09/04 10:33AM >>> Thank you, [REDACTED]

As the BSW is, legally speaking, an external activity, we cannot use Sternberg's mishandling of the Meyer paper to revoke his status as Research Associate. The SI Directive lists only a few points that are deemed sufficient cause for that purpose, and none applies to Sternberg.

Like you, I would like to know who the alleged reviewers were, but [REDACTED] has not told me anything. People at the NCSE suspect that some or all of them may have been co-authors on a previous paper by Meyer, which was substantially copied into the PBSW paper.

>> [REDACTED] 09/09/04 10:12AM >>>

I would be glad to pop over at a convenient time.

But certainly it is not unreasonable to ask [REDACTED] or [REDACTED] to pull the file and determine whether the manuscript was rigorously reviewed, in effect who reviewed it? After all, Meyer [and now Sternberg] are establishing their bona fides based on the fact that for 15 years prior to Sternberg, PBSW manuscripts were rigorously reviewed by international taxonomists [I led that movement!].

So, were the reviewers people who could provide a balanced assessment of the manuscript and people who were cited in the manuscript, especially those whose ideas were opined to be wrong? Or were the reviewers people who a priori support ID or structuralism, nuanced names for creationism?

After all, the manuscript does nothing except poke holes in evolutionary processes that attempt to explain major changes in body architecture, and then gratuitously concludes that because evolution cannot explain major architectural changes, intelligent design must be the process involved.

Two traps not to get caught in:

Number of reviewers. If two or even three reviewers were used, that was not enough for a paper of this broad a reach; four to six reviewers should have been consulted.

Reviewer Anonymity. Don't let [REDACTED] or Sternberg tell you that reviewers names must remain a secret. Reviewer anonymity is a request by a reviewer to an editor that the reviewer not be directly and immediately identified to the author of a manuscript under review. In fact, during the 15 years I was associate editor, we published a list of reviewers of manuscripts for the year at the end of each year as a way of advertizing our interest in a rigorous review process.

[REDACTED]

In these e-mails they are continuing to explain why you should not be given access to the SI for the next "2.5 years." This information also seems to indicate that your managers were not concerned about the SI Directive 205 until after the Meyer article. Also troubling is that these e-mails and others show that they were not concerned with these issues until after the Meyer "fiasco." Lastly, as you can see they were very interested in piercing the veil of peer review. Again, there is no information to indicate that this was done before the Meyer article.

From: [REDACTED]  
To: [REDACTED]  
Date: 9/9/04 11:13AM  
Subject: Re: Reply [3]

Please read my e-mails more carefully. I am not suggesting martyrdom for anyone. I am concerned about how and by whom the Meyer manuscript was reviewed.

As an aside: in general then, who is responsible for the scientific behavior of a Research Associate of the National Museum of Natural History?

>>> [REDACTED] 09/09/04 10:57AM >>>

Legally, unless you can present me with evidence that Sternberg has represented himself as an employee of NMNH, my hands are tied. I have extensively researched and consulted on this issue as I fully share your point of view. Indeed, I was strongly advised that we do not make a "martyr" out of Sternberg; you may be aware that there are powerful members of Congress who would rush to his defense.

This whole embarrassment can be credited to the late [REDACTED] who nominated this man and to the BSW who entrusted him with the editorship of the Proceedings. Sternberg is a well-established figure in anti-evolution circles, and a simple Google search would have exposed these connections. Please place the blame where it squarely belongs. I immediately resigned from the BSW.

>>> [REDACTED] 09/09/04 10:46AM >>>

Excuse me [REDACTED] but I thought we were addressing the issue of the integrity of this museum's scientific research. In that respect, you are responsible for the actions of your researchers, as well as those scientists who use the name of this museum in any way related to research or collections [which includes research associates and those of the, euphemistically named, affiliated agencies]. Given the Meyer fiasco, how Sternberg represents himself to the world of science is of some consequence to you. I strongly suggest that you call [REDACTED] and start asking questions rather than waiting until the crisis becomes unmanageable. [REDACTED]

>>> [REDACTED] 09/09/04 10:33AM >>> Thank you, [REDACTED]

As the BSW is, legally speaking, an external activity, we cannot use Sternberg's mishandling of the Meyer paper to revoke his status as Research Associate. The SI Directive lists only a few points that are deemed sufficient cause for that purpose, and none applies to Sternberg.

Like you, I would like to know who the alleged reviewers were, but [REDACTED] has not told me anything. People at the NCSE suspect that some or all of them may have been co-authors on a previous paper by Meyer, which was substantially copied into the PBSW paper.

>>> [REDACTED] 09/09/04 09 11AM >>>

I think there is, but the heat may have to increase a bit.

From: [REDACTED]

To: [REDACTED]

Date: 9/13/04 1:46PM

Subject: Re: Upcoming in Helsinki

Well, if you ask me, a face to face meeting or at least a "you are welcome to leave or resign" call with this individual, is in order. Of course, that is easy for me to say, and as bosses it is you who have to decide what to do. I will always respect your decision. All I can say is that this is plain embarrassing for us all in NMNH. What will we do when a book on ID comes out with our name on it? Believe me, it will come. The BSW made a crucial error a year ago, and it seems to me we don't want to do the same.

If you have not yet seen the summary update, see:

[http://M-w.ncseweb.org/resources/news/2flo4Jrd33~id paper continues to attract 9 10 2004.asD](http://M-w.ncseweb.org/resources/news/2flo4Jrd33~id%20paper%20continues%20to%20attract%209%2010%202004.asD)

A key to all this is whether the infamous PBSW article was really peer-reviewed or not. Since the museum funds a lot of papers in that journal, it seems to me a reasonable thing for NMNH to ask BSW to demonstrate what really happened by opening the files to you. They certainly should have a vested interest in clarifying this. The ex-editor had already demonstrated a pattern of disregard for the well-

established peer-review process in that journal, and that alone does not "follow prevailing standards for conducting research in the discipline" (SI D 205, page 4), as far as I can tell. That, taken with the AAAS resolution, should be enough to justify a "you are welcome to leave or resign" call or meeting to say so.

Finally, whether or not SI D 205 needs to be revisited is perhaps something the admin may wish to pursue. I for one, find it deficient in many respects. How does it deal, for example, with the current situation: the SI staff that supported the RA passes away, so who should the RA report to? Here are some eye-openers, juts FYI (and pardon me for sounding repetitive). Said RA

- \*is not known who he reports to, or what decapod groups he is waiting on and for what projects/manuscripts;
- \*comes to work "after hours only" but nobody knows when, yet we will extend him long-term space privileges (meaning in the daytime his assigned space could be tied up);
- \* keeps an unusual number of catalogued specimens in NMNH office, and for unusual lengths of time, ignoring requests from curator in charge to place them back in stacks;
- \* keeps in NMNH office what appear to be specimens that have not been registered through the required TM procedures;
- \* has currently 50 books checked out from SI library (I checked this with the library);
- \* an SI staff from another NMNH department has been seen entering HA office and apparently handles specimens without authorization from IZ CM head or curator in charge.

If I were to do this in any other museum I'd be run out of that town.

>>> [REDACTED] 09/13/04 10:51AM>>>

I just reread 205, but I don't see any basis for terminating his appt based on this sort of activity, suppose we could call him on the phone and verbally ask him to do the right thing and resign?"

These e-mails are consistent with many others at this time. Your managers are still attempting to find a way to terminate your access. However, they have decided the politics aren't right for them to let you go. They wanted to make it clear that you should "do the right thing and resign." This supports your allegation that you were subjected to a hostile work environment. Finally, the last e-mail cited sets forth a troubling summary of events where people had to be investigating your work activities beyond that which is done for other RAs. They are even inspecting what you have been checking out from the library. We are very concerned where this type of scrutiny can lead. Your job as a scientist is to ask the hard questions and make other scientists think about their positions. This type of scrutiny does not engender the correct atmosphere. From the information received by OSC, not a single e-mail shows that a manager attempted to halt this type of retaliatory investigation or admonish those that had already taken place.

Eventually the changes in your working conditions were watered down significantly. You are now required to give your supervisor an outline of your research. This may seem innocuous, but as you explain, this can be used as a method of controlling any controversial study. Also, you make the point that others in your position were not asked to do the same. Second, they denied your access by taking your master key. Lastly, they have prevented you from having the same access to the research specimens. Again, this may seem minor until considering the advantage given to others that do not have the same hindrances.

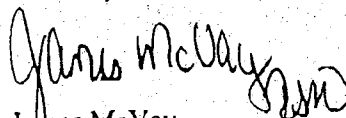
There are many retaliatory comments made by senior scientists of the SI and NMNH noted in the documents and e-mails that we have received. Some are suggestions about how to handle the situation with you and some are directed at changes they want made to prevent scientist like you from being RAs. Many have not been cited in this letter. However, they do support the contention that the managers have created a hostile work environment. The most telling of these off-handed comments came after they realized that you could not be discharged for cause and that they could only make, what they consider, minor changes to your work environment. They make the point that you only have a little more than two years left on your RA position with the SI and being that all RAs are required to have a sponsor, your RA will lapse, forcing you to leave. These emails make it clear that nobody would be willing to sponsor you two years from now. In fact, your supervisor made this point.

There are disturbing conclusions that can be drawn from this comment. First, it is insightful that it is openly stated between senior managers more than two years before you will be considered for reappointment. Keep in mind that there are scientists who are RAs at the SI for decades. You could theoretically win many scientific accolades between now and then, and to these managers it may not matter. It seems that the merit of your work may have nothing to do with your position at the SI. It could mean that they will ensure that no one would dare sponsor you for fear that they will receive the same treatment. This may ultimately mean that, as far as they know, others in the SI who would be in a position to sponsor you are "like minded."

At this point I would normally discuss the legal standards for First Amendment violations and for religious and political affiliation discrimination. Because it seems clear that we now lack jurisdiction, it is not necessary. Other than to say, aside from the jurisdictional argument, there is nothing in our preliminary investigation that would rule out the merit of your claims.

As indicated above, I have made a preliminary determination to close my inquiry into your 5 U.S.C. § 2302(b)(10), allegation. However, before we actually close our inquiry into this allegation, we will give you an opportunity to submit any comments or additional documents you may wish to provide concerning our determination. Your response must be *in writing* and should address each of the reasons cited in reaching my preliminary determination to close your complaint. You have *16 days* from the date of this letter to submit your written response. If we do not receive any written comments by the end of the sixteen-day period, we anticipate closing the file. We will then send you a letter terminating the investigation into those allegations and advising you of any additional rights you may have.

Sincerely,



James McVay  
Attorney



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August 16, 2005, 8:26 a.m.

## Unintelligent Design

Hostility toward religious believers at the nation's museum.

By David Klinghoffer

**T**he Smithsonian Institution is a national treasure of which every American can legitimately feel a sense of personal ownership. Considering this, I'd imagine widespread displeasure as more Americans become aware that senior scientists at the publicly funded Smithsonian's National Museum of Natural History have reportedly been creating a "hostile work environment" for one of their colleagues merely because he published a controversial idea in a biology journal.

The controversial idea is Intelligent Design, the scientific critique of neo-Darwinism. The persecuted Smithsonian scientist is Richard von Sternberg, the holder of two PhDs in biology (one in theoretical biology, the other in molecular evolution). While the Smithsonian disputes the case, Sternberg's version has so far been substantiated in an investigation by the U.S. Office of Special Counsel (OSC), an independent federal agency.

A lengthy and detailed letter from OSC attorney James McVay, dated August 5, 2005, and addressed to Sternberg, summarizes the government's findings, based largely on e-mail traffic among top Smithsonian scientists. A particularly damning passage in the OSC letter reads:

Our preliminary investigation indicates that retaliation [against Sternberg by his colleagues] came in many forms. It came in the form of attempts to change your working conditions...During the process you were personally investigated and your professional competence was attacked. Misinformation was disseminated throughout the SI [Smithsonian Institution] and to outside sources. The allegations against you were later determined to be false. It is also clear that a hostile work environment was created with the ultimate goal of forcing you out of the SI.

Meanwhile, on the basis of the "misinformation" directed against him, Sternberg's career prospects were being ruined.

### OFFENSIVE PROCEEDINGS

What exactly was his offense? Some background is in order. In a January *Wall Street Journal* op-ed, I reported the story of how Sternberg, a *Smithsonian* research associate, suffered as a result of his editing a technical peer-reviewed biology journal, *The Proceedings of the Biological Society of Washington*.

The journal is housed at the Smithsonian, though it's nominally independent. For his part, formally, Sternberg is employed by the National Institute of Health, though his agreement with his employer stipulates that he may spend 50 percent of his time working at the Smithsonian. So when the August 2004 issue of the *Proceedings* appeared, under Sternberg's editorship, Sternberg's managers at the Smithsonian took a keen interest in a particular article

— the first paper laying out the evidence for ID to be published in a peer-reviewed technical journal.

The article was "The Origin of Biological Information and the Higher Taxonomic Categories," by Stephen Meyer, a Cambridge University PhD in the philosophy of biology. He's currently a senior fellow at Seattle's Discovery Institute. In the essay, Meyer reviewed the work of scientists around the world — at places like Oxford, Cambridge, Yale, and the University of Chicago — who have cast doubt on whether Darwinian evolution can explain the sudden infusion of genetic "information" and the resulting explosion of between 19 and 34 new animal phyla (body plans) about 530 million years ago — the Cambrian Explosion. Meyer argued that perhaps an unidentified designing intelligence played a role in the event.

#### NO WAY TO TREAT A "RESPECTED SCIENTIST"

However strong you think the argument is for Intelligent Design — and I'm no scientist — most reasonable people would agree that an ID theoretician should, without fear of retaliation, be allowed to state his case for the consideration of fellow scientists. This was the view held by Sternberg, who isn't himself an advocate of ID. However, according to the OSC's investigation, when the Meyer article was published, Sternberg's managers were outraged and a number of them sought a strategy that would make him pay.

Writes the OSC's McVay: "Within two weeks of receiving the Meyer article in the *Proceedings*, four managers at the SI and NMNH [National Museum of Natural History] expressed their desire to have your access to the SI denied." A typical internal e-mail on the subject fumed, "I hope we are not even considering extending his access to space." (All quotations from e-mails given here are taken from the OSC's letter to Sternberg.) Another expresses frustration that a good pretext for dismissing him had so far not been identified: "As he hasn't (yet) been discovered to have done anything wrong,... the sole reason to terminate his appt seems to be that the host unit has suddenly changed its mind. If that's OK w/NMNH, let me know and I'll send him a letter stating so." One manager huffed, "Well, if you ask me, a face-to-face meeting or at least a 'you are welcome to leave or resign' call with this individual is in order." The same e-mail indicated that a manager had been compiling trivial offenses by Sternberg that could be cited in telling him to get out. Among other things, the Smithsonian staffer had gone over Sternberg's library records. He "has currently 50 books checked out from the SI library (I checked this with the library)."

One bright idea was to tear apart the traditional veil of secrecy concerning the identities of the scientists ("peers") who had reviewed and approved Meyer's article before publication. The "serious effort" to do this, as the OSC document relates, would represent

an unprecedented and unethical act within your [Sternberg's] field. They also assumed that you [Sternberg] violated editorial regulations of the *Proceedings* because you were the primary editor of the article. These comments were made to and by SI and NMNH managers and were published to several outside organizations. It was later revealed that you complied with all editorial requirements of the *Proceedings* and that the Meyer article was properly peer reviewed by renowned scientists. As an aside, the information received by OSC does not indicate that any effort was made to recall or correct these comments once the truth was made known.

One disturbing element in the affair concerns Sternberg's allegations that his supervisor, Zoology Department chairman Jonathan Coddington, called around the museum to check out Sternberg's religious and political affiliations. After I wrote about this in *Wall Street Journal*, Coddington, who had repeatedly ignored my telephone calls asking for his side of the story,

responded on a favorite website of Darwinists.

Coddington wrote: "As for prejudice on the basis of beliefs or opinions, I repeated and consistently emphasized to staff...that private beliefs and/or controversial editorial decisions were irrelevant in the workplace...that [Sternberg] was an established and respected scientist, and that he would at all times be treated as such."

The OSC investigation directly contradicts this: "...at the same time many other actions were taken during the uproar over the Meyer article, your [Sternberg's] supervisor was questioning your friends about your personal political and religious background."

The investigation also contradicts Coddington's assertion that no actions were ever taken against Sternberg: "At no time did anyone deny him [research] space, keys, or access." According to the OSC, "they denied your access by taking your master key." The museum "prevented you from having the same access to the research specimens," access "given to others [who] do not have the same hindrances."

#### NO CULTURE OF TRUTH

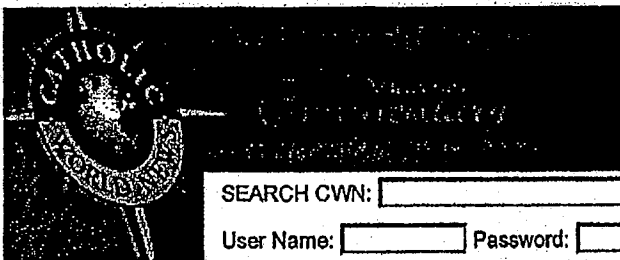
Whether, in the end, Sternberg's legal rights were violated remains unclear. Owing to what the OSC's McVay describes as a "complicated jurisdictional puzzle," it turns out that because Sternberg is employed by the National Institute of Health he is "effectively remove[d]..from the protections granted under the auspices of OSC." So the OSC investigation is being closed.

Whether or not Sternberg's Smithsonian managers broke the law, the OSC's preliminary investigation certainly opens a window on the culture of the Smithsonian, a venerated institution where the unfettered search for truth is supposed to be the rule, and where, one also hopes, the people who fund that search would be respected.

And yet, quite apart from Sternberg's treatment, the e-mail traffic at the Smithsonian gives ample evidence not of respect for ordinary Americans but of contempt, especially if those Americans are religious believers. One senior SI staffer commented ruefully about the Meyer article in an e-mail quoted in the OCS document: "We are evolutionary biologists, and I am sorry to see us made into the laughing stock of the world [by publishing Meyer's article criticizing Darwinian theory], even if this kind of rubbish [that is, Intelligent Design] sells well in backwoods USA." One e-mail generously granted, "Scientists have been perfectly willing to let these people alone in their churches." Another from a scientist at the museum told of how, after "spending 4.5 years in the Bible Belt," the writer had learned how to deal with religious Christians. For example, he described the "fun we had" when "my son refused to say the Pledge of Allegiance because of the 'under dog' [meaning presumably the 'under God'] part."

The Smithsonian is indeed a treasure, beloved by millions of Americans who visit it from across the country. How sad that some of the scientists who work there feel this way about the people who pay their salaries. Whether that observation is more or less troubling than the way the same scientists apparently feel about the search for truth is a question every taxpayer will have to decide for himself.

— David Klinghoffer, a former NR literary editor, is a columnist for the Jewish Forward. His most recent book is Why the Jews Rejected Jesus: The Turning Point in Western History. His website is [www.davidklinghoffer.com](http://www.davidklinghoffer.com).



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## Scientist punished for Intelligent Design article, federal probe confirms

Aug. 19 (CWNNews.com) - A federal government investigator has confirmed that a scientist suffered harassment at the Smithsonian Institution because he agreed to publish an essay on Intelligent Design in a scientific journal that he edited.

Dr. Richard Sternberg, the editor of the *Proceedings of the Biological Society of Washington*, reported that he was subjected to verbal abuse by other senior scientists at the prestigious federal research institution immediately after the appearance of the journal article.

Although the essay had been approved for publication after peer review by other qualified scientists, the Smithsonian staff violently objected to the appearance of an article that questioned the theories of Darwinian evolution, Steinberg said. He reports that colleagues questioned his competence and honesty, and circulated false rumors about his own scholarly work.

"They were saying I accepted money under the table, that I was a crypto-priest, that I was a sleeper cell operative for the creationists," Steinberg told the *Washington Post*. The *Post* today reported that the US Office of Special Counsel has confirmed Steinberg's complaints. The campaign against Steinberg was clearly a response to the Intelligent Design article, wrote James McVay for the Office of Special Counsel. He said that the "retaliation came in many forms," including "misinformation that was disseminated through the Smithsonian Institution and to outside sources."

Glossary Terms: None

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Evolution is not science. It is a creed. Object to this "atheistic religion" and suffer the

consequences. To object to the concept of "Intelligent Design" is the work of a fool. It doesn't help much when highly placed clerics weigh in with some idiotic platitudes meant to assuage the hurt feelings of these fools when their errors are pointed out. This like all error needs to be corrected - at times with gentleness, at times with humor, at times with loud bellows!

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The real problem here is that evolutionists have turned anti-scientific. Way back in my graduate school days, I wondered how the Krebs cycle, which produces intermediates that are poisonous to the cell (remember lactic acid?) could have evolved if all the enzymes are necessary to prevent the poisoning and release the energy. All the enzymes would have had to appear in a reproducing cell at once. Michael Behe just asks the obvious.

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"Ah, persecution..."

"How sweet it is..."

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The Smithsonian & the full extent of its relationship to the federal government should be the subject of a thorough investigation. I live in D. C. & have spent a great deal of time at their several museums here. Along with the national public school monopoly & other radical secularist forces, they are spending billions of federal dollars to 'establish an anti-religion' in the form of an anti-Christian and antireligious culture. In recent decades, the Supreme Court has protected their flanks.

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Apparently, no one is qualified to oppose evolution, not politicians, not school boards, not scientists or the president. Evolutionists, go back to the lab and come back with evidence, not words, theories and name-calling. As much as nature itself is scientific, so is the idea that nature is intelligent. Anyone can prove it. Signed, Samuel Alibrando author "Nature Never Stops Talking - The Wonderful Ingenuity of Nature" [www.NatureNeverStopsTalking.com](http://www.NatureNeverStopsTalking.com) (see more articles on this topic)

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## EDITORIAL DESK

**Intelligent Design and the Smithsonian**

(NYT) 459 words  
Published: August 20, 2005

The Smithsonian Institution can't seem to disentangle itself from the clutches of the anti-evolution crowd. Earlier this year, the Smithsonian's natural history museum discovered to its dismay that it had agreed to be the host and co-sponsor of a movie intended to undercut the theory of evolution and make the case for "intelligent design," the idea that an intelligent agent had a hand in designing the universe. Only after intelligent-design proponents started chortling on the Internet about their stunning coup in co-opting the Smithsonian did museum officials reverse course and withdraw their sponsorship, while allowing the film to be shown.

Now comes word that a little-known government office has accused the Smithsonian of retaliating against a scientist who slipped an article promoting intelligent design into an obscure journal that has only very loose connections to the Smithsonian. That judgment, by the United States Office of Special Counsel, a federal agency set up to protect whistle-blowers, is the latest twist in a case that started with the publication of the article last year in the Proceedings of the Biological Society of Washington.

The article contended that evolution theory could not account for the great proliferation of life forms during the so-called Cambrian explosion some 530 million years ago, and that an intelligent agent was the best explanation. It set off an uproar among evolutionary biologists and was later disowned by the professional society that published it.

The editor who authorized publication, Richard Sternberg, filed a complaint contending that he had suffered reprisals. In an 11-page letter not yet officially released, the Office of Special Counsel said it had found support for his complaint but was dropping the investigation because he was not an employee of the Smithsonian, just a research associate.

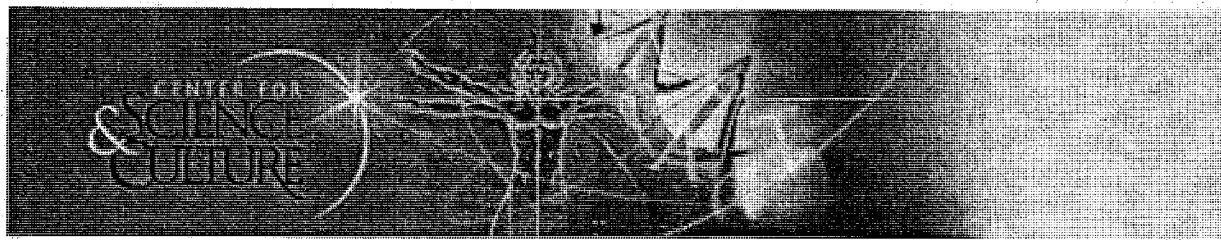
E-mail notes show that several scientists and managers at the Smithsonian were extremely embarrassed and eager to push Mr. Sternberg out of his research niche, and that some dug around for material to discredit him. That may lead critics of evolution to see Mr. Sternberg as a martyr.

But those who see no place for intelligent design in the realm of science -- and that includes us -- will ruefully give him credit for maneuvering a brief for intelligent design into a peer-reviewed scientific journal, although how rigorous that review was remains a point of contention.

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## OFFICE OF SPECIAL COUNSEL CONCLUDES SMITHSONIAN CREATED A "HOSTILE WORK ENVIRONMENT" IN EFFORT TO OUST BIOLOGIST SKEPTICAL OF DARWINISM

By: Staff

Discovery Institute

August 19, 2005

**Seattle, Aug. 19** – In a letter to Smithsonian biologist Dr. Richard Sternberg, the United States Office of Special Counsel writes: "it is... clear that a hostile work environment was created with the ultimate goal of forcing you out of the [Smithsonian Institution]."

Dr. Sternberg, who holds two PhDs in evolutionary biology, was persecuted by Smithsonian colleagues for allowing the publication of an article skeptical of Darwinian evolution and advocating intelligent design, in the peer-reviewed biology journal *Proceedings of the Biological Society of Washington*, published out of the Smithsonian. The article was written by Discovery's Dr. Stephen Meyer, a Cambridge educated philosopher of science.

According to the *Washington Post*: "Within hours of publication, senior scientists at the Smithsonian Institution -- which has helped fund and run the journal -- lashed out at Sternberg as a shoddy scientist and a closet Bible thumper."

The OSC letter, made public by Dr. Sternberg, states that "retaliation came in many forms," and says that the OSC was able to find support for many of Dr. Sternberg's allegations, including:

- A hostile work environment was created with the ultimate goal of forcing him out of the Smithsonian.
- Sternberg's religious and political affiliations were investigated.
- Sternberg's scientific education, background and writings were investigated.
- Attempts were made to deny Sternberg workspace within the Smithsonian.
- Misinformation was disseminated through the Smithsonian and to outside sources.

"These self-appointed defenders of the theory of evolution are waging a malicious campaign to demonize and blacklist anyone who disagrees with them," said Bruce Chapman president of Discovery Institute, the nation's leading think tank dealing with scientific challenges to evolution and supporting research of intelligent design. "Unfortunately, Dr. Sternberg is not alone. There are a number of scientists under similar attack across the country."

"Free speech and academic freedom are cherished principles in America," added Chapman. "They are

too important to be sacrificed to the intolerant demands of extremists on any issue."

It was determined that Sternberg "complied with all editorial requirements of the proceedings and the ... article was properly peer-reviewed by renowned scientists." Furthermore, allegations against Sternberg were later proven to be false, but no retractions were ever issued.

The OSC investigation also revealed that not one single e-mail examined during the investigation showed that a manager attempted to halt retaliatory actions or administer any admonishment for those that had taken place.

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## Editor Explains Reasons for 'Intelligent Design' Article

By Michael Powell  
Washington Post Staff Writer  
Friday, August 19, 2005; A19

Evolutionary biologist Richard Sternberg made a fateful decision a year ago.

As editor of the hitherto obscure Proceedings of the Biological Society of Washington, Sternberg decided to publish a paper making the case for "intelligent design," a controversial theory that holds that the machinery of life is so complex as to require the hand -- subtle or not -- of an intelligent creator.

Within hours of publication, senior scientists at the Smithsonian Institution -- which has helped fund and run the journal -- lashed out at Sternberg as a shoddy scientist and a closet Bible thumper.

"They were saying I accepted money under the table, that I was a crypto-priest, that I was a sleeper cell operative for the creationists," said Steinberg, 42, who is a Smithsonian research associate. "I was basically run out of there."

An independent agency has come to the same conclusion, accusing top scientists at the Smithsonian's National Museum of Natural History of retaliating against Sternberg by investigating his religion and smearing him as a "creationist."

The U.S. Office of Special Counsel, which was established to protect federal employees from reprisals, examined e-mail traffic from these scientists and noted that "retaliation came in many forms . . . misinformation was disseminated through the Smithsonian Institution and to outside sources. The allegations against you were later determined to be false."

"The rumor mill became so infected," James McVay, the principal legal adviser in the Office of Special Counsel, wrote to Sternberg, "that one of your colleagues had to circulate [your résumé] simply to dispel the rumor that you were not a scientist."

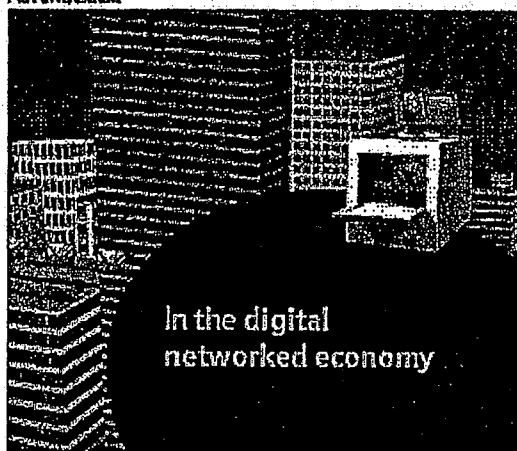
The Washington Post and two other media outlets obtained a copy of the still-private report.

McVay, who is a political appointee of the Bush administration, acknowledged in the report that a fuller response from the Smithsonian might have tempered his conclusions. As Sternberg is not a Smithsonian employee -- the National Institutes of Health pays his salary -- the special counsel lacks the power to impose a legal remedy.

A spokeswoman for the Smithsonian Institution declined comment, noting that it has not received McVay's report.

"We do stand by evolution -- we are a scientific organization," said Linda St. Thomas, the spokeswoman. An official privately suggested that McVay might want to embarrass the institution.

Advertisement



It is hard to overstate the passions fired by the debate over intelligent design. President Bush recently said that schoolchildren should learn about the theory alongside Darwin's theory of evolution -- a view that goes beyond even the stance of intelligent design advocates. Dozens of state school boards have attempted to mandate the teaching of anti-Darwinian theories.

A small band of scientists argue for intelligent design, saying evolutionary theory's path is littered with too many gaps and mysteries, and cannot account for the origin of life.

Most evolutionary biologists, not to mention much of the broader scientific community, dismiss intelligent design as a sophisticated version of creationism. To teach it in science classes, they say, would be to overturn hundreds of years of scientific progress. The National Museum of Natural History was drawn into this controversy in June, when protest forced it to withdraw from co-sponsorship of a documentary on intelligent design.

Sternberg's case has sent ripples far beyond the Beltway. The special counsel accused the National Center for Science Education, an Oakland, Calif.-based think tank that defends the teaching of evolution, of orchestrating attacks on Sternberg.

"The NCSE worked closely with" the Smithsonian "in outlining a strategy to have you investigated and discredited," McVay wrote to Sternberg.

NCSE officials accused McVay of playing out a political agenda. "I must say that Mr. McVay flatters us beyond our desserts -- the Smithsonian is a distinguished organization of highly competent scientists, and they're not marionettes," said Eugenie Scott, the group's executive director. "If this was a corporation, and an employee did something that really embarrassed the administration, really blew it, how long do you think that person would be employed?"

### Risky Decision

Sternberg is an unlikely revolutionary. He holds two PhDs in evolutionary biology, his graduate work draws praise from his former professors, and in 2000 he gained a coveted research associate appointment at the Smithsonian Institution.

Not long after that, Smithsonian scientists asked Sternberg to become the unpaid editor of *Proceedings of the Biological Society of Washington*, a sleepy scientific journal affiliated with the Smithsonian. Three years later, Sternberg agreed to consider a paper by Stephen C. Meyer, a Cambridge University-educated philosopher of science who argues that evolutionary theory cannot account for the vast profusion of multicellular species and forms in what is known as the Cambrian "explosion," which occurred about 530 million years ago.

Scientists still puzzle at this great proliferation of life. But Meyer's paper went several long steps further, arguing that an intelligent agent -- God, according to many who espouse intelligent design -- was the best explanation for the rapid appearance of higher life-forms.

Sternberg harbored his own doubts about Darwinian theory. He also acknowledged that this journal had not published such papers in the past and that he wanted to stir the scientific pot.

"I am not convinced by intelligent design but they have brought a lot of difficult questions to the fore," Sternberg said. "Science only moves forward on controversy."

He mailed Meyer's article to three scientists for a peer review. It has been suggested that Sternberg fabricated the peer review or sought unqualified scientists, a claim McVay dismissed.

"They were critical of the paper and gave 50 things to consider," Sternberg said. "But they said that people are talking about this and we should air the views."

When the article appeared, the reaction was near instantaneous and furious. Within days, detailed scientific critiques of Meyer's article appeared on pro-evolution Web sites. "The origin of genetic information is thoroughly understood," said Nick Matzke of the NCSE. "If the arguments were coherent this paper would have been revolutionary— but they were bogus."

A senior Smithsonian scientist wrote in an e-mail: "We are evolutionary biologists and I am sorry to see us made into the laughing stock of the world, even if this kind of rubbish sells well in backwoods USA."

An e-mail stated, falsely, that Sternberg had "training as an orthodox priest." Another labeled him a "Young Earth Creationist," meaning a person who believes God created the world in the past 10,000 years.

This latter accusation is a reference to Sternberg's service on the board of the Baraminology Study Group, a "young Earth" group. Sternberg insists he does not believe in creationism. "I was rather strong in my criticism of them," he said. "But I agreed to work as a friendly but critical outsider."

Scott, of the NCSE, insisted that Smithsonian scientists had no choice but to explore Sternberg's religious beliefs. "They don't care if you are religious, but they do care a lot if you are a creationist," Scott said. "Sternberg denies it, but if it walks like a duck and quacks like a duck, it argues for zealotry."

### Endgame

Sternberg has seen stress piled upon stress in the past year. His marriage has dissolved, and he no longer comes into the Smithsonian. When the biological society issued a statement disavowing Meyer's article, Sternberg was advised not to attend. "I was told that feelings were running so high, they could not guarantee me that they could keep order," Sternberg said.

A former professor of Sternberg's says the researcher has an intellectual penchant for going against the system. Sternberg does not deny it.

"I loathe careerism and the herd mentality," he said. "I really think that objective truth can be discovered and that popular opinion and consensus thinking does more to obscure than to reveal."

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## Special counsel finds GSA chief violated Hatch Act

By Daniel Pulliam [dpulliam@govexec.com](mailto:dpulliam@govexec.com) May 23, 2007

A report from the federal agency that investigates allegations of illegal political activity in the government has concluded that Lurita Doan, the head of the General Services Administration, violated the Hatch Act.

The 21-page report from Scott Bloch, the head of the Office of Special Counsel, has not been made public, but the independent agency sent Doan a copy for her review on Friday, according to sources with knowledge of the investigation who spoke on condition of anonymity.

The facts gathered by OSC investigators "establish that Administrator Doan violated the Hatch Act," by inducing "her subordinates to engage in the type of political brainstorming session that is prohibited from occurring while the political appointees are on duty or in a federal workplace," the May 18 report, obtained by *Government Executive* Wednesday, stated.

"I have determined that you violated the Hatch Act's prohibition against using your official authority or influence for the purpose of interfering with or affecting the result of an election when you solicited over 30 subordinate employees to engage in political activity," Bloch wrote in a cover letter to the report.

In a statement Wednesday, Doan said she disagreed with the report's preliminary findings, calling it a "staff-drafted report."

"I have concerns with the leaps in logic and the many inaccuracies contained in it, such as an error as simple as citing a nonexistent employee in my office," Doan said. "I have an opportunity, which I will take, to work with the Office of Special Counsel to correct the many inaccuracies before the final report is issued."

Doan later revised her statement, excluding the remark about the nonexistent employee in her office, but reiterating that she disagrees with the report's preliminary findings.

OSC will not comment on the report until Doan has submitted a response, a spokesman said. "We believe she should be given that opportunity," he said.

Doan has until June 1 to respond. OSC investigators will review her comments and deliver a final report to President Bush, since she is a presidential appointee confirmed by the Senate.

A White House spokeswoman said that since they have not seen the report, they cannot comment.

The Hatch Act limits political activity in government agencies. OSC's investigation focused on Doan's role in a Jan. 26 meeting at GSA headquarters where Scott Jennings, special assistant to the president and a deputy of Karl Rove, showed a 28-slide PowerPoint presentation to more than 30 GSA political appointees that analyzed the results of the 2006 midterm election.

Several of the political appointees who attended the meeting testified that during a question-and-answer period following the presentation, Doan asked how the agency could help Republican candidates. The exact words Doan used differ among the witnesses according to the OSC report, but the investigators said in the report that this did not prevent them from determining her intent.

"One can imagine no greater violation of the Hatch Act than to invoke the machinery of an agency, with all its contracts and buildings, in the service of a partisan campaign to retake Congress and the governors' mansions," the report stated.

Doan has said she does not remember making the statement in question.

According to the report, Doan said during a May 3 interview with OSC, "I do find it highly disturbing that some of the most vocal proponents or the most articulate speaking out against me are also the people who are people I've either moved on or they are, I don't want to say permanently demoted but they're kind of, until extensive rehabilitation of their performance occurs, they will not be getting promoted and they will not be getting bonuses or special awards or anything of that nature."

But in looking at the performance reviews of seven employees who had provided information to House lawmakers about Doan's alleged statements, OSC found that Doan's claim regarding the witnesses "appears to have been purposefully misleading and false" since none of the seven employees had "between a poor to totally inferior performance."

"Administrator Doan's implication that the adverse witnesses were biased against her simply is not credible," the report stated. "[I]t is troubling that Administrator Doan made the above unsubstantiated allegations during an official investigation of *her* actions. It arguably indicates a willingness on her part not only to use her position in a way that is threatening to anyone who would come forward, but also suggests a willingness to retaliate against anyone who would be so 'disloyal' as to tell the truth about a matter she confesses she does not remember."

Doan also told OSC investigators that she does not remember any of the slides from the presentation because she was using her BlackBerry and only periodically looked up, but an OSC review of her e-mail use during that time failed to corroborate that she was using her BlackBerry or any other personal digital assistant during the meeting.

In sworn testimony before the House Oversight and Government Reform Committee on March 28, Doan said she would not answer questions about whether she thought the meeting was appropriate and would let OSC "make their independent judgment and I will live with it."

"I am happy to leave the investigation and the decision-making to the Office of the Special Counsel," Doan told the panel. "I'm just going to let the investigation take its course, let them make their decision."

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## Early special counsel report pushed punishment for GSA chief

By Daniel Pulliam [dpulliam@govexec.com](mailto:dpulliam@govexec.com) May 24, 2007

An early version of a report finding that General Services Administration head Lurita Doan violated the Hatch Act, the law limiting political activity in the government, recommended that President Bush "take disciplinary action" against her. This was changed to "appropriate action" in a later version of the report.

The recommendation of punishment, included in a May 17 draft investigative report from the Office of Special Counsel obtained by *The Washington Post* and posted on the newspaper's Web site Wednesday night, was absent from the May 18 version obtained Wednesday by *Government Executive*. The *Post* removed the link to the earlier report and issued a correction on its story Thursday.

"In our view, the evidence in this case supports a conclusion that whatever standard the president uses to review the evidence in this case, we recommend that the president take disciplinary action against Administrator Doan," the earlier version stated. "Because Ms. Doan, as the head of GSA, engaged in conduct before her subordinate employees that violated a federal law that is intended to protect the federal workplace from political influence and ensure that government resources are being administered in a nonpartisan fashion, her disregard for such protections and safeguards is serious and warrants punishment."

Both versions of OSC's report contained identical cover letters to Doan, stating that Special Counsel Scott J. Bloch determined that Doan violated the Hatch Act's prohibition against using official authority or influence to affect the result of an election.

OSC's investigation focused on Doan's role in a Jan. 26 meeting at GSA headquarters, where Scott Jennings, special assistant to the president and a deputy of political adviser Karl Rove, showed a 28-slide PowerPoint presentation to more than 30 GSA political appointees that analyzed the results of the 2006 midterm election and prospects for the 2008 elections.

The reports are consistent until page 10, where they detail Doan's claims that employees who presented testimony on her remarks following the January presentation were biased against her because they were poor performers.

The political appointees told OSC that Doan asked how the agency could help Republican candidates, though the accounts varied as to her exact wording. The older report omitted the names of the appointees who testified against Doan, and did not contain as much detail on OSC's position that there is little evidence to support Doan's claim.

But the reports' final sections on recommended action differed the most substantially. The earlier version stated that the "statutorily mandated punishment of removal has been recognized as 'an obvious expression of congressional policy that violations of the Hatch Act demand substantial punishment.' "

The earlier report also stated, "Doan's violation is further aggravated by her failure to take responsibility for her actions and her lack of remorse in violating the Hatch Act."

In interviews with OSC, Doan, "attempted to diminish her responsibility by consistently stating in her words 'probably like 40 times' that the Jan. 26 meeting 'was not her meeting' and it was 'not her agenda,' " the earlier report noted. "What Administrator Doan fails to recognize is that regardless of who sets a meeting or who sets the agenda of a meeting, she cannot, as the highest ranking official at GSA, ask or encourage an audience of over 30 subordinates to engage in political activity or to corrupt her agency to be used for political ends."

The later version of OSC's report contained a section titled "Disciplinary Action," but it simply quoted from the parts of the Hatch Act law that deal with punishments, and did not explicitly recommend that President Bush punish Doan.

The law states that federal employees who violate the Hatch Act law should be removed from their position, but the Merit Systems Protection Board can find, by unanimous vote, that a violation does not warrant removal and issue a penalty of at least 30 days of suspension without pay.

"Because Administrator Doan is a presidential appointee confirmed by the Senate, the president, not the Merit Systems Protection Board, must make any decision regarding imposition of disciplinary action," the earlier report stated.

An OSC spokesman said the agency does not comment on the process used to draft reports, or "how specific versions may have been disseminated."

Elaine Kaplan, Bloch's predecessor as special counsel, said it is not uncommon for changes to be made before this type of report is finalized, because there are a number of levels of review. She said the differences in the concluding sections of the reports are substantial.

"Apparently, there was a change of heart by the special counsel between May 17 and 18," Kaplan said. "It looks like a calculated decision was made that the original letter was too prosecutorial in tone and that the better course would be for OSC to take a neutral tone and leave the decision regarding Ms. Doan's fate to the president."

From her experience as head of OSC, Kaplan said that in highly sensitive cases like this, she would have been personally involved in shaping the language of the recommendation in the report and would have had the final approval authority.

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May 24, 2007

Michael J. Nardotti, Jr.  
Major General, U.S. Army, Retired  
202-457-6125  
mnardotti@pattonboggs.com

The Honorable Scott J. Bloch  
The Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. HA-07-1160

Dear Special Counsel Bloch:

I am writing on behalf of GSA Administrator Lurita A. Doan, whom we represent, to express utter outrage that the confidentiality of the report concerning allegations against her has not been maintained.

The report which included a cover letter signed by you was delivered on Friday, May 18<sup>th</sup>. By Monday, May 21<sup>st</sup>, members of the media had sensitive information about the report. By Wednesday, May 23<sup>rd</sup>, they had copies of what we believed was the same report. As deplorable as that circumstance is, we learned today that the breaches of confidentiality were even worse than we knew. There are now two reports in the hands of the media – the version you sent dated May 18<sup>th</sup> and an earlier version dated May 17<sup>th</sup> which is even more disparaging in its terms than the report sent by you.

It would be beyond reason to conclude that the leak of these reports is from any source other than your office. The leak of the May 17<sup>th</sup> version – clearly a draft – is particularly egregious. It evidences a malicious effort by someone on your staff to seriously disparage Administrator Doan publicly – perhaps before she even received the report – but certainly before she had any meaningful opportunity to respond. Furthermore, the fact that some version of the report is now in the hands of at least three major media outlets leads to the very reasonable conclusion that this is not simply a case of one person providing a copy of the report to a favored journalist. Instead, it appears to be carefully planned campaign to cause maximum damage to Ms. Doan.

The obligation to maintain the confidentiality of the report lies with your office and ultimately with you as The Special Counsel. The gross and inexcusable failure to prevent the release of the report is extraordinarily unfair to Administrator Doan and has compromised the integrity of the

The Honorable Scott J. Bloch

May 24, 2007

Page 2

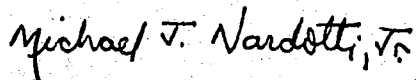
process. To the extent that the report lacks objectivity and impartiality as written, those serious deficiencies are only aggravated by the premature release of the damaging information.

For these reasons we demand that you take immediate action to investigate and hold accountable those responsible for the leak of this sensitive information and that you take whatever action is necessary to prevent any further leaks.

In addition to the extraordinary unfairness to Administrator Doan caused by this misconduct, the objectivity and impartiality of the Office of the Special Counsel in this matter has been irreparably damaged. The Office of Special Counsel has an obligation to avoid even the appearance of impropriety. No action by your office now could erase the stigma of impropriety that now overshadows this case.

We intend to pursue alternative disposition of this matter with the Office of the President, and we believe it would be appropriate, under these very exceptional circumstances, for you to disapprove the current report and support any further consideration of this matter by an investigative body outside the Office of Special Counsel.

Sincerely,



Michael J. Nardotti, Jr.  
Major General, U.S. Army, Retired

*Counsel to GSA Administrator Lurita A. Doan*





**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

[www.osc.gov](http://www.osc.gov)

May 25, 2007

The Special Counsel

Michael J. Nardotti, Jr.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037-1350

Dear Mr. Nardotti:

Your letter of May 24, 2007, accusing our office of giving the report sent to you about Ms. Doan to the public, is false. Our information is that someone from GSA obtained a copy of OSC's report to your client from your client, and then faxed it to the press.

It appears to us that your client is attempting to throw up roadblocks to the official investigation of the U.S. Office of Special Counsel. Indeed, one could construe this ruse as further obstruction, attempting to prevent completion of our investigation and report to the President. This office has exclusive jurisdiction over the Hatch Act, and we will complete this matter and report to the President.

It is not a preliminary report as your client implied in the press. It is the report of this office. We will receive your client's response pursuant to our statute and place that along with our report in a letter to the President as required, also as required by our statute. All of our investigation was done by our experienced career staff in accordance with our laws.

Our published privacy act regulations state that I may release any information I deem appropriate or in the public interest, or to enhance the public's perception of the administration of justice, or for any other reason I deem appropriate in the public interest. There is no potential contamination of a jury pool here. The decision maker is the President of the United States who, I expect, will not likely be swayed by varying press reports, but will take into account all of the evidence, presented by the official report and responses, together with my letter to the President. Then when I deem it appropriate, I may release all of that publicly.

If you disagree with the report, you will have the opportunity to state that and to present any additional evidence or make any arguments. We will include all of that with our report to the President.

I appreciate the opportunity to talk to you last night and look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch  
Special Counsel



May 30, 2007

Michael J. Nardotti, Jr.  
Major General, U.S. Army, Retired  
202-457-6125  
mnardotti@pattonboggs.com

The Honorable Scott J. Bloch  
The Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Re: OSC File No. HA-07-1160

Dear Special Counsel Bloch:

We have received your letter of May 25, 2007.

With respect to the leak of the May 18th report provided to Administrator Doan, it is absurd to claim that Administrator Doan released this extremely damaging report herself or through someone else at GSA for any reason, and she strongly denies your charge of a "ruse". The damage done to Administrator Doan by the public release of the report in any form - without the mitigating effect of a meaningful response - cannot be undone. To compound the possible injury to the Administrator, the report was leaked to at least three major media outlets, none of which has shown any bias in Administrator Doan's favor. To suggest that the Administrator could somehow benefit from such self-inflicted damage is ridiculous. In addition, the scenario you propound simply does not make sense given the timeline of events, specifically, that these media outlets were in possession of the information at the same time, if not before, the Administrator first viewed it.

Moreover, my letter to you concerned two separate and distinct media leaks. With respect to the leak of the May 17th draft, it is perhaps noteworthy that the carefully worded opening sentence of your letter does not address that issue. You state that our accusation that your office leaked "the report sent to you is false." The May 17th draft was never sent to Administrator Doan, and you do not explain how the Administrator could have leaked a document which she did not have.

I note that when it became apparent on Monday, May 21<sup>st</sup>, that information from the report and perhaps the report itself, had been leaked, I contacted your office to express our very serious concerns about the leak. I also asked whether the report had been shared with anyone outside your office. I asked specifically whether the GSA Inspector General had been provided a copy as a courtesy since the initial report of allegations had come from his office. I was assured by your

The Honorable Scott J. Bloch  
May 30, 2007  
Page 2

office that neither the GSA Inspector General nor anyone else outside your office had been provided with the report.

In light of what is now known, however, I must ask the question in more all-encompassing terms: Has your office provided a copy of the report in any form - draft or final - and specifically the May 17<sup>th</sup> draft, to any person or any entity outside your office, including the GSA Inspector General or any member of his office or staff?

Given the fact that Administrator Doan never received the May 17<sup>th</sup> draft and your assurance that no one outside your office had been provided the final report, it is difficult to conclude that the leak of the draft report came from anywhere other than your office, and that point is important. If someone in your office was willing to leak the draft, that fact would make it all the more probable that the same source would have no qualms about leaking the final report.

Additional questions are also raised by your claim that the source of the leak was someone inside the GSA. As you know, members of the GSA senior staff and I began expressing very serious concerns about the leak on Monday, May 21<sup>st</sup>. The leaks of information and the report itself became more aggravated as the week continued. Neither you nor anyone from your office, however, claimed the source of the leak was internal to the GSA until after my letter to you late on Thursday, May 24<sup>th</sup>. You responded to me relatively quickly by telephone and you informed me that your sources indicated the report had been leaked by someone within the GSA.

I presume that information did not come to you between your receipt of my letter and your call to me. If that is the case, why didn't you or a member of your staff contact me as personal counsel for the Administrator or the GSA Acting General Counsel as agency counsel to inform us of that possibility? Knowing that we had serious concerns about the leaks, it seems that it would have been prudent to pass on that information as soon as you were aware of it if you believed the GSA itself was in any way responsible for such an irresponsible act.

Lastly, your discussion of your broad release authority for reports in matters such as this one calls for comment. You state:

"...I may release any information I deem appropriate or in the public interest, or to enhance the public's perception of the administration of justice, or for any other reason I deem appropriate in the public interest. There is no potential contamination of the jury pool here. The decision maker is the President ...who, I expect, will not likely be swayed by varying press reports, but will take into account all of the evidence, presented by the official report and responses, together with my letter to the President. Then when I deem appropriate, I may release all of that publicly."

The Honorable Scott J. Bloch

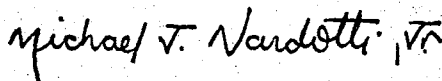
May 30, 2007

Page 3

We are well aware of and do not dispute your broad release authority, but we do not agree that it is relevant to the issue of leaks as now raised. We assumed the report could be made public at some later stage, but surely after Administrator Doan has had her opportunity to respond. It cannot be credibly argued that any public interest or the public's perception of the administration of justice has been served by the calculated, premature, and malicious release of the draft report and the final report in this instance. These actions will more likely have just the opposite effect when the public becomes aware of the more complete facts and circumstances of this aspect of the case. Further, emphasizing your broad release authority seems inconsistent with the underlying premise of your letter: if it was not your office which released the report, your authority to do so is not called into question. Of course, if dissemination of the report was an official act taken under your admittedly broad authority, it would not need to be in the form of a leak to the media.

We look forward to your further response to our questions.

Sincerely,



Michael J. Nardotti, Jr.  
Major General, U.S. Army, Retired

*Counsel to GSA Administrator Lurita A. Doan*





**U.S. OFFICE OF SPECIAL COUNSEL**  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

[www.osc.gov](http://www.osc.gov)

**The Special Counsel**

May 30, 2007

Michael J. Nardotti, Jr.  
Patton Boggs LLP  
2550 M Street, NW  
Washington, DC 20037-1350

Dear Mr. Nardotti:

This is in response to your letter of May 30, 2007. I'd like to remind you that this matter concerns your client's violation of the Hatch Act. I would suggest you cease your efforts to divert the investigation, respond to our completed report and include any objections to the process that you see fit to include, and allow us to finish our statutory process.

We look forward to receipt of your client's response to OSC's staff report of May 18, 2007, on Friday of this week.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch". The signature is stylized with a large, sweeping "S" and a long, horizontal stroke at the end.

Scott J. Bloch  
Special Counsel

# Withdrawal Marker

## The George W. Bush Library

| FORM  | SUBJECT/TITLE                                                                                           | PAGES | DATE       | RESTRICTION(S) |
|-------|---------------------------------------------------------------------------------------------------------|-------|------------|----------------|
| Email | RE: COS Correspondence: Project on Government Oversight - To: Mary Beth Bakke - From: J. Michael Farren | 2     | 07/21/2008 | P5;            |

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Counsel's Office, White House

### **SERIES:**

Fielding, Fred - General Files

### **FOLDER TITLE:**

Office of Special Counsel Reports & Scott Bloch Issues [8]

### **FRC ID:**

11293

### **OA Num.:**

10820

### **NARA Num.:**

10382

### **FOIA IDs and Segments:**

2014-0441-F

2014-0210-F

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- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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**U.S. OFFICE OF SPECIAL COUNSEL**

1700 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

August 28, 2008

The Honorable Fred F. Fielding  
Counsel to the President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-07-2724

Dear Mr. Fielding:

I am transmitting the enclosed letter to the President concerning the above-referenced case regarding the pumping equipment in New Orleans. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Bloch".

Scott J. Bloch

Enclosures

**U.S. OFFICE OF SPECIAL COUNSEL**1130 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505[www.osc.gov](http://www.osc.gov)

The Special Counsel

August 28, 2008

The President  
The White House  
Washington, D.C. 20500Re: OSC File No. DI-07-2724

Dear Mr. President:

On August 4, 2008, I informed you by letter that the report to me regarding the New Orleans flood protection system submitted by the Department of Defense (DoD) did not appear to be reasonable within the meaning of 5 U.S.C. § 1213(e)(3). In 2007, U.S. Army Corps of Engineers (USACE) civil engineer Maria E. Garzino disclosed serious allegations to my office concerning the pumping equipment manufactured and installed in New Orleans by a contractor, Moving Water Industries, and the related lack of proper government oversight and contract management.<sup>1</sup> In sum, Ms. Garzino alleged that the pumping equipment was defective and largely untested.

On May 14, 2008, in response to my September 21, 2007, referral, then DoD Inspector General Claude M. Kicklighter substantiated several of Ms. Garzino's allegations. However, the DoD report concluded that "... these deficiencies were performance-related shortcomings that did not rise to the level of a serious violation of law or regulation, abuse of authority or gross mismanagement. Nor did they result in a gross waste of funds or a danger to public health or safety."

As you know, after reviewing the report, I informed you, the Honorable Carl Levin, Chairman of the Senate Committee on the Armed Services, the Honorable Ike Skelton, Chairman of the House Armed Services Committee, and the Honorable Gordon S. Heddell, Acting DoD Inspector General, that the agency report appeared superficial and dismissive. In Ms. Garzino's substantial and detailed comments, she concluded that the DoD report was devoid of engineering and mathematical interpretation with severely flawed and erroneous conclusions representing, in her words, a "whitewash."

On August 8, 2008, shortly after receiving my letter, Acting Inspector General Heddell notified me that he strongly agreed "... that every effort must be made to assure the citizens of New Orleans that pumps designed for flood protection will perform as specified during hurricanes." Consequently, Acting Inspector General Heddell directed his office to determine

<sup>1</sup> Ms. Garzino has worked as a DoD employee for approximately 17 years, including ten years as a USACE engineer. From March 2006 to September 2006, Ms. Garzino was detailed to USACE New Orleans District, and served as Team Leader of Pumping Systems Installation.

The Special Counsel  
The President  
Page 2

whether the pumps were, in fact, adequately tested and to evaluate the likelihood that the pumps could be vulnerable to failure in the event of a hurricane. A copy of Acting Inspector General Heddell's letter is enclosed for your review.

I am encouraged by the prompt response of Acting Inspector General Heddell to engage his organization to ensure that the pumps will perform when needed in order to provide flood protection to the people of New Orleans. Given that Hurricane Gustav is presenting a threat to the Gulf Coast, it is imperative that DoD continue to take steps to ensure the public health and safety of the citizens of New Orleans. Therefore, as a result of DoD's encouraging response, I have reopened the above-referenced case. Acting Inspector General Heddell has pledged to keep me informed regarding his progress and to provide me with the results of his agency findings. In turn, I am determined to provide ongoing oversight of DoD's progress and findings, and will continue to keep you and members of Congress informed about these important safety and management issues.

Respectfully,



Scott J. Bloch

Enclosure



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

The Honorable Scott J. Bloch  
Special Counsel, U.S. Office of Special Counsel  
1730 M. Street, N.W., Suite 300  
Washington, D.C. 20036-4505

AUG 8 2008

Re: OSC File No. DI-07-2724

Dear Mr. Bloch:

Thank you for sharing with me your letter of August 4, 2008, to the President in regard to the Department of Defense Inspector General (DoD IG) report of May 14, 2008. I strongly agree that every effort must be made to assure the citizens of New Orleans that pumps designed for flood protection will perform as specified during hurricanes.

Having recently been designated as the Acting Inspector General for the Department of Defense, I have carefully reviewed the history of this issue. Based upon my review, and the need for public confidence in New Orleans' flood protection system, I have concluded that an outside opinion is warranted.

Accordingly, I have directed that my office immediately begin the process to secure a contractual arrangement with a professional engineering company to determine whether the pumps in question were, in fact, adequately tested; and to evaluate the likelihood that the pumps could be vulnerable to failure in the event of a hurricane.

I will keep you advised regarding my progress and will provide you the results of the findings. If you have any questions, please contact me at (703) 604-8300.

Sincerely,

A handwritten signature in cursive script, reading "Gordon H. Heddell", is positioned above the printed name.

Gordon H. Heddell  
Acting

The Special Counsel



## U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505

## FACSIMILE COVER SHEET

TO:

|                                            |                            |
|--------------------------------------------|----------------------------|
| <b>Name:</b> The Honorable Fred Fielding   |                            |
| <b>Title:</b> Counsel to the President     |                            |
| <b>Organization:</b> The White House       |                            |
| <b>Office / Location:</b> Washington, D.C. |                            |
| <b>Telephone:</b> (202) 456-2632           | <b>Fax:</b> (202) 456-6279 |

FROM:

|                                                |                            |
|------------------------------------------------|----------------------------|
| <b>Name:</b> Scott J. Bloch                    |                            |
| <b>Organization:</b> Office of Special Counsel |                            |
| <b>Office / Location:</b> Washington, D.C.     |                            |
| <b>Telephone:</b> (202) 254-3601               | <b>Fax:</b> (202) 653-5151 |

|                              |                                                       |
|------------------------------|-------------------------------------------------------|
| <b>Date:</b> August 28, 2008 | <b>Number of pages, including this cover sheet:</b> 5 |
|------------------------------|-------------------------------------------------------|

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET

✓  
Many Beth,

Clay asked me to pass these on to Mr. Fielding as a follow-up to their meeting this morning.

Please let us know if you have questions.

Thanks.

Sarah x6-7070



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, DC 20415-1100

OFFICE OF  
THE INSPECTOR GENERAL

November 15, 2007

Honorable Clay Johnson III  
Deputy Director for Management  
Office of Management and Budget  
Washington, DC 20503

Dear Mr. Johnson:

This letter provides you further information regarding my office's investigation of the March 3, 2005 (as amended March 31, 2005) complaint of prohibited personnel practices against Special Counsel Scott Bloch. By letter dated September 28, 2007, we identified actions on the part of Mr. Bloch and certain former U.S. Office of Special Counsel (OSC) officials that have hindered our ability to perform the investigation. Since that time, as we have continued to review material in furtherance of our investigation, we have developed additional information indicating that Mr. Bloch has not respected his recusal obligations. You had previously advised him that his failure to do so would constitute inefficiency, neglect of duty and malfeasance in office.

In a letter to you of March 4, 2005—the day after the original complaint against him was filed—Mr. Bloch informed you that he had recused himself from any participation in this matter and would “fully cooperate with” an investigation. During the period in which jurisdictional issues regarding the case were being considered, you honored Mr. Bloch's recusal commitment by declining to involve him in these matters. Subsequently, in your February 21, 2006 letter to Mr. Bloch, confirming that our office would be conducting an investigation, you advised Mr. Bloch that his recusal decision was correct in light of U.S. Office of Government of Ethics (OGE) rules. You stated that he should act in conformity with his expressed commitment to refrain from any involvement in OSC's handling of the U.S. Office of Personnel Management – Office of the Inspector General (OPM-OIG) investigation, and you identified a broad range of actions that would violate the recusal. These included involvement in preliminary discussions, interim evaluations, review or approval at intermediate levels, supervision of subordinates working on a matter, assigning work, even on an *ad hoc* basis, or taking part in decisions concerning who should work on a matter, how a matter should be handled, and whether a matter should be acted upon.

We have identified instances spanning the entirety of this investigation in which Mr. Bloch became involved, in a personal and substantive manner, with OSC's dealings with our office and its responses to our investigation. The following paragraphs identify a number of these situations. They illustrate that Mr. Bloch repeatedly ignored both his

own assurances of his recusal and your confirmation of the necessity for him to do so, and demonstrate that he was continuously involved in OSC's decisionmaking processes regarding this case. On numerous occasions, he used his access to OSC personnel resources as a means of facilitating his opposition to the investigation. Further, it should be noted that Mr. Bloch's violations continued, and to some extent even intensified, after he received your guidance about recusal during 2006.

1. In 2005 and 2006, Mr. Bloch participated in OSC's decision-making process with respect to its negotiations regarding the Economy Act agreement on which the investigation is based. In this connection, he informed the OSC employee who was negotiating the agreement with our office of his views regarding the amount of funding that should be made available through the agreement, and provided guidance to other OSC employees about handling the negotiations with the OPM-OIG.
2. Also in 2005, Mr. Bloch issued to our respective offices his personal response to the complaint against him. He directed the input of all staff of the Immediate Office of the Special Counsel, as well as at least one OSC senior career executive, in researching, editing, and reviewing this extensive (50 page) document.
3. In March 2006, an OSC attorney, with the assistance of senior OSC management officials, prepared a document titled "Conflict of Interest of OPM and the OPM IG in the Complaint Against Scott Bloch," which represented itself as "Mr. Bloch's position" in respect to the OPM-OIG's ability to conduct an impartial investigation. In turn, this was attached to a letter drafted by one of Mr. Bloch's special assistants, proposing that our office and the OPM Director recuse themselves from any participation in the investigation of Mr. Bloch. You will note that this document was prepared notwithstanding the fact that your February 21, 2006 letter stated that your office had concluded that "alleged conflicts of interest relating to OPM" did not raise "an actual conflict or an appearance of conflict that would prevent OPM from conducting this investigation."
4. As summarized in our September 28, 2007 letter to you, when the OPM-OIG began to interview OSC employees in June 2006, Mr. Bloch requested that affidavits be obtained from the interviewees regarding the actions of our investigators and the questions that they asked. The Acting Deputy Special Counsel informed Mr. Bloch that these actions were contrary to the terms of his recusal. The Acting Deputy Special Counsel also instructed the Special Assistant to refrain from further contacts with the employees. However, Mr. Bloch then asked two employees of the Immediate Office of the Special Counsel, in lieu of taking affidavits, to report to him any information about the investigation that they could obtain by speaking with the employees who had been interviewed.
5. As our office's investigation proceeded during 2006, Mr. Bloch repeatedly requested members of his immediate staff to obtain specific items of information

for him regarding the status of the investigation, such as investigative plans, interview schedules, and topics likely to be of interest to the investigators.

6. Our requests for information and documents from OSC have primarily been communicated through written requests to the Deputy Special Counsel. However, in August 2007 we exercised OSC's subpoena authority—which we believe to have been delegated to us through the March 2006 Economy Act agreement—in connection with four requests. Upon being served with a subpoena for records in his possession, Mr. Bloch directed the Deputy Special Counsel to inform us that subpoena authority had not been delegated to our office.
7. In response to requests made both via subpoena and by request to the Deputy Special Counsel, Mr. Bloch directed the Deputy Special Counsel to refuse to turn over various documents that include e-mails and attachments from several OSC employees.

As we informed you in our September 28, 2007 correspondence, the deletion, destruction, and refusal of access to OSC documents have hampered our ability to thoroughly investigate this case, and it has now become evident that Mr. Bloch's recusal violations contributed significantly in this regard. We are working to overcome these obstacles, and may provide you further information about recusal matters if it becomes possible to do so within the context of the pending criminal proceedings of which we have previously notified you.

If you have any questions, please do not hesitate to contact me on (202) 606-1200.

Sincerely,

A handwritten signature in black ink, reading "Patrick E. McFarland". The signature is fluid and cursive, with the first name "Patrick" being the most prominent.

Patrick E. McFarland  
Inspector General



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the  
Inspector General

September 28, 2007

Honorable Clay Johnson III  
Deputy Director for Management  
Office of Management and Budget

Dear Clay:

I am writing to you about the status of my office's investigation of the March 3, 2005 (as amended March 31, 2005) complaint of prohibited personnel practices against Special Counsel Scott Bloch. As explained in this letter, we have recently referred to the Office of the United States Attorney for the District of Columbia serious misconduct by Special Counsel Bloch. We believe it is prudent to advise you of these developments in a timely manner, given the seriousness of the recent conduct by Special Counsel Bloch. In order to avoid jeopardizing any potential criminal proceeding, we request that you do not disclose the Department of Justice referral to anyone at the Office of Special Counsel (OSC), including Special Counsel Bloch.

As I have previously indicated, my office has encountered a pattern of systematic delays on the part of OSC officials that began even before we executed the interagency agreement on which our involvement in this matter is based. The OSC caused a delay totaling 233 work days, or approximately 47 percent of the elapsed time since my office undertook this investigation. We have nonetheless continued our investigative activities in good faith, continuing to engage OSC with the expectation that we could ultimately secure its full cooperation and conduct a thorough, impartial, and expedient investigation. Unfortunately, the periodic meetings among you, your counsel, my office, and OSC, generally produced only brief intervals of compliance, followed by repeated but unfulfilled assertions of a desire to cooperate with our inquiry. It has become increasingly evident that actions of both current and former OSC officials continue to thwart our office's efforts to conduct a thorough, impartial investigation that meets professional standards of completeness and integrity.

The knowing destruction of records has occurred throughout the period of our investigation, assertions of unsupported and legally insufficient claims of privilege have been offered in response to investigative inquiries, and the denial of access to relevant documentary material still occurs. A most troubling incident which has recently been brought to our attention is the destruction of documents and withholding of documents by Special Counsel Bloch who is the subject of our investigation. This letter describes each of these situations, and informs you of the actions we have taken and plan to take.

### **Destruction of Records**

Our first formal contact with OSC after receiving your request to conduct an investigation of the complaint against Special Counsel Bloch was through an October 17, 2005 letter that we sent to the then-Deputy Special Counsel, asking that all documents and records relevant to our inquiry be preserved. However, our investigators have determined that Special Counsel Bloch and at least one other senior OSC official have destroyed records subsequent to our preservation notice. One episode in particular, the "wiping" of OSC-furnished computers assigned to Special Counsel Bloch and two of his special assistants by an outside contractor, also raises concerns involving the security of OSC information systems, misuse of government funds and obstruction of justice.

Further details regarding these matters are provided below.

1. On December 18 and 21, 2006 Special Counsel Bloch procured, with OSC appropriated funds, a technician from the company "Geeks on Call" to service his OSC-owned laptop computer. The contractor copied records (including email files) from Special Counsel Bloch's computer to encrypted flash drives and, after providing the flash drives to Special Counsel Bloch, "wiped" the computer's hard drives in a manner that precluded subsequent forensic retrieval of materials that had been stored there. On the same days, the contractor also wiped the OSC-assigned computers of Special Counsel Bloch's principal special assistant and a former special assistant. The total cost of these services and the flash drives was approximately \$1,100, which was paid in its entirety with federal funds. Special Counsel Bloch asserts that none of the material copied onto the flash drives from his OSC laptop computer was related to OSC. Special Counsel Bloch, through his attorney, asserts that one file related to his tenure on the PCIE and the remaining material related to previous government positions that Special Counsel Bloch has held. Special Counsel Bloch has refused to provide the flash drives and their contents to our investigators.

Special Counsel Bloch indicated through his attorney that during his tenure both as Special Counsel and his earlier service at the Department of Justice (November 2001 – December 2003), he routinely deleted email messages as soon as he sent or received them, to avoid "cluttering" his computer. Our review of Special Counsel Bloch's email accounts (as provided by OSC after review by both Special Counsel Bloch and his attorney) disclosed that the "sent messages" folder is missing for the entirety of his tenure as Special Counsel (January 2004 – present). His email "inbox" is missing for the period January 2004 – January 2006, with the exception of one message dated December 15, 2004 and eight messages received at various times in the period January 15 – June 18, 2005. These missing, and presumably deleted, email files cover the period during which the violations alleged by the complaint against Special Counsel Bloch would have occurred and immediately thereafter. Subsequent to January 20, 2006, Special Counsel Bloch's "inbox" reflects several gaps for periods from which data had been removed, but does contain 2,180 messages

which were not deleted. Additionally, Special Counsel Bloch's "deleted items" folder contained 14 items; 2 were dated September 1, 2006 and 12 dated between March 27, 2007 – June 29, 2007.

2. All of the 2004 and 2005 email records of the official who served as the Acting Deputy Special Counsel during July 2006 – February 2007 were missing, with the exception of a few messages received in December 2005. This individual stated in an interview with OIG personnel that she deleted her emails on an ongoing basis throughout her service in OSC (March 2004 – present), although this was clearly not accurate, given that her inbox subsequent to December 20, 2005 and sent messages folder subsequent to March 20, 2006 appeared to be largely intact and contained over 11,000 messages. As was the case with Special Counsel Bloch's email account, the emails deleted by this person covered the period that is most directly relevant to our inquiry.
3. For the period covered by our investigation, OSC's information management system was designed to erase materials, including emails and documents that had been deleted from network drives and email servers by individual users after 30 days. No limitations were placed on this process, either by the system itself or by management directive. As a result, the material deleted from email accounts by Special Counsel Bloch and the former Deputy Special Counsel is not believed to be susceptible to recovery through forensic techniques.
4. Special Counsel Bloch directed an OSC management official to obtain affidavits from all OSC employees whom we interviewed. That management official refused to follow Special Counsel Bloch's order.
5. An OSC management employee has informed us that Special Counsel Bloch has directly reviewed files whose release we have requested and initially ordered an OSC staff member to remove "damaging" material from them before they were provided to our office, but later withdrew this request.
6. Given the serious nature of the information described above, we conferred with the Department of Justice. We have recently been informed that this matter has been assigned to an Assistant United States Attorney for development of a criminal investigation under the obstruction of justice statute (18 U.S.C. § 1512).

### **Unsupported Claims of Privilege**

Our investigation has determined that a very small group of individuals within the immediate Office of the Special Counsel, including Special Counsel Bloch, were responsible for the decisions that formed the underlying basis for the March 3, 2005 complaint. Our interviews of the two officials other than Special Counsel Bloch resulted in their blanket refusals, on the basis of attorney-client privilege, to discuss matters

regarding the January 2005 OSC reorganization, the event that appears to be central to the allegations that Special Counsel Bloch committed prohibited personnel practices. Upon further questioning by OIG investigators, these persons—both of whom are now career employees for other federal agencies—declined to provide even basic information that would support their assertions of privilege, such as dates, times, subject-matter, and circumstances surrounding the communications they deemed to be privileged. We believe the blanket nature of these claims reflects that they are for the most part unwarranted and are not supportable by reference to the criteria identified by the Merit Systems Protection Board for assessing the applicability of attorney-client privilege in the context of actions for enforcement of subpoenas for documents or testimony. These are generally the same criteria as are applied to assess claims of privilege by the Federal judiciary. *See, for example, Gangi v. United States Postal Service*, 97 M.S.P.R. 165 (September 1, 2004); *Grimes v. Department of the Navy*, 99 M.S.P.R. 7 (June 10, 2005); and *Willingham v. Ashcroft*, 2005 U.S. Dist. LEXIS 22258 (D. DC. October 4, 2005).

We will continue to explore the full range of means to obtain full and truthful testimony from these employees, and if necessary, to contest unsupported claims of privilege before an appropriate adjudicatory forum.

#### **Denial of Access to Relevant Information**

Our office requested that the current Deputy Special Counsel release the emails of various OSC employees. While we ultimately did receive the email accounts we sought in an electronic format, all of them have been subject to some degree of prior scrutiny by OSC officials. The integrity of an investigation and the credibility of the resultant reports are predicated on the investigators' unrestricted access to information. OSC's ongoing insistence upon selectively furnishing materials to us, rather than complying with our requests in full, is inimical to the most fundamental principles of an effective investigation.

Given these concerns, we concluded that full compliance with our requests for information could be secured only through a mandatory process with an enforcement mechanism involving sanctions for noncompliance. The Office of Special Counsel holds an administrative subpoena authority under 5 U.S.C. § 1212 which meets these criteria. Pursuant to the interagency agreement on which our investigation is based and funded, we believe that the power to invoke this authority was delegated to us. Therefore, during the period August 17 – 23, 2007, we issued four subpoenas for documents and information to the Deputy Special Counsel, acting as OSC's point of contact, and one directly to Special Counsel Bloch. The Deputy Special Counsel responded on August 29, 2007, asserting that our subpoenas were "invalid and ultra vires," and claiming that he intended to comply, solely on a voluntary basis, with our investigative requests "as much as reasonably possible."

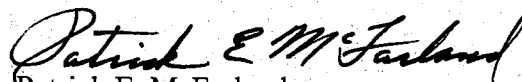
Special Counsel Bloch responded in a similar vein through a letter from his attorney. Having stated that he believes that "[I]t does not appear that your office has any authority to issue subpoenas in [this] matter," he indicated that he would cooperate "for those requests which are within reason and within your authority." The remainder of that letter in effect documents his refusal to provide any of the items we requested.

### **Conclusion**

It appears that Special Counsel Bloch has successfully thwarted our investigative process. We suspect his lack of cooperation is related to a cover-up, which is an issue we will pursue. It is incredible that such a high level government official subject to an investigation would hire an outside contractor to wipe his computer and the computer of his special assistants, refuse to produce a copy of the deleted material, and demand affidavits, through a management official, of his subordinates who were interviewed. While we can prepare a report that contains factual information regarding the issues identified in the March 2005 complaint against Special Counsel Bloch, the fundamental accuracy of such report is questionable in the absence of complete information from Special Counsel Bloch. We will continue to explore any available options in our investigation and will fully cooperate with the Office of the United States Attorney.

If you have any questions, please do not hesitate to contact me, at (202) 606-1200, or have a member of your staff contact Patti Marshall, my special counsel for this case, at (312) 751-3390.

Sincerely,

  
Patrick E. McFarland  
Inspector General

THE WHITE HOUSE  
WASHINGTON

Date: August 8, 2008

To:

From: Office of the Counsel to the President

- ☐ FYI
- ☐ Appropriate Action
- ☐ Direct Response
- ☐ Prepare Response For My Signature
- ☐ Per Our Conversation
- ☐ Let's Discuss
- ☐ Per Your Request
- ☐ Please Return
- ☐ Deadline
- ☐ Other

Comments: Copies want to  
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Date: August 8, 2008  
To: Fred F. Fielding  
Firm: The White House  
Fax #: (202) 456-6279  
From: Roscoe C. Howard, Jr.  
Subject: Scott Bloch

Operator: Fran Hewitt  
Recipient #: (202) 456-2632

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\*\*\* COMMENTS \*\*\*

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|--------|----------------------------------------------------|-------|------------|----------------|
| Letter | [Letter] - To: Fred Fielding - From: Roscoe Howard | 7     | 08/08/2008 | P6/b6;         |

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**COLLECTION:**

Counsel's Office, White House

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Fielding, Fred - General Files

**FOLDER TITLE:**

Office of Special Counsel Reports & Scott Bloch Issues [8]

**FRC ID:**

11293

**OA Num.:**

10820

**NARA Num.:**

10382

**FOIA IDs and Segments:**

2014-0441-F

2014-0210-F

**RESTRICTION CODES**

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
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**Records Not Subject to FOIA**

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U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

August 4, 2008

The Honorable Fred F. Fielding  
Counsel to the President  
The White House  
Washington, D.C. 20500

Re: OSC File No. DI-07-2724

Dear Mr. Fielding:

Pursuant to 5 U.S.C. § 1213(e)(3), I am transmitting the enclosed letter, report, and comments to the President. If I may provide more information concerning this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Bloch".

Scott J. Bloch

Enclosures



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

The Special Counsel

August 4, 2008

The President  
The White House  
Washington, DC 20500

Re: OSC File No. DI-07-2724

Dear Mr. President:

The United States Army Corps of Engineers (USACE) serves the Armed Forces and the nation by providing vital engineering services in support of national interests. As part of its mission, USACE has been tasked with providing critical hurricane and flood protection to the recently-devastated city of New Orleans. Maria E. Garzino, USACE Civil Engineer, alleged that USACE employees and Moving Water Industries (MWI) personnel installed defective pumps in New Orleans and circumvented contract requirements related to contract modifications and notifications at the expense of public safety and proper contract oversight.

I required the Honorable Robert Gates, Secretary of Defense, to conduct an investigation into Ms. Garzino's disclosure pursuant to 5 U.S.C. § 1213(c) and (d). Secretary Gates delegated responsibility for investigating Ms. Garzino's allegations to his Inspector General, the Honorable Claude M. Kicklighter, who submitted a report to me. Ms. Garzino also provided comments to the agency report. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the report and the whistleblower's comments to you.

Specifically, Ms. Garzino, who consented to the release of her name, stated that costly pumping equipment at three "outfall gated canal closure structures," which is part of the flood protection design to protect New Orleans, was inherently flawed due to poor pumping and hydraulic system designs; pumping equipment that had previously malfunctioned under favorable contractor testing conditions, and subsequently shown to be defective, was knowingly installed by USACE employees and MWI personnel; and that USACE and MWI employees were responsible for not providing proper oversight of the pumping equipment project which created a substantial and specific danger to public health and safety.

On May 14, 2008, the agency submitted a report in response to Ms. Garzino's disclosures. The report substantiated several of Ms. Garzino's allegations, but ultimately concluded that "... these deficiencies [were] performance related short-comings that did not rise to the level of a serious violation of law or regulation, abuse of authority, or gross mismanagement. Nor did they result in a gross waste of funds or a danger to public health or safety."

The President

Page 2

Ms. Garzino, however, vigorously disputed the agency's findings and provided OSC with extensive documentary evidence to support her account of events surrounding the design, testing, installation, operational capabilities, and contract irregularities. She stated that the agency's conclusions were severely flawed and erroneous, and represent a "whitewash," according to the available evidence and documentation. Ms. Garzino states that the agency report is devoid of engineering and mathematical interpretation, upon which the engineering profession is based. Merely transcribing without question and adequate scrutiny what others put forth, no matter how illogical, unsubstantiated, or void of fact, is unsuitable in any investigatory effort. Ms. Garzino believes that it is imperative that there be a vehicle in place that can provide a truthful, competent, and fair investigation of the evidence and documentation that exists in this matter. As required by law, 5 U.S.C. § 1213(e)(3), I am now transmitting the agency report along with Ms. Garzino's comments to you.

Having reviewed the agency's submissions and Ms. Garzino's comments, I have determined that the agency's report, taken together, contain all of the information required by statute, but, as explained in the enclosed Analysis of Disclosure, I must conclude that findings in the agency report do not appear reasonable within the meaning of 5 U.S.C. § 1213(e)(2). Ordinarily, in cases where I have found the report unreasonable, I would afford the agency head an opportunity to correct the deficiencies and submit a supplemental report. In this case, because of the exigencies of hurricane season, I have elected to forgo this option, and I am forwarding the reports, together with my comments and recommendations, to you.

The documentation and comprehensive explanation provided by Ms. Garzino in contrast with the agency's superficial and dismissive findings also suggest that, although Ms. Garzino regularly and persistently made USACE aware of serious flaws in the design, testing, installation, capabilities and contract issues that arose with the New Orleans pumps, USACE employees failed to act in a manner that was consistent with providing accountability to the process. Instead of taking Ms. Garzino's concerns seriously, USACE employees appeared to have taken a band-aid approach at the expense of good government and public health and safety. As explained in the Analysis of Disclosure, the agency report appears to make excuses on behalf of the USACE employees instead of holding employees and contractors accountable for their actions and assuring the citizens of New Orleans that the pumps, a critical pillar of the flood protection systems, would actually perform without catastrophic failure during the mildest of hurricanes. I am left to conclude that a thorough and impartial investigation conducted by independent professional engineers into these matters is warranted. Moreover, it appears that the pumps remain inadequately untested, and vulnerable to failure in the event of a hurricane.

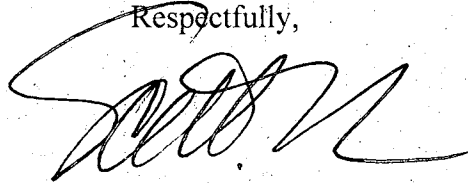
The Special Counsel

The President

Page 3

As required by § 1213(e)(3), I have sent a copy of the agency report and Ms. Garzino's comments to the Chairmen of the Senate and House Committees on the Armed Forces. We have also filed a copy of the agency report and Ms. Garzino's comments in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to be "S. Bloch", written in a cursive style.

Scott J. Bloch

Enclosures

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| FORM   | SUBJECT/TITLE                                          | PAGES | DATE | RESTRICTION(S) |
|--------|--------------------------------------------------------|-------|------|----------------|
| Report | OSC Report on Analysis of Disclosure, Agency Report... | 54    | N.D. | P6/b6; b7c;    |

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