Description of document:	Council of Inspectors General for Integrity and Efficiency (CIGIE) Investigation Reports from selected substantiated Integrity Committee cases 2012-2019
Requested date:	08-May-2021
Release date:	22-September-2021
Posted date:	12-June-2023
Source of document:	FOIA Request FOIA Officer Council of the Inspectors General on Integrity and Efficiency 1717 H Street, NW Suite 825 Washington, DC 20006 Fax: (202) 254-0162 Email: FOIASTAFF@cigie.gov Preferred during COVID-19 pandemic: Email: FOIASTAFF@cigie.gov

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

September 22, 2021

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-36

This is in response to your Freedom of Information Act (FOIA) request dated May 8, 2021, and received on May 10, 2021, by the Council of the Inspectors General on Integrity and Efficiency (CIGIE). On May 13, 2021, CIGIE acknowledged this request and informed you of the assigned FOIA case number: 6330-2021-36. In your own words, you have requested a total of seven reports of investigation (ROIs), namely:

> *A copy of the investigation Report or Reports (not just the minimal data from the Integrity Committee Annual Report) from these substantiated Integrity Committee Cases (numbered): 890, 909, 911, 918, 919, 972 and 954.*

The enclosed pdf file of 400 pages includes the responsive records for all of the requested ROIs. The following FOIA redactions have been applied:

- Exemption 5 (5 U.S.C. § 552(b)(5)): allows the agency the discretion to withhold "…inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The purpose of this exemption is to protect the deliberative process by encouraging a frank exchange of views. In addition, this exemption protects from disclosure attorney-work product and attorney-client materials.
- Exemption 6 (5 U.S.C. § 552(b)(6)): allows Federal agencies the discretion to withhold information the disclosure of which would "…constitute a clearly unwarranted invasion…" of individual privacy and might adversely affect the individual and his/her family.
- Exemption 7 (5 U.S.C. § 552(b)(7)): protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information …

  (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

If you have questions about this response, you may contact the FOIA Public Liaison directly by dialing (202) 478-8265. You may also send an email to FOIASTAFF@cigie.gov. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
ogis@nara.gov
(202) 741-5770
(877) 684-6448 (toll free)
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

(1) Regular mail sent to the address listed in this subsection, above; or

(2) By fax sent to the FOIA Officer at (202) 254-0162; or

(3) By email to FOIAAPPEAL@cigie.gov.

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,

Faith R. Coutier
Senior Assistant General Counsel

Enclosure: as stated

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Clayton:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to receive, review, and refer for investigation allegations of wrongdoing made against an Inspector General (IG) or a designated staff member within an Office of Inspector General (OIG).[1] Pursuant to that mandate, this letter reports the IC's findings, conclusions, and recommendations regarding the allegations against Carl Hoecker, Inspector General; (b) (6), (b) (7)(C) [redacted][2] U.S. Securities and Exchange Commission (SEC). The below findings, conclusions, and recommendations relating to the wrongdoing of IG Hoecker are referred to you for appropriate action. (b) (6), (b) (7)(C), (b) (5) [redacted].[3]

Executive Summary

Numerous complaints against IG Hoecker, (b) (6), (b) (7)(C) [redacted] were submitted to the IC beginning in October 2016. The complaints contained multiple allegations, including that IG Hoecker and (b) (6), (b) (7)(C) [redacted] were improperly protecting the subjects of an internal SEC OIG investigation by conducting a limited, substandard investigation. Consequently, the complainants alleged the resulting SEC OIG Report of Investigation (ROI) understated the seriousness of the misconduct and significance of the evidence, and speculated in a manner favorable to the subjects.[4] Pursuant to its procedures, the IC decided to investigate the complaints with the assistance of special agents and staff from the U.S. Department of Education Office of Inspector General (ED OIG).

ED OIG conducted an extensive investigation of the allegations and provided a draft ROI to the IC on August 21, 2018. In accordance with section 11(d) of the IG Act, the IC provided IG

[1] Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), section 11(d)(1).
[2] (b) (6), (b) (7)(C) [redacted]
[3] The IC notes the IG or Acting IG makes personnel decisions regarding subordinate OIG employees, not the agency, however the statute requires the IC to include all findings in their report to the appointing authority.
[4] The substance of the remaining allegations is addressed in the attached Integrity Committee Report of Investigation (ROI).

Hoecker, (b) (6), (b) (7)(C) the opportunity to respond to the draft ROI, which was redacted to protect witness and complainant confidentiality. However, on October 12, 2018, the IC received information that IG Hoecker had improperly contacted one of those protected witnesses, compelling the IC to expand the scope of the investigation to include that conduct. ED OIG completed this supplemental work and the IC provided IG Hoecker, (b) (6), (b) (7)(C) an opportunity to respond to the revised draft ROI and their responses were incorporated into the final ROI.

After a thorough review of the final ROI and its exhibits, including the subjects' comments, the IC adopts the facts in the ROI and concludes that IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor. (b) (6), (b) (7)(C), (b) (5)

Background of SEC OIG's Internal Investigation

In February 2013, IG Hoecker became the SEC IG after the resignation of the previous IG, the Deputy IG, and the termination of the AIGI. Their departures followed an external investigation, which found the former SEC IG's personal relationship with an attorney and a whistleblower created a conflict of interest relating to the initiation and supervision of multiple investigations and violated CIGIE's investigative standards and the Standards of Ethical Conduct for Employees of the Executive Branch.[5]

IG Hoecker began rebuilding the OIG by hiring new employees and personally selected, without interview, three individuals with whom he had longstanding professional relationships – (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) These individuals had previously worked for IG Hoecker when he was (b) (6), (b) (7)(C).[6] On May 16, 2016, IG Hoecker received multiple complaints alleging SE1 and SE2 "maintained the appearance of an inappropriate relationship" and, as a result, SE2 received preferential treatment. The complaints also alleged SE1 and SE2 wasted government funds and engaged in time and attendance fraud.

Against concerns raised by (b) (6), (b) (7)(C), IG Hoecker decided to handle the allegations internally instead of asking an outside, independent OIG to conduct the investigation, and assigned the investigation as a "joint" effort to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Like IG Hoecker, (b) (6), (b) (7)(C) also (b) (6), (b) (7)(C)

[5] https://archive.org/stream/472239-finalsec12uihq0063gc37si-sec-oig-a-pdf/472239-finalsec12uihq0063gc37si-sec-oig-a-pdf_djvu.txt. These standards include a requirement for acting impartially and avoiding any actions that would create the appearance of a violation.

[6] ROI, Exhibit 38, Interview of IG Hoecker on June 13, 2018, p. 410.

from 2013 until (b) (6), (b) (7)(C) retired, including the time of the SEC OIG internal investigation. Email correspondence demonstrates (b) (6), (b) (7)(C), (b) (5) [redacted].[7]

IG Hoecker tasked (b) (6), (b) (7)(C) with completing the bulk of the investigative legwork prior to (b) (6), (b) (7)(C) imminent retirement. (b) (6), (b) (7)(C) gathered evidence and conducted most of the interviews, including the subject interviews of SE1 and SE2.[8] (b) (6), (b) (7)(C) also provided testimony and evidence as a fact witness for his own investigation, including a dispositive memo he sent to (b) (6), (b) (7)(C) that evaluated SE1 and SE2's work performance and interpreted "reasonable travel time" for the SEC OIG policy on physical fitness, which was used in the SEC ROI to directly refute the allegations of time and attendance fraud.[9]

SEC OIG issued its final ROI on March 3, 2017, which found SE1 and SE2 did not have a sexual relationship but found SE1 created the appearance of an inappropriate relationship with SE2.[10] However, this finding appeared to be unduly generous to SE1 and SE2 in multiple respects: the investigation did not follow up on clear leads as to whether there was an *actual* inappropriate relationship and failed to fully and responsibly confront SE1 or SE2 on relevant points in their interviews.

Additionally, the SEC ROI found that SE1 and SE2 had unexplained absences during work hours throughout the year, but did not find these absences to be improper by speculating, without supporting evidence, that it was "possible" SE1 and SE2 "may have been working or attending meetings outside of SEC offices" during that time.[11] Conversely, the SEC ROI found SE1 and SE2 "occasionally exceeded" the time permitted by SEC OIG policy for physical fitness.[12] Finally, the SEC ROI found that SE2 received no actual preferential treatment from SE1, although "the appearance of the inappropriate relationship" caused many OIG employees to believe they had. SEC OIG concluded the matter by (b) (6), (b) (7)(C) [redacted]

The minimal disciplinary action against SE1 and SE2 and the lack of recusals by key SEC OIG managers resulted in multiple complaints that SEC OIG management conducted a biased and substandard investigation, which was orchestrated to contain the facts and limit the professional harm to favored employees. (b) (6), (b) (7)(C), who replaced (b) (6), (b) (7)(C) after he retired, imposed

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[7] In a 2015 email exchange, (b) (6), (b) (7)(C) [redacted] ROI, Exhibit 43.

[8] ROI, Attachment 1, IG Hoecker's Comments on the Draft ROI, p. 18.

[9] ROI, Exhibit 44.

[10] ROI, Exhibit 4.

[11] The ROI found SE1 had 144 hours (18 days) of unexplained absences and SE2 had 126 hours (over 15 days). ROI Exhibit 4.

[12] *Id.* The SEC ROI found that, in one year, SE1 exceeded the physical fitness policy by 304 minutes (over 5 hours) and SE2 exceeded the policy by 426 minutes (over 7 hours).

the discipline.

Conclusions of the Integrity Committee

After a thorough review of the evidence, including each of the subject's comments on the draft ROI, the IC concludes the actions by (b) (6), (b) (7)(C) do not meet the IC's threshold standard for wrongdoing. Additionally, since (b) (6), (b) (7)(C) retired from federal service in June 2016, the IC determines it is not in the public's interest to further investigate his actions or make findings regarding his conduct.[13] Conversely, the IC finds IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor.[14]

IG Hoecker Initiated and Oversaw an Internal Investigation that was Inadequate, Flawed, and Lacking in Objectivity

Pursuant to the Quality Standards for Federal Offices of Inspector General (Silver Book), IGs and their staff must be independent in fact and appearance from personal, external, and organizational impairments.[15] Accordingly, IGs and their employees should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude the OIG is not able to maintain independence in conducting specific work.[16] The totality of the facts and circumstances in this matter clearly demonstrates that IG Hoecker's actions created the appearance that he attempted to conceal potential wrongdoing within the OIG by ordering and overseeing a remarkably biased and flawed internal investigation, and a third party with knowledge of the relevant facts and circumstances might reasonably question the independence and objectivity of the investigation. The IC finds these actions constitute an abuse of his authority and undermine the independence and integrity reasonably expected of an IG.

IG Hoecker asserts the internal SEC OIG investigation "complied with the Silver Book, as well as the IG Act and CIGIE standards and guidelines."[17] Furthermore, IG Hoecker denies that he had a personal relationship with anyone involved in the internal investigation and states (b) (6), (b) (7)(C) relationship with SE1 and SE2 "was not close and personal" but a "typical professional relationship that exists in any office."[18] IG Hoecker also denies (b) (6), (b) (7)(C) relationship with SE1 and SE2 presented a conflict because "the appearance is for knowledgeable third parties."[19]

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[13] (b) (6), (b) (7)(C) elected not to be interviewed by the IC investigators and because he is no longer in government service, the investigators could not compel his interview.
[14] "Abuse of authority" is an arbitrary or capricious exercise of power that adversely affects the rights of any person or that results in personal gain to the subject or other preferred persons. *Ramos v. Dep't of the Treasury*, 72 M.S.P.R. 235, 241 (1996) (citation omitted).
[15] Quality Standards for Federal Offices of Inspector General (The Silver Book, 2012), https://www.ignet.gov/content/quality-standards.
[16] Silver Book, p. 10.
[17] ROI, Attachment 1, p. 10.
[18] ROI, Attachment 1, p. 19; ROI, Exhibit 38.
[19] ROI, Exhibit 38, p. 394.

The IC finds IG Hoecker's response to be unpersuasive and inconsistent with the facts developed in the investigation. First, IG Hoecker chose to have his office conduct an internal investigation, over the concerns of SEC OIG's counsel.[20] IG Hoecker claims that (b) (6), (b) (7)(C) never expressed concerns about handling the matter internally nor did he advise him of an impartiality problem or an appearance issue that would require recusal;[21] however, (b) (6), (b) (7)(C) testified that he did raise such concerns to IG Hoecker at the outset of the investigation.[22] Moreover, the whistleblower who originally brought the complaint to SEC OIG's attention raised concerns about the close relationships between the subjects and IG Hoecker and (b) (6), (b) (7)(C) in the whistleblower's initial interview.[23]

Furthermore, IG Hoecker selected (b) (6), (b) (7)(C) to lead the internal investigation, despite (b) (6), (b) (7)(C) longstanding and widely known relationship with (b) (6), (b) (7)(C) and contrary to well-established investigative standards.[24] Six SEC OIG employees interviewed in the IC's investigation did not believe the internal investigation was impartial or independent, and several of these employees expressed concerns regarding the lack of impartiality during the internal investigation. These witnesses based their opinion on their daily observations of the close relationships among IG Hoecker, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and one witness stated that there would have been more investigative activity if the investigation had involved someone (b) (6), (b) (7)(C) [25]

IG Hoecker attempts to minimize the issue of independence by stating the investigation was assigned to (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) was merely assisting for his last 30 days in office. While IG Hoecker denies (b) (6), (b) (7)(C) was the lead investigator or had any supervisory role in the internal investigation,[26] the evidence and IG Hoecker's prior statements indicate otherwise. During the IC's investigation, both (b) (6), (b) (7)(C) and IG Hoecker acknowledged that it was (b) (6), (b) (7)(C) who led the effort in gathering evidence and conducting interviews for the internal investigation.[27] Specifically, IG Hoecker told IC investigators that he wanted (b) (6), (b) (7)(C) to "get the bulk" of the interviews finished and that when (b) (6), (b) (7)(C) retired, "counsel would complete the investigation" and that "the cleanup could be really [in] the swim lane of [(b) (6), (b) (7)(C)] to do that."[28]

In addition to lacking an appearance of impartiality, the evidence shows IG Hoecker and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) impacted the quality of the internal investigation. In

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[20] ROI, Attachment 1, Tab A.
[21] ROI, Attachment 1, p. 20. This was not the only instance in which IG Hoecker disregarded the advice of (b) (6), (b) (7)(C). He likewise disregarded (b) (6), (b) (7)(C) recommendation to (b) (6), (b) (7)(C), (b) (5) because SE1 was not negotiating in good faith and was continuing the misconduct underlying the investigation. ROI, Exhibit 37, Interview of (b) (6), (b) (7)(C) on June 12, 2018, p. 234 to 236.
[22] ROI, Exhibit 37, p. 35 to 37.
[23] ROI, Exhibit 11.
[24] ROI, Attachment 1, p. 13 to 14; ROI, Attachment 1, Tab B.
[25] ROI, Exhibits 11, 15, 19, 20, 28, and 29.
[26] ROI, Attachment 1, p. 20.
[27] ROI, Exhibit 37, p. 167 to 168.
[28] ROI, Exhibit 38, p. 203 to 204, 208, 317. IG Hoecker even sought to recognize (b) (6), (b) (7)(C) for his work on the investigation. ROI, Exhibit 37, p. 18 to 19.

addition to evidence that obvious leads were not pursued, (b) (6), (b) (7)(C) failed to advise SE1 and SE2 of their 5th Amendment right not to incriminate themselves before he interviewed them, thereby jeopardizing the ability of the U.S. Attorney's Office to use their statements if the case were accepted for prosecution.[29] Omitting this routine and required warning is highly unusual for someone who had served (b) (6), (b) (7)(C), and it is an error that had not occurred in the prior 59 SEC OIG investigations of SEC officials, including matters with identical allegations.[30] This serious omission suggests a predisposition to limit the investigation to administrative channels, no matter what the evidence showed and despite the potentially criminal nature of the allegations of time and attendance fraud.

(b) (6), (b) (7)(C) also failed to address additional credible allegations (b) (6), (b) (7)(C) engaged in sexual harassment, which were reported prior to and during the internal investigation.[31] In fact, the misconduct was reported to (b) (6), (b) (7)(C), and IG Hoecker; however, the complaining witness was never interviewed, and no one followed up on the allegations. Moreover, under IG Hoecker's supervision, (b) (6), (b) (7)(C) was both the principal investigator and a critical fact witness for the internal investigation. (b) (6), (b) (7)(C) provided testimony and evidence as a witness in the investigation, including a memorandum to (b) (6), (b) (7)(C) that interpreted the SEC OIG policy on physical fitness in a manner that SEC OIG employees viewed as favorable to (b) (6), (b) (7)(C) and included an evaluation of (b) (6), (b) (7)(C).[32] This memo had a direct effect on the investigation since (b) (6), (b) (7)(C) was used in the SEC ROI to justify and minimize their unexplained absences, which stated, without supporting evidence, that SE1 and SE2 could have been working during the missing hours given their high level of individual performance results. (b) (6), (b) (7)(C) provided this assessment despite failing to interview SE1 and SE2 on this issue.

The IC finds IG Hoecker's assertions that the internal SEC OIG investigation was conducted independently and objectively to be unpersuasive and lacking in credibility. IG Hoecker has been employed as an investigator in the Federal government for over 40 years and has over a decade of experience as an IG. He has opened and closed over 150 investigations at SEC and at the time of the internal investigation, IG Hoecker served as the Chairperson of CIGIE's Investigations Committee and was responsible for advising the IG community on issues involving investigations and establishing investigative guidelines.[33] The IC is therefore troubled that someone with IG Hoecker's extensive experience would maintain, even in hindsight, that the internal SEC OIG investigation was impartial, thorough, and free of conflicts of interest.[34]

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[29] Department of Justice guidance calls on investigative personnel to administer these so-called *Garrity* warnings routinely in voluntary interviews of Federal employees.

[30] Investigators found that, during the three years preceding this matter, there were 12 subjects in 59 SEC OIG investigations with similar allegations and each subject was given a rights advisement.

[31] ROI, Exhibit 31.

[32] ROI, Exhibit 44.

[33] ROI, Attachment 1, Tab B. IG Hoecker served as the Chairperson of CIGIE's Investigations Committee from 2009 to 2019.

[34] The IC is likewise unpersuaded by IG Hoecker's contention that a finding against him in this matter would effectively preclude any IG from handling an investigation of a longtime employee in-house. ROI, Attachment 1, p. 5. The relationships in this matter were not merely those of longtime workplace colleagues but of mentor-protégé and trusted right-hand.

Further, IG Hoecker's strenuous efforts to withhold the internal investigation from scrutiny by CIGIE's investigative peer reviewers support an inference that he was aware of its manifest defects. He could have quickly established that the report was outside the review period by producing it and related data to the peer reviewers, but he chose instead to engage in protracted discussions and to offer a sequence of non-meritorious rationales for withholding it entirely. Only when faced with the prospect that an inconclusive peer review outcome might lead to revocation of SEC OIG's law enforcement authority did IG Hoecker turn over the report. The peer reviewer agreed that the report was beyond the review period, but also noted numerous irregularities in it.[35] While the IC does not rely on the peer reviewer's substantive analysis of the report, we find IG Hoecker's course of conduct to be probative of his knowledge that the internal investigation was substandard and would not withstand independent scrutiny.

While IGs have broad discretion in the performance of their mission, the IC determines that a reasonable person with knowledge of the underlying facts and circumstances in this matter would have questioned the objectivity and independence of an internal investigation. IG Hoecker's decision to overlook the threats to (b) (6), (b) (7)(C) independence and prominently include him in the investigation into SE1 and SE2, and to disregard advice of (b) (6), (b) (7)(C) and complaints from other employees, constituted an abuse of his authority and undermined the independence and integrity reasonably expected of him.

IG Hoecker Improperly Confronted and Questioned a Subordinate Witness

The IC also finds that IG Hoecker engaged in wrongdoing when he contacted a witness in the IC's investigation to ask questions about statements that witness made to IC investigators. On October 10, 2018, IG Hoecker contacted a subordinate employee and witness in the IC investigation on their personal cell phone after business hours and questioned the witness about certain statements attributed to the witness in the draft ROI that IG Hoecker had recently reviewed. During the conversation, IG Hoecker told the witness that he would be able to view the transcript of the witness's testimony and asked the witness if the statements the witness made to investigators would be consistent or inconsistent with the information the witness had just described to him on the phone. The witness was surprised and reluctant to answer IG Hoecker's questions and was concerned enough to report the conversation to (b) (6), (b) (7)(C) the following day. The witness also provided (b) (6), (b) (7)(C) a detailed memorandum documenting the conversation, which (b) (6), (b) (7)(C) promptly forwarded to the IC.[36]

When questioned by investigators, IG Hoecker acknowledged that he was able to deduce the witness's identity despite redactions in the draft ROI and claimed he contacted this individual only to ensure that there were no unresolved workplace issues that he needed to address, and that he was concerned the witness may have a diminished trust in him.[37] IG Hoecker denied asking the witness if the transcript would match their conversation and he did not believe contacting the

[35] ROI, Exhibit 51.
[36] ROI, Exhibit 68.
[37] ROI, Exhibit 70, Interview of IG Hoecker, December 6, 2018, p. 7 to 8; ROI, Attachment 1, p. 39.

witness violated any rule or IC direction[38] stating, "I wouldn't have taken retaliatory action on [witness]. I think [witness is] doing a great job. I just finished an evaluation and [witness is] top notch."[39] Notably, the favorable evaluation issued by IG Hoecker occurred after the phone call.

The IC finds IG Hoecker's reasons for contacting the witness to be lacking in credibility. The witness created a memorandum of the conversation shortly after the call and was concerned enough to describe the phone call to (b) (6), (b) (7)(C) the next day and provide him with a copy of the memorandum. This contemporaneous account carries more weight with the IC than IG Hoecker's later justifications. In addition, the witness's account that IG Hoecker asked about details in the witness's statement and whether they would match the transcript of the witness's interview is highly credible because this information would only be known by IG Hoecker, which undercuts his denial.

Moreover, as IG Hoecker should know from his extensive investigative experience and as the then-Chairperson of the CIGIE Investigations Committee, it is highly improper for the subject of the investigation to contact a witness and press them on what they said to investigators – this conduct may even constitute obstruction of an investigation. That type of behavior—made during the pendency of an investigation—is widely known to be unacceptable in the IG community as it can be reasonably construed as coercive or retaliatory in nature, especially in an ongoing workplace setting. Therefore, the IC determines that by improperly contacting this subordinate witness IG Hoecker abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of an IG.

IG Hoecker Exhibited a Lack of Candor

The IC is further troubled IG Hoecker's lack of candor throughout the IC process. It is clear from the record that IG Hoecker changes his story depending on what is most advantageous to him at the time. In addition to his misrepresentations about not receiving advice from (b) (6), (b) (7)(C) and his reasons for questioning a witness in the IC's investigation, IG Hoecker also mischaracterized the nature of the SEC internal investigation depending on his audience, calling it a thorough "investigation" in initial statements to the IC, but later telling CIGIE peer reviewers and IC investigators it was a "management inquiry" and therefore not subject to CIGIE's Quality Standards for Investigations.

Recommendation

The IC concludes that IG Hoecker engaged in wrongdoing in that he abused his authority and engaged in misconduct that undermines the independence and integrity reasonably expected of an IG, including showing a lack of candor. Furthermore, the sustained inappropriate nature of

[38] The IC's written communications to IG Hoecker included the following language: "Finally, it is important to ensure that appropriate measures are in place to prevent retaliation or other prohibited personnel practices from being taken against an employee based on the employee's disclosure of information that he or she reasonably believes evidences administrative misconduct as defined above." ROI, Exhibit 70.
[39] ROI, Exhibit 70, p. 14 to 15.

his actions throughout this matter, such as contacting a subordinate witness about their participation in the IC's investigation, were wholly inconsistent with fundamental standards expected of an IG. These serious violations are aggravated by IG Hoecker's extensive experience and the leadership role entrusted to him by the IG community. (b) (6), (b) (7)(C), (b) (5) [redacted]

The IC has also provided its findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Report of Investigation

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Michael Horowitz
Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, N.W., Suite 825
Washington, D.C. 20006

Dear Chairperson Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson, the SEC Chairperson, IG Hoecker, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6250

The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Government Affairs

The Honorable Carolyn Maloney
Acting Chairwoman
Committee on Oversight and Reform
2471 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform

The Honorable Mike Crapo
Chairman
Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Senate Committee on Banking, Housing, and Urban Affairs

The Honorable Maxine Waters
Chairwoman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
House Committee on Financial Services

Dear Chairmen and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

After thoroughly reviewing the report of investigation (ROI) and accompanying exhibits, the IC adopted the findings of fact in the ROI and concluded IG Hoecker abused his authority in the exercise of his official duties and engaged in conduct that undermines the independence and integrity reasonably expected of an IG, including a lack of candor. Accordingly, the IC

(b) (6), (b) (7)(C), (b) (5) [redacted]

The IC provided the attached report with our recommendation to the CIGIE Executive Chairperson, the CIGIE Chairperson, the SEC Chairperson, and IG Hoecker, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

October 18, 2019

The Honorable Margaret Weichert
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, D.C. 20006

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards the report of our findings and our recommendation regarding Inspector General Carl Hoecker of the U.S. Securities and Exchange Commission (SEC).

The IC also provided the attached report with our recommendation to the CIGIE Chairperson, the SEC Chairperson, IG Hoecker, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

REFERRAL

REPORT OF INVESTIGATION

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY: INTEGRITY COMMITTEE REQUEST IC890 AND IC909

I18EAS00388

APRIL 5, 2019

Table of Contents

Report by:

(b) (6), (b) (7)(C)

Approved by:

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)
Assistant Inspector General for Investigations

Distribution:
CIGIE Integrity Committee, AIGI, IG Counsel
File

REFERRAL

REPORT OF INVESTIGATION

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY: INTEGRITY COMMITTEE REQUEST IC890 AND IC909

EXECUTIVE SUMMARY

The United States (U.S.) Department of Education (ED) Office of Inspector General (OIG), conducted an investigation at the request of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Integrity Committee (IC), into claims of wrongdoing against senior management officials at the U.S. Securities and Exchange Commission (SEC) OIG regarding the handling of an employee investigation within SEC OIG. The specific allegations and their respective findings follow:

Allegation 1

The investigation was a whitewash[1]: Inspector General Carl Hoecker (Hoecker), SEC OIG, caused and (b) (6), (b) (7)(C) SEC OIG, conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) SEC OIG, and (b) (6), (b) (7)(C) SEC OIG, that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew.

[1] The complainant characterized SEC OIG's investigation as a "whitewash." ED OIG did not attempt to confirm or refute the complainant's subjective characterization of the investigation. Instead, ED OIG focused on the specific instances of misconduct the complainant alleged to have occurred, and which investigators could substantiate or not substantiate using investigative methods and criteria.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to [redacted] and to OIG Counsel, although [redacted] and SEC OIG were not free in appearance from impairments to independence. We did not find that [redacted] had impairments in fact or appearance.

Finding 1.1.b

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Investigative Policy.

Allegation 1.2

The report stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative—circumstantial evidence of a sexual relationship. The report appeared to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that [redacted] spent together, exceeding the time that they spent with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which [redacted] were found in the evidence room and the door was blocked, where one witness observed [redacted] zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that [redacted] gave [redacted] an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) , ED OIG could not substantiate whether the report of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) .

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C) , who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

Finding 1.3

ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office was spent on official activities. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

ED OIG also developed the following information in the course of its investigation:

1. Additional allegations of inappropriate comments made by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) were not addressed as part of the SEC OIG investigation.
2. (b) (6), (b) (7)(C), (b) (5) , SEC OIG Counsel advised Hoecker that (b) (6), (b) (7)(C) was not negotiating in good faith (b) (6), (b) (7)(C), (b) (5) . However, Hoecker made the decision to continue (b) (6), (b) (7)(C), (b) (5).

Allegation 2

The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) improperly excluded the investigation from the peer review conducted by the National Science Foundation (NSF) OIG, which prevented NSF OIG from completing the peer review.

Allegation 2.1

They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1

ED OIG substantiated that the SEC OIG offered varying justifications for why the investigation should not have been subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Allegation 2.3

The respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by SEC OIG Counsel). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

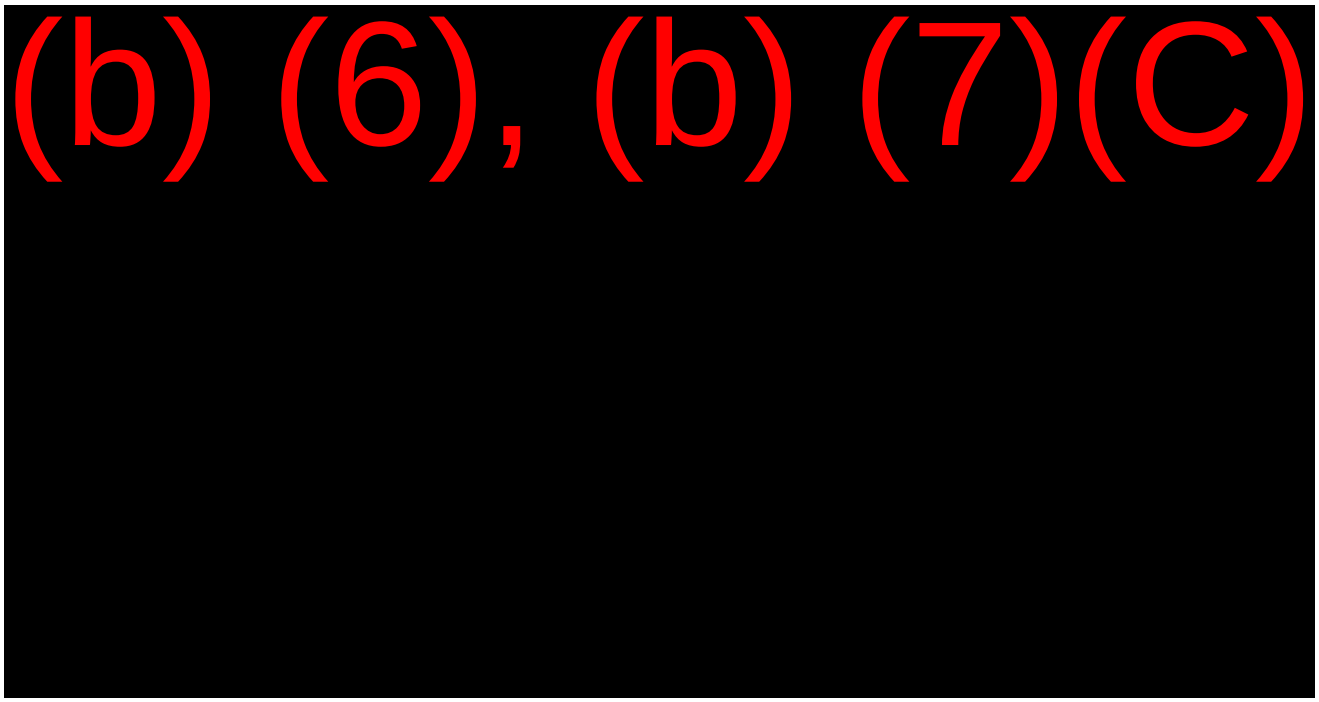
Allegation 2.4

Respondents designated or allowed (b) (6), (b) (7)(C) to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Finding 2.4

ED OIG substantiated that (b) (6), (b) (7)(C) served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the SEC OIG, but did not substantiate his serving in this role obstructed the peer review.

(b) (6), (b) (7)(C)



Allegation 5

On or about October 10, 2018, Hoecker engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 12, 2018, containing information that, on October 10, 2018, Hoecker contacted (b) (6), (b) (7)(C) SEC OIG, and questioned her regarding information she provided to ED OIG during the IC investigation.

Finding 5

ED OIG substantiated that Hoecker contacted (b) (6), (b) (7)(C) on October 10, 2018, regarding statements attributed to (b) (6), (b) (7)(C) in the draft ROI. Hoecker stated that he did not contact any other witnesses about the IC investigation or their interviews.

VIOLATIONS

The violations identified in this report include:

- Lack of compliance with SEC OIG investigative policy.
- Lack of compliance with Quality Standards for Federal Offices of Inspector General (Silver Book) and CIGIE QSI.

PREDICATION

This case was predicated on a request received on November 8, 2017, from CIGIE's IC for ED OIG to conduct an independent administrative investigation into allegations of wrongdoing by Hoecker and [redacted] (Exhibit 1). On November 15, 2017, the IC notified Hoecker and [redacted] of these allegations. On November 27, 2017, [redacted] was added as a subject to IC890 and additional allegations regarding obstruction of a peer review [redacted] were added as IC909 (Exhibit 2). [redacted].

On August 21, 2018, ED OIG provided a draft report of investigation (draft ROI) to the IC addressing the specific allegations of IC Requests IC890 and IC909 and the respective findings. On October 19, 2018, the IC requested ED OIG expand the scope of its investigation regarding an additional allegation of wrongdoing by Hoecker involving him contacting a witness to the IC investigation and questioning her regarding information she provided to ED OIG (Exhibit 67).

BACKGROUND

SEC OIG's Investigation

On January 19, 2017, [redacted] issued a ROI to Hoecker regarding, "Allegations of Misconduct related to [redacted] and [redacted]" The report was amended for administrative and clerical oversight errors and reissued on March 3, 2017 (Exhibit 4). The investigation was conducted by [redacted] SEC OIG.

According to the report, the investigation focused on allegations [redacted] (respectively direct supervisor and subordinate) maintained the appearance they were having a sexual relationship in the office, while on official travel, and during official paid work time. As a result, [redacted] received preferential treatment. The investigation also focused on allegations that [redacted] were frequently absent from the office for one or two hours, or more, during lunch time, left and returned together, and engaged in physical fitness time in excess of the time permitted by the policy. It also focused on allegations that [redacted] and

(b) (6), (b) (7)(C) potentially increased travel costs and wasted government funds by staying at hotels separate from other SEC OIG Office of Investigations (OI) staff.

Additional allegations investigated by the SEC OIG included: (b) (6), (b) (7)(C) committed a prohibited personnel practice as a result of the relationship by excluding a potentially qualified applicant because she was a friend of (b) (6), (b) (7)(C) wife and (b) (6), (b) (7)(C) did not want someone reporting on his activities to his wife; (b) (6), (b) (7)(C) ridiculed a subordinate's religion and made inappropriate and unsolicited sexually explicit remarks to an OI staff member; (b) (6), (b) (7)(C) created a hostile work environment by instructing individuals not to provide information to another (b) (6), (b) (7)(C); (b) (6), (b) (7)(C) disregarded SEC policies by erroneously approving a travel authorization; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) obstructed justice by concealing records and withholding information from a U.S. Attorney's Office (USAO); (b) (6), (b) (7)(C) transmitted a sexually suggestive email message to a male (b) (6), (b) (7)(C) instructed a subordinate employee to violate the SEC Rules of the Road policy; and (b) (6), (b) (7)(C) wasted federal procurement funds by refusing to properly construct an interview room.

The SEC OIG's investigation developed additional allegations including: more conduct related to the appearance of an inappropriate sexual relationship between (b) (6), (b) (7)(C) (the two were found together in the evidence room); (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) a gift potentially violating the ethics regulations regarding gifts between a supervisor and a subordinate employee; (b) (6), (b) (7)(C) made inappropriate comments about a co-worker's religion and (b) (6), (b) (7)(C) made inappropriate sexual comments; and in November 2017, OI staff members had observed (b) (6), (b) (7)(C) entering and leaving the SEC's Division of Enforcement testimony rooms together, indicating the possibility of an ongoing sexual relationship occurring in the workplace on official government time.

The ROI concluded there was no direct evidence to support a conclusion (b) (6), (b) (7)(C) had a sexual relationship. However, the evidence did support a finding that (b) (6), (b) (7)(C) created the appearance he had an inappropriate relationship with (b) (6), (b) (7)(C) As a result of that appearance, employees in OI believed (b) (6), (b) (7)(C) received preferential treatment. The evidence did not show (b) (6), (b) (7)(C) actually received preferential treatment.

The ROI concluded evidence supported (b) (6), (b) (7)(C) were absent from the office together around lunch time for extended periods, but did not support a finding this was improper. (b) (6), (b) (7)(C) were out of the office but could have been conducting official business. However, the evidence did suggest (b) (6), (b) (7)(C) occasionally exceeded the time permitted by policy for physical fitness.

The ROI further concluded evidence did not exist to support (b) (6), (b) (7)(C) increased travel costs to the government and wasted government funds by staying at hotels separate from other OI staff. Similarly, evidence did not support (b) (6), (b) (7)(C) committed a prohibited personnel practice as a result of the inappropriate relationship.

Additionally, the ROI concluded evidence did support (b) (6), (b) (7)(C) made inappropriate sexual comments to and about subordinate employees and that (b) (6), (b) (7)(C) made remarks that were not appropriate in a professional environment.

(b) (6), (b) (7)(C), (b) (5)

OIG Professional Standards

Quality Standards for Federal Offices of Inspector General (Silver Book)

The Quality Standards for Federal Offices of Inspector General (Silver Book) sets forth the overall quality framework for managing, operating, and conducting the work of Offices of Inspector General (Exhibit 42, p. Foreword).

Quality Standards for Investigations

According to the QSI, "Recognizing that members of the OIG community are widely diverse in their missions, authorities, staffing levels, funding, and day-to-day operations, certain foundational standards apply to any investigative organization. As such, the standards outlined here are comprehensive, relevant, and sufficiently broad to accommodate a full range of OIG criminal, civil, and administrative investigations across the CIGIE membership" (Exhibit 41, p. Preface).

At the time of this investigation, Hoecker served as the Chair of CIGIE's Investigations Committee responsible for advising the IG community on issues involving criminal investigations and criminal investigative personnel, and on establishing criminal investigative guidelines. As the chair, Hoecker's message included in the updated QSI in 2011, emphasized the QSI will continue to guide the community in high-quality investigative work, and that members of CIGIE shall adhere to professional standards developed by the CIGIE as stated in the IG Reform Act of 2008 (Exhibit 41).

SEC OIG Policy

(b) (6), (b) (7)(C), (b) (5), (b) (2)

Expanded Scope of the IC Investigation

On October 12, 2018, CIGIE IC received an email, "Referral of Complaint," from [redacted] with an attached copy of an email dated October 11, 2018, with subject, "Memo for the Record – October 10, 2018, Phone Call from IG," from [redacted] to herself. The email detailed an October 10, 2018, telephone discussion [redacted] had with Hoecker (Exhibit 68 - "Memo"). According to the memo, Hoecker initiated the call to her. In substance, the memo detailed [redacted] recollection of the 11 minute telephone call in which Hoecker questioned [redacted] about the basis for certain statements attributed to her in ED OIG's draft ROI, "Additional Allegations of

[2] Harrell retired in March 2017.

Misconduct Related to Allegation 1, not Addressed by SEC OIG"). Specifically, [redacted] wrote that the IG asked her about statements attributed to her in the draft ROI regarding her reporting to the IG unwelcomed attention and comments from [redacted] and how the IG handled the situation with [redacted] Hoecker questioned whether [redacted] told the ED OIG investigators that the events occurred on the same day (July 1, 2016), as that was not his recollection.[3] [redacted] stated that Hoecker also questioned whether she was making a formal complaint against [redacted] when she reported [redacted] behavior to [redacted] The following day, October 11, 2018, [redacted] described the telephone call to [redacted] who told [redacted] she should document the conversation she had with Hoecker. [redacted] documented the discussion in an email memorandum to herself and forwarded the email to [redacted] who then forwarded it to the IC.

METHODOLOGY

ED OIG requested and SEC OIG provided the following data (Exhibits 7-9):

- the complete and un-redacted official case file for the subject investigation (electronic and hardcopy);
- SEC OIG policies and procedures/standard operating guidelines;
- SEC OIG personnel and contact information;
- records supporting the qualifications, training, or experience of [redacted] to conduct internal employee investigations;
- final ROI and any supporting documentation on the external Quality Assurance Review (Peer Review) of the SEC OIG's investigative function conducted by NSF OIG in 2017.
- digital forensic images of calendars, contacts, and emails for any and all email addresses assigned to Hoecker, [redacted], from April 1, 2016, to June 30, 2017, and [redacted] from April 1, 2016, to April 30, 2017.

ED OIG processed over 2.25 terabytes of data, including digital documents and emails from SEC OIG and conducted an in-depth review of the information received. ED OIG's Technology Crimes Division also conducted an internet profile of relevant SEC OIG employees to determine the existence, or a lack thereof, of any online evidence of relationships or friendships (Exhibit 10).

ED OIG conducted 26 witness interviews (Exhibits 11-35 and 69). ED OIG made numerous attempts to contact [redacted] for an interview, to include; email, telephone calls (including voicemail), and an in-person visit to his [redacted] residence (a business card was left with [redacted] at his residence). [redacted] did not acknowledge or respond to ED OIG's requests for contact.

[3] The draft ROI did not, nor does the final ROI, indicate the events in question took place on the same day.

ED OIG interviewed [redacted] on June 8, 2018 (Exhibit 36), [redacted] on June 12, 2018 (Exhibit 37), and Hoecker on June 13, 2018 (Exhibit 38) and December 6, 2018 (Exhibit 70).

INVESTIGATIVE FINDINGS

Allegation 1

The investigation was a whitewash: Hoecker caused and [redacted] conducted an irregular substandard investigation of allegations of sexual misconduct between [redacted] that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and [redacted] was about to retire, Hoecker assigned this investigation to [redacted], tasking [redacted] to complete it after the retirement of [redacted] in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to [redacted] and to OIG Counsel, although [redacted] and SEC OIG were not free in appearance from impairments to independence. We did not find that [redacted] had impairments in fact or appearance.

The Silver Book states the IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence (Exhibit 42, p. 10). The QSI further states that investigative work and investigative organizations must follow the same standard (Exhibit 41, p. 6).

Hoecker assigned the investigation to [redacted] and OIG Counsel

According to SEC OIG policy, Chapter 1: [redacted][4] [redacted] (Exhibit 39, p.2).

According to his response letter to the IC on June 29, 2017, Hoecker initially assigned [redacted] to conduct the investigation jointly with [redacted] and SEC OIG's Office of Counsel ([redacted]) assumed sole responsibility for the investigation once [redacted]

[4] The 2013 version of this policy, quoted here, was applicable to the time period of the SEC OIG investigation and the decision not to assign the investigation to an outside agency.

retired. Hoecker stated, "As the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement, I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation" (Exhibit 40).

SEC OIG policy, Chapter 1, continues, (b) (6), (b) (7)(C), (b) (5), (b) (2) (Exhibit 39, p.2). According to Hoecker, (b) (6), (b) (7)(C) had no such conflicts. In his June 29, 2017, letter to the IC, Hoecker stated, "(b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) was not close and personal and it was determined that it did not present a conflict" (Exhibit 40).

As outlined below, there is evidence (b) (6), (b) (7)(C) longstanding relationship with the subjects of the SEC OIG investigation, and with (b) (6), (b) (7)(C) in particular, created the appearance that he had impairments to his independence, which may have limited the extent of the investigation. Some SEC OIG staff perceived that impairments, such as the relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) could limit the extent of the investigation.

We referred to CIGIE's Silver Book (Exhibit 42), CIGIE's QSI (Exhibit 41), and SEC OIG policy to review the standards applicable to OIGs and OIG staff "to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 42, p. 10).

There was an appearance that impairments to independence existed

Quality Standards for Federal Offices of Inspector General (Silver Book)

The Silver Book states that, "[t]he IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The IG and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work" (Exhibit 42, p.10).

Quality Standards for Investigations

The QSI state that, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude." According to the QSI, "[t]his standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 41, p. 6-7).

Personal impairments are circumstances that may occur in which an investigator may experience difficulty in achieving impartiality because of their views and/or personal situations and relationships. This includes, "[o]fficial, professional, personal, or financial relationships that might affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way" (Exhibit 41, p. 7).

SEC OIG Policy

(b) (6), (b) (7)(C), (b) (5), (b) (2) (Exhibit 39, p. 3-4).

Professional History

Hoecker, (b) (6), (b) (7)(C) had previously worked together at the U.S. Department of Treasury (Treasury) OIG. Without being interviewed, (b) (6), (b) (7)(C) were hired by Hoecker in 2013 to rebuild SEC OIG. (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) direct supervisor at SEC OIG from 2013 until (b) (6), (b) (7)(C) retirement in 2016. (b) (6), (b) (7)(C) was also (b) (6), (b) (7)(C) direct supervisor at SEC OIG from 2013 until (b) (6), (b) (7)(C) promotion (b) (6), (b) (7)(C) in March 2014, then making (b) (6), (b) (7)(C) second line supervisor.

The following table provides a timeline of the employment and supervisory roles for Hoecker, (b) (6), (b) (7)(C), at Treasury OIG and SEC OIG, from 2003 through 2013:

Table 1: Employment and supervisory roles for Hoecker, (b) (6), (b) (7)(C) 2003-2013[5]

Year	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	TREASURY OIG										SEC OIG			
Hoecker	DAIGI	DAIGI	DAIGI	DAIGI							IG	IG	IG	IG
[redacted]			(b) (6), (b) (7)(C)		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	(b) (6), (b) (7)(C)			
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]			[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Hoecker 1st line supervisor to [redacted]
[redacted] 1st line supervisor to (b) (6), (b) (7)(C)
[redacted] 2nd line supervisor to (b) (6), (b) (7)(C)

[5] Positions with other agencies excluded.

Professional Relationships

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

According to (b) (6), (b) (7)(C) she maintained a supervisor, subordinate relationship with (b) (6), (b) (7)(C) while at Treasury OIG and SEC OIG. She described the relationship as friendly but strictly professional. When (b) (6), (b) (7)(C) left Treasury OIG, she and (b) (6), (b) (7)(C) kept in touch via telephone and have continued to stay in touch through his retirement (Exhibit 25, p. 1). According to (b) (6), (b) (7)(C) SEC OIG, she and (b) (6), (b) (7)(C) visited (b) (6), (b) (7)(C) at his home when he was placed on administrative leave at Treasury OIG. The reason for the visit was because (b) (6), (b) (7)(C) wife just gave birth and they were bringing gifts to celebrate. (b) (6), (b) (7)(C) described the gift giving and visit as a personal gesture out of friendship (Exhibit 21, p. 3).

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) at Treasury OIG From 2003 to 2007. From 2007 to 2010, he was a (b) (6), (b) (7)(C) at U.S. Department of Transportation OIG. (b) (6), (b) (7)(C) returned to Treasury OIG in 2010 (b) (6), (b) (7)(C) (Exhibit 27). From 2010 to 2013, (b) (6), (b) (7)(C) served (b) (6), (b) (7)(C) at Treasury OIG. According to (b) (6), (b) (7)(C) at Treasury OIG, (b) (6), (b) (7)(C) was known as (b) (6), (b) (7)(C) "right hand" (Exhibit 25, p. 1). According to (b) (6), (b) (7)(C) he was characterized as (b) (6), (b) (7)(C) right hand because of their long working relationship. He was trusted, needed little supervision and was known to get the job done, when others could not (Exhibit 27, p. 2).

In a 2015 email, (b) (6), (b) (7)(C) wished (b) (6), (b) (7)(C) a happy birthday and stated, "It has been nine years now and we have come a long way…I am appreciative to call you my boss, mentor, and more importantly my good friend. You have played a major part in my professional and personal growth as a man." (b) (6), (b) (7)(C) replied, "I am fortunate to have crossed paths with you and often rejoice in the success of your career achievements. You are a fine man with a bright future that will certainly exceed my ceiling. Thanks again for all that you do for me and the OIG" (Exhibit 43).

Subject of the investigation, (b) (6), (b) (7)(C) perceived (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) as close

When she was interviewed on June 21, 2016, as part of the SEC OIG investigation, (b) (6), (b) (7)(C) stated to (b) (6), (b) (7)(C) "[Because] everybody knows I'm (b) (6), (b) (7)(C) girl, just like everybody knows (b) (6), (b) (7)(C) your boy. I mean, it is what it is" (Exhibit 49, p. 49).

(b) (6), (b) (7)(C) as investigator and witness in SEC OIG investigation

Despite his role conducting the material interviews, including the subject interviews, and major document reviews until his departure, (b) (6), (b) (7)(C) also provided factual information to the investigation, which made him a witness.

As (b) (6), (b) (7)(C) direct supervisor and (b) (6), (b) (7)(C) second line supervisor (and previous direct supervisor), (b) (6), (b) (7)(C) was involved in decision-making that was considered during the investigation and in subsequent decisions regarding the appropriate discipline to impose on (b) (6), (b) (7)(C). On June 15, 2016, while still conducting the investigation, (b) (6), (b) (7)(C) provided

a memo to [redacted] titled, "Supervisory Clarification of Issues Related to the Performance of [redacted] and [redacted]." He provided an evaluation of [redacted] work performance and interpreted SEC OIG's policy on physical fitness to provide an additional 40 minutes of "reasonable" time (in excess of actual fitness time) to commute from the front of Station Place 1 (SEC OIG office) to the end of Station Place 3[6] (where the gym is located) coupled with changing into PT gear, showering, and returning to proper work attire (Exhibit 44).

The performance evaluation that [redacted] provided was not only considered during the discipline process for [redacted], but also was provided as information to the USAO during the presentation of the case for criminal prosecution consideration on June 15, 2016 (Exhibit 45). [redacted] interpretation of the SEC OIG's physical fitness policy had a direct effect on the investigation since one of the supported findings in SEC OIG's report of investigation was that [redacted] exceeded the allowable physical fitness time. The calculations of the amount of time exceeded was offset by the 40 minutes which [redacted] interpreted to be a "reasonable time" [redacted] to and from the fitness location and to change clothes (Exhibit 4, p. 25).

After his retirement, on November 2, 2016, [redacted] was interviewed by [redacted] as a witness, regarding allegations of [redacted] cancelling training to travel with [redacted] the withholding of information from an Assistant U.S. Attorney; and the existence of bias during the SEC OIG hiring process (Exhibit 46).

[redacted] expressed to [redacted] his concerns about impairments

On May 16, 2016, [redacted] SEC OIG, brought the initial complaint to Hoecker and stated in the complaint that he feared retribution and reprisal in bringing the complaint forward (Exhibit 47, p. 5). During his interview on May 18, 2016, conducted by [redacted] and [redacted] expressed [redacted] were concerned about reprisal for bringing information forward about an alleged inappropriate relationship between [redacted] and [redacted] because of [redacted] perceived relationships with [redacted] and Hoecker. Memorandum of Activity (MOA) for interviews of OI staff that were used as exhibits in SEC OIG's ROI did not indicate the OI staff were questioned about reprisal concerns. [redacted] made the following statements during his interview to [redacted] that should have alerted [redacted] and [redacted] to [redacted] perception of impairments within SEC OIG (Exhibit 48):

1. "And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] over." [redacted] acknowledged the statement, saying "Right" (p. 29).

2. "And there's a feeling that, you know, [redacted] your guy" (p. 30).

[6] Identified as suites occupied by SEC OIG in Washington, DC.

3. "You said something there that, I think, made people concerned…you said something like you owe the world to [redacted]." [redacted] clarified his statement then, stating "we wouldn't be here today without [redacted]" (p. 33).

4. "I believe only a fair and objective investigation could provide you evidence to make that determination" (p. 43).

5. "They're afraid of [redacted] But they feel that [redacted] is protected by you and Carl (Hoecker)" (p. 70).

6. "Someone told me, and I don't know if this is accurate, that Carl was like literally his ([redacted]) godfather, or if that means godfather in that like I've got people that I'm the godfather of their, you know, their federal career. I brought them in, I've mentored them, I've taken care of them, you know, helped develop people. So, I don't know if that was an allegation or if that just means, you know, Carl supporting [redacted] professional development, because that can be okay totally. But I think to the extent that that information may be out there, people are concerned, well, he is protected which is why he's behaving in this way, and if I report it, it's not going to go so well for me" (p. 70-71).

7. "I think you're very perceptive…How could you not have a sense something was going on?" (p. 71).

8. "That's what [sic] people are concerned, that either [redacted] doesn't see it, so are they hiding it from you, or has it gone on…how is it possible that you don't see it…" (p. 72).

9. "I think people have a sense that he ([redacted]) operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and [redacted] hugging it out in the locker room or something… But I think people are looking to see how you're going to resolve this" (p. 110).

10. Regarding one on one interviews of OI staff by [redacted] [redacted] stated "I think that no one wants to challenge what you've built here…I think everyone wants to just come in and say everything is okay from the one-on-ones and move on" (p. 109).

When presented with the above remarks made by [redacted] Hoecker stated it was the first time he heard of such remarks (Exhibit 38, Tr. 39)[7]. When asked if hearing those remarks would have made him concerned about whether or not an objective investigation could have been conducted within SEC OIG, Hoecker stated, "No. Witnesses say a lot of things, as you know, some of them self-serving, for other reasons. Some of them not. I know [redacted], and I know

[7] Tr. – Page of the transcript attachment in the exhibit.

what he stands for. I know what I stand for. And, you know, people may say this, but it's, it wouldn't affect the investigation" (Exhibit 38, Tr. 39-40).

Some SEC OIG staff ED OIG interviewed did not believe the investigation was impartial or that it should have been conducted within SEC OIG

In his interview, Hoecker asserted that there was not an appearance of impairments because, "the appearance is for knowledgeable third parties" (Exhibit 38, Tr. 203).

However, interviews with SEC OIG OI staff regarding the investigation substantiated that the appearance of impairments to independence on the part of [redacted] and SEC OIG as an organization, did exist. The SEC OIG OI staff had a general knowledge of the past and current professional relationships between Hoecker, [redacted], as well as a general knowledge of conducting internal investigations and what impairments to independence were.

1. According to [redacted], [redacted] could not have conducted a fair and objective investigation because of his long work history with [redacted]. In addition, [redacted] was [redacted] immediate supervisor who had hired him to work at the SEC OIG. She did not know how [redacted] could have separated any personal bias. She advised if it was her decision, she would have gone outside the agency (Exhibit 15).

2. According to [redacted], [redacted] was the "heir apparent" to [redacted] citing [redacted] expected retirement. [redacted] had an established relationship at Treasury OIG and [redacted] was [redacted] "go-to" person. Regarding the friendship between Hoecker, [redacted] SEC OIG, [redacted] explained the perception among [redacted] was that "these were the people we trusted from the past," [redacted]. [redacted] stated that management activities at SEC OIG were unethical, immoral, and borderline criminal. When asked what she meant by "criminal" [redacted] explained that the investigation into [redacted] was a cover-up (Exhibit 19).

3. According to [redacted] he did not believe SEC OIG could have conducted the investigation objectively because [redacted] had known the subjects ([redacted]) for years. It would be difficult to overcome the perception the investigation lacked objectivity. In addition, [redacted] was [redacted] direct supervisor and [redacted] second line supervisor. As such, [redacted] would not have been able to conduct an objective investigation and if necessary implement disciplinary actions. [redacted] advised, the reason SEC OIG employees may not have come forward was because the perception was that [redacted] was hand-selected by [redacted] and Hoecker to work at SEC OIG and coming forward would result in professional harm (Exhibit 20).

4. According to [redacted], [redacted] conducting the investigation of a subordinate and someone with whom he had a long work history raised the

question of impartiality and created the appearance of a lack of objectivity (Exhibit 28).

5. According to (b) (6), (b) (7)(C), he did not believe a fair and objective investigation could have been conducted. He believed no one within SEC OIG would have been able to conduct a fair and objective investigation due to the small size of SEC OIG, the work history of SEC OIG management and the subjects of the investigation and the perception of loyalty (Exhibit 29).

6. According to (b) (6), (b) (7)(C) had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist. He stated he believed the investigation was conducted above board (Exhibit 35).

7. According to (b) (6), (b) (7)(C) he was not concerned about the appearance of objectivity affected by (b) (6), (b) (7)(C) relationships with (b) (6), (b) (7)(C) due to (b) (6), (b) (7)(C) integrity. However, when asked about perceived impairments (b) (6), (b) (7)(C) stated that he once recused himself from an investigation of an OIG auditor that he used to supervise and socialize with (Exhibit 16).

8. According to (b) (6), (b) (7)(C) she thought that it was good that (b) (6), (b) (7)(C) was asked to conduct the investigation with (b) (6), (b) (7)(C) for objectivity purposes. (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) should have been raised or disclosed. Although, (b) (6), (b) (7)(C) could have disclosed the relationship and received direction to proceed from Hoecker. (b) (6), (b) (7)(C) added that it was hard to miss the relationships between (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) because everyone was co-located in the office (Exhibit 21).

9. (b) (6), (b) (7)(C) stated in his interview, "I believe that in hindsight with everything I know now, I believe this should have been handled differently from day one. And that perhaps an outside investigative agency should have been brought in, and none of these issues would be here as we're sitting here today" (Exhibit 36, Tr. 80).

(b) (6), (b) (7)(C) *expressed concerns about the investigation being conducted internally*

According to (b) (6), (b) (7)(C) he recalled an initial discussion with Hoecker about whether the matter should be handled internally or referred out. At that time, factors regarding impairments to independence, including (b) (6), (b) (7)(C) previous work history with (b) (6), (b) (7)(C) and his direct supervision of (b) (6), (b) (7)(C) at SEC OIG were discussed. (b) (6), (b) (7)(C) remembered (b) (6), (b) (7)(C) concerns as factors discussed in the initial meeting with Hoecker about the complaint.[8] However, (b) (6), (b) (7)(C)

[8] During his interview, Hoecker clarified that the initial meeting regarding the complaint was between him, (b) (6), (b) (7)(C) and probably (b) (6), (b) (7)((exhibit 38, Tr.111).

stated that he did not remember discussing those concerns again with Hoecker. (b) (6), (b) (7)(C) added, "So if I've advised a client, look, I think, you know, one course of action is better than another, but they've decided on the other course of action, at some point I become insubordinate if I keep going back to my supervisor arguing the point" (Exhibit 37, Tr. 34).

(b) (6), (b) (7)(C) stated that he expressed to Hoecker concerns about appearance issues regarding the investigation. He stated that, "I was concerned about resources and I was concerned about appearances" (Exhibit 37, Tr. 35). When asked if he made the recommendation to Hoecker to have an outside agency conduct the investigation, (b) (6), (b) (7)(C) stated, "I believe so. Did I use the word, well Carl, my recommendation is? I don't remember. Did I say, you know, I think this would be better if we let somebody outside handle it? Yeah, I expressed concerns along those lines" (Exhibit 37, Tr. 36-37).

Regarding the decision to have (b) (6), (b) (7)(C) conduct the investigation, (b) (6), (b) (7)(C) said that he thought SEC OIG's experience with outside investigators reviewing matters, particularly after the investigation into SEC OIG under former IG David Kotz by the U.S. Postal Service OIG, which was reported in Rolling Stone (Exhibit 50), caused Hoecker to be reluctant to request another outside investigation (Exhibit 37, Tr. 31).

Additionally, (b) (6), (b) (7)(C) was concerned that he and (b) (6), (b) (7)(C) were conducting the investigation and would also be responsible for advising the proposing and deciding officials during the disciplinary process. When asked if it was standard practice to have both roles, (b) (6), (b) (7)(C) stated "absolutely not," and "it was an uncomfortable position to be in. It is one I would have preferred not to have been in" (Exhibit 37, Tr. 68).

Hoecker said no concerns about impairments regarding the investigation were brought to his attention

During his interview on June 13, 2018, Hoecker stated he could not recall if concerns of impairments were brought to his attention (Exhibit 38, Tr.16). Hoecker stated concerns regarding OIG Counsel conducting the investigation and also advising the proposing and deciding officials were not brought to his attention (Exhibit 38, Tr. 96). Additionally, according to Hoecker, nobody offered to recuse themselves from the investigation (Exhibit 38, Tr. 16). Our investigation confirmed that no one recused themselves from the SEC OIG investigation.

SEC OIG's efforts to address independence and objectivity

Assignment of the OIG Office of Counsel

Hoecker assigned the OIG Office of Counsel to work alongside (b) (6), (b) (7)(C) in conducting the investigation and when (b) (6), (b) (7)(C) retired, he assigned sole responsibility to the Office of Counsel. According to his letter to the IC on June 29, 2017, Hoecker stated that, "[a]s the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement, I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation. (b) (6), (b) (7)(C) had prior experience conducting and overseeing highly

sensitive internal investigations and the assigned staff attorney was relatively new to the OIG and therefore presented limited, if any, independence and objectivity concerns" (Exhibit 40, p. 2).

While we did not find evidence that (b) (6), (b) (7)(C) had personal impairments, OIG Counsel were not trained to conduct, or experienced in conducting, OIG investigations. In their interviews, neither (b) (6), (b) (7)(C) reported any training in conducting criminal or administrative investigations. During his interview, (b) (6), (b) (7)(C) stated, "I haven't conducted internal affairs investigations. I've done, throughout my career, internal management inquiries" (Exhibit 37, Tr. 10). According to (b) (6), (b) (7)(C) prior to the investigation into (b) (6), (b) (7)(C), she did not (b) (6), (b) (7)(C) nor did she (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) provided (b) (6), (b) (7)(C) (Exhibit 34).

Although OIG Counsel was involved in the investigation, Hoecker and (b) (6), (b) (7)(C) acknowledged that (b) (6), (b) (7)(C) conducted the bulk of the interviews and gathered evidence and information for the investigation. In an email dated June 28, 2016, Hoecker sought to recognize (b) (6), (b) (7)(C) for his work and stated that (b) (6), (b) (7)(C) "conducted all material interviews and major document reviews" in regards to the internal investigation (Exhibit 37, attachment 3).

Review of the draft ROI by an outside party

In his response to the IC on June 29, 2017, Hoecker stated that, "as an added step to help ensure thoroughness and impartiality, an outside party, an Acting Inspector General (Acting IG) of another agency was asked by (b) (6), (b) (7)(C) to review a draft of the investigatory report and provide input into the thoroughness and impartiality of the report" (Exhibit 40, p. 2).

ED OIG identified (b) (6), (b) (7)(C) (former Acting IG for the OIG (b) (6), (b) (7)(C)) as the outside party asked to review SEC OIG's ROI. (b) (6), (b) (7)(C) stated he was provided the SEC OIG's ROI without the exhibits. His understanding was the request to review the ROI was not a formal request and was not considered to be for quality control. He stated he was providing informal advice. He reiterated that his role was informal and to ensure the SEC OIG was not, "missing the boat on matters that would come back through a Merit System Protection Board." (b) (6), (b) (7)(C) provided his opinion that the ROI appeared to be fairly balanced, and did not show favoritism or rely on subjective fact (Exhibit 24).

When asked about the purpose of (b) (6), (b) (7)(C) review, (b) (6), (b) (7)(C) stated that it was for, "more logic, flow, you know, when you read it, does it make sense? Are there, are there gaps where things are unaddressed? Did we cover all the allegations?" (Exhibit 37, Tr. 65).

Hoecker requested DOJ OIG conduct the investigation

During his interview on June 13, 2018, Hoecker confirmed that he made a request to DOJ OIG to take over the internal investigation. According to Hoecker, the reason he requested DOJ OIG

conduct the investigation was because he was not satisfied with the progress of the investigation. More specifically, Hoecker stated "I was unhappy with the progress of the investigation. In other words, it wasn't happening fast enough for me," (Exhibit 38, Tr. 84) and that he was "impatient" (Exhibit 38, Tr. 138).

However, earlier in the interview, when Hoecker discussed the option of asking another OIG to conduct the investigation, he stated, "I feel that we ended up in a place where we should have…in a shorter time period than we normally would have taken… It would have taken me thirty days at least to get some outside entity in. These internals you, you have to get on them and get through them so that people can get back to normal life" (Exhibit 38, Tr. 56-57).

During his interview, (b) (6), (b) (7)(C) indicated that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally. (b) (6), (b) (7)(C) stated, "I raised concerns. I remember there was a discussion about who could do it. And I do remember, I don't know that it was specifically because of these statements of (b) (6), (b) (7)(C), but at one point, we talked to Department of Justice OIG about whether or not they could pick it up and take it on" (Exhibit 37, Tr. 36).

During his interview on June 22, 2018, (b) (6), (b) (7)(C) DOJ OIG, stated that on October 24, 2016, Hoecker contacted IG Michael Horowitz (Horowitz), DOJ OIG, to discuss whether DOJ OIG could take over the SEC OIG's investigation. Horowitz asked (b) (6), (b) (7) and (b) (6), (b) (7)(C), DOJ OIG, to speak with (b) (6), (b) (7)(C) regarding the request. In contrast to Hoecker's statements provided during his interview, (b) (6), (b) (7) stated that Horowitz was advised by Hoecker that SEC OIG had allegations of improper relationships and a variety of collateral allegations, including allegations against Hoecker that were referred to CIGIE. (b) (6), (b) (7) did not recall (b) (6), (b) (7)(C) telling him a specific reason for SEC OIG's request to DOJ OIG, but based on the information provided to him, (b) (6), (b) (7) inferred that there were issues related to objectivity and impairments in SEC OIG's investigation. (b) (6), (b) (7) reasoned that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments. DOJ OIG declined to take over the investigation over concerns that there would be impairments to independence because former DOJ OIG employees were working for SEC OIG and were potential witnesses or subjects of the investigation (Exhibit 14).

Around the same time SEC OIG contacted DOJ OIG (October 21, 2016 to October 24, 2016), the IC received additional allegations against Hoecker (b) (6), (b) (7)(C) .

Furthermore, in his response to the IC on June 29, 2017, Hoecker stated that he believed that the investigation was both timely and thorough, which conflicts with his stated reason for requesting DOJ OIG's assistance (Exhibit 40, p. 2).

Finding 1.1.b

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's QSI or the SEC OIG Investigative Policy.

Hoecker said it was an investigation but QSI did not apply because the investigation was conducted under the supervision of counsel

Hoecker stated that the examination of the allegations involving (b) (6), (b) (7)(C) was an investigation, but that the QSI did not apply to it because the investigation was conducted under the supervision of the OIG Office of Counsel. Hoecker stated he did not require or expect the internal investigation to follow QSI or SEC OIG investigative policy. Hoecker advised that although (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) and a criminal investigator, he was not required to conduct his investigation within the QSI because it was conducted under the supervision of SEC OIG's Office of Counsel (Exhibit 38, Tr. 186).

Under the same premise, SEC OIG's Office of Counsel was not expected to adhere to QSI when conducting the investigation (Exhibit 38, Tr. 34). He stated that, "This was not an investigative operation. You know, investigations can be done outside of investigative operations. And, you know, between seventy-three IGs, you know, maybe somebody does it this way. Maybe somebody does it that way. It's, it's the IG's, that's the independent, professional judgment that we exercise" (Exhibit 38, Tr. 59).

Hoecker was asked whether standards that were put in place by CIGIE to ensure that the OIGs conduct criminal investigations within a certain framework should be followed in criminal investigations conducted by the OIG. Hoecker answered, "No. Anybody could do the investigation. You can have an 1810 (non-criminal investigator job series) do an investigation. And when it comes to making an arrest or serving federal paper, then you get your 1811s. So, so you can assign it outside of Investigations if you want" (Exhibit 38, Tr. 66). Hoecker acknowledged that he had 1810 investigators at SEC OIG who conduct investigations under the QSI framework, because they are under the investigations operation (Exhibit 38, Tr. 67).

Hoecker also explained that the investigation "wasn't necessarily criminal," despite being presented to the USAO for criminal prosecution consideration. Hoecker stated, "that constitutes an abundance of caution. Like the IG Act says if we have something that's technically a violation, then we run it by the DOJ. And I'm not sure if they did that before or after they interviewed (b) (6), (b) (7)(C)" (Exhibit 38, Tr. 63).

When discussing the changes to CIGIE's investigations peer review standards in July 2018, which included creating a mechanism for a peer review team to review investigations that may not fall under the OIG's primary investigations office, such as internal affairs investigations, Hoecker stated that, "if you have an internal affairs function and you don't think it should be peer reviewed, well, you don't have the assurance, and if one of our stakeholders asks some questions, then that IG has to answer the question" (Exhibit 38, Tr. 195).

When asked if he chose not to have the assurance by following the QSI, Hoecker stated, “No. This is, I look at this investigation that you referenced that (b) (6), (b) (7)(C) did as a “one-off” for me… It's a “one-off.” It means that it's, it's probably not going to happen again” (Exhibit 38, Tr. 198).

Hoecker further explained, “But at the same time, I think down the road if we do internals, we, we have made decisions to go outside. We had NASA do an investigation, I'm sure they've talked to you, instead of doing it inside or having counsel do it. So, when I say “one-off,” I think that this is probably, I needed to get it done. I needed to get across the goal line. I needed to be, be thorough, fair, objective, and I need some action taken. And I think that's what I got” (Exhibit 38, Tr. 199).

Counsel believed that they were conducting a management inquiry and the QSI did not apply

The OIG Office of the Counsel believed the examination of the allegations involving (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) was a “management inquiry.” (b) (6), (b) (7)(C) reported during his interview that he did not have great clarity in what was expected of them ((b) (6), (b) (7)(C)) regarding the investigation (Exhibit 37, Tr. 27). (b) (6), (b) (7)(C) thought she was conducting a management inquiry. She described a management inquiry as something management asks her to look into. She did not see a distinction between a management inquiry and an investigation. Asked whether the Office of the Counsel typically investigated criminal allegations, (b) (6), (b) (7)(C) stated she assumed that a criminal allegation would not come to counsel for inquiry. She did not believe that would be a standard practice (Exhibit 34).

In their interviews, (b) (6), (b) (7)(C) both stated that the investigation was not conducted according to the QSI. (b) (6), (b) (7)(C) stated, “I'm not an 1811 (criminal investigator job series). I'm not going to do an investigation pursuant to QSI standards” (Exhibit 37, Tr. 20). When asked if SEC OIG would have been required to collect evidence and perform investigative steps within the QSI prior to presenting it to the USAO, (b) (6), (b) (7)(C) stated, “I believe so. With respect to what (b) (6), (b) (7) was doing as an 1811” (Exhibit 37, Tr. 44).

(b) (6), (b) (7)(C) previously referred to the matter as an investigation in his email to the USAO regarding its June 15, 2016, declination of the investigation. (b) (6), (b) (7)(C) stated, “[t]his email will serve to confirm the overview of the factual evidence developed in an [sic] preliminary investigation of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) of the SEC OIG” (Exhibit 45).

There was no SEC OIG policy on management inquiries or on Counsel conducting investigations

Based on SEC OIG employee and subject interviews, along with a review of SEC OIG policy, ED OIG did not find any SEC OIG policy on management inquiries. When asked what standards OIG Counsel would use in order to conduct high-quality investigations, Hoecker responded, “Well, they're lawyers, so they would use the law. They would, they would use rule, regulation, and everything that lawyers do” (Exhibit 38, Tr. 61). When asked how many other criminal investigations he assigned to OIG Counsel, Hoecker stated, “I don't think I've assigned any criminal investigations to counsel” (Exhibit 38, Tr. 62). When asked if there was any policy used

as a guideline for [redacted] to conduct the investigation, Hoecker stated, "there is no policy for doing an investigation in my shop as counsel" (Exhibit 38, Tr. 129).

Absent another standard governing the investigation, ED OIG used the QSI to determine whether the investigation was substandard, as alleged

ED OIG concluded that reviewing the investigation against the QSI would enable us to determine whether the investigation was substandard, as alleged. We believe this method was appropriate because (1) the QSI are designed to accommodate a variety of types of investigations (2) the investigation the SEC OIG conducted involved potential criminal conduct (time and attendance fraud) until it was declined on June 15, 2016, by the USAO, and such allegations generally are investigated in accordance with the QSI; (3) a criminal investigator trained to conduct investigations according to the QSI conducted the majority of the investigation.

ED OIG found the following areas of non-compliance with the QSI

Independence

The QSI state, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence…will be impartial and will be viewed as impartial by knowledgeable third parties" (Exhibit 41, p. 6-7).

As previously noted under Finding 1.1.a, [redacted] and SEC OIG were not free in appearance from impairments to independence and the investigation was not viewed as being impartial by some SEC OIG staff.

NSF OIG's peer review also noted [redacted] involvement in the investigation raised concerns about his independence (Exhibit 51).

Due Professional Care

The QSI states that due professional care must be used in conducting investigations and in preparing related reports. This standard requires a constant effort to achieve quality and professional performance (Exhibit 41, p. 8). ED OIG's investigation found the following non-compliance with the due professional care standard.

1. Legal Requirements—Investigations should be initiated, conducted, and reported in accordance with (a) all applicable laws, rules, and regulations; (b) guidelines from the DOJ and other prosecuting authorities; and (c) internal agency policies and procedures... with due respect for the rights and privacy of those involved (Exhibit 41, p.8).

No warnings were given to either subject ([redacted]), which is inconsistent with SEC OIG policy.

Prior to the presentation to the USAO for consideration of criminal prosecution, the subjects should have been advised of their rights using Garrity warnings.

SEC OIG Investigations Policy, Chapter 4 (b) (6), (b) (7)(C), (b) (5), (b) (2)

(Exhibit 52, p. 13).

Following the declination, the subjects could have been given rights advisements using Garrity or Kalkines warnings.

SEC OIG Investigations Policy, Chapter 4, also states, (b) (6), (b) (7)(C), (b) (5), (b) (2)

(Exhibit 52, p. 14).

That subjects were not given proper warnings was a finding on NSF OIG's D1 checklist during its peer review of SEC OIG (Exhibit 51).

(b) (6), (b) (7)(C) *was not advised of her rights*

(b) (6), (b) (7)(C) was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). ED OIG's review of the case file and June 21, 2016, transcript of (b) (6), (b) (7)(C) interview, as well as interviews of (b) (6), (b) (7)(C) , corroborated that (b) (6), (b) (7)(C) was not provided rights advisements for any of her interviews.

As the subject of an investigation, which included criminal allegations of time and attendance fraud, (b) (6), (b) (7)(C) should have been advised of her rights under Garrity. Furthermore, she stated that she felt like she could not leave during the first interview, which raises the question of whether this was a custodial interview. After the declination by the USAO, and before sitting for other interviews with (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) was not advised of her rights under Garrity or Kalkines. During her interview with ED OIG, (b) (6), (b) (7)(C) stated that she had no intention of providing certain corroborating information to SEC OIG investigators unless she was compelled (Exhibit 25, p. 3).

(b) (6), (b) (7)(C) *was not advised of his rights*

During his interview with ED OIG, (b) (6), (b) (7)(C) indicated that he was interviewed by SEC OIG on June 3, 2016, and June 21, 2016 (Exhibit 27). (b) (6), (b) (7)(C) indicated that (b) (6), (b) (7)(C) was also interviewed during the time of the initial May 18 2016, OI staff interviews (Exhibit 37, Tr. 51). ED OIG's review of the case file and the June 3, 2016, and June 21, 2016, transcripts of (b) (6), (b) (7)(C)

interviews, as well as (b) (6), (b) (7)(C) interviews with ED OIG corroborated that (b) (6), (b) (7)(C) was not provided rights advisements at the time of his interviews.

During his June 3, 2016, interview, without any rights advisement (Garrity), (b) (6), (b) (7)(C) admitted to occasions where he may have exceeded physical fitness time and allotted break time (Exhibit 55, starting on p. 25). The failure to provide a Garrity advisement potentially jeopardized the use of (b) (6), (b) (7)(C) admissions had the USAO agreed on June 15, 2016, to prosecute the matter.

According to (b) (6), (b) (7)(C) NSF OIG, when asked during the SEC OIG peer review about the lack of warnings, (b) (6), (b) (7)(C) advised, in essence, that they ((b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)) were not perfect and were not experienced in conducting employee investigation interviews (Exhibit 33).

In his interview, Hoecker stated that he did not know why rights advisements were not given to (b) (6), (b) (7)(C) (Exhibit 38, Tr. 132).

SEC OIG's not providing rights advisements to (b) (6), (b) (7)(C) *was not consistent with similar SEC OIG cases*

ED OIG reviewed 59 investigations of SEC employees (OIG and non-OIG) with similar allegations to the internal investigation.[9] A review of those cases, showed a total of 12 subjects interviewed.[10] Of the 12 subjects interviewed, each was provided a rights advisement and each interview was recorded. An exception was noted that in the first interview of the subject in case # (b) (6), (b) (7)(C), the subject was not provided a rights advisement. That interview was conducted by (b) (6), (b) (7)(C) and noted that the matter was a management inquiry. For the subject's second interview, conducted by SEC OIG special agents, a Garrity warning was provided. For case # (b) (6), (b) (7)(C), for the first interview, the subject was not provided warnings. The subject was advised that the investigation was administrative only. During the subject's second interview, he was provided a Garrity warning based on allegations of an unauthorized disclosure.

2. Accurate and complete documentation – The QSI state that investigative report findings and accomplishments must be supported by adequate documentation and maintained in the case file (Exhibit 41, p.9).

[9] Case numbers: (b) (6), (b) (7)(C)

[10] Case numbers: (b) (6), (b) (7)(C) .

Two of three interviews of [redacted] *were not documented in the ROI*

[redacted] was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). However, only her June 21, 2016, interview was audio recorded and transcribed. [redacted] June 21, 2016, interview is the only interview included as an exhibit to the ROI.

When asked about it during her interview, [redacted] did not know why [redacted] interviews prior to June 21, 2016, were not documented. She did not ask [redacted] why reports of the interviews were not written. [redacted] stated that she only documented [redacted] June 21, 2016, interview in the ROI because it was the only interview she used information from (Exhibit 34).

Two of three interviews of [redacted] *were not documented in the ROI*

According to [redacted] he was interviewed two times, June 3, 2016 (Exhibit 55), and June 21, 2016 (Exhibit 56). However, [redacted] recalled interviewing [redacted] with [redacted] around the time of the May 18, 2016, staff interviews. Only the June 3, 2016, and June 21, 2016, interviews were audio recorded and transcribed. Only the June 3, 2016, interview was included as an exhibit to the ROI.

According to [redacted] the June 21, 2016, interview being excluded from the ROI, was "not intentional" and an "oversight" (Exhibit 37, Tr. 59 and 63). Although [redacted] indicated to ED OIG that [redacted] was interviewed around May 18, 2016, no documentation of the interview was located in SEC OIG's case file.

The following information from the June 21, 2016, interview was not addressed or documented in the ROI (Exhibit 56):

a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20).

b. [redacted] refused to provide information that would corroborate who he was staying at a hotel with during SEC OIG training travel in Charleston, SC (p.20).

c. During his June 3, 2016 interview, [redacted] stated that he did not stay at a hotel in Fredrick, MD after an SEC OIG in-service training on April 28, 2016 (Exhibit 55, p. 10). However, after the interview, on June 6, 2016, he sent an email changing his story. (Exhibit 57) [redacted] discussed this during his June 21, 2016, interview and admitted to staying over at a hotel in Frederick, MD. [redacted] admitted to meeting with [redacted] to eat at a restaurant but was inconsistent on whether [redacted] ever met him at his hotel (Exhibit 56, p.5-13). During her June 21, 2016, interview, [redacted] admitted to meeting [redacted] at his hotel, but could not recall whether she went to his room (Exhibit 49, p. 6-11).

During his interview, Hoecker stated knowledge of inconsistent statements could have been important to proposing officials (Exhibit 38, Tr. 92). He did not recall being notified of the inconsistencies (Exhibit 38, Tr. 95).

3. Planning - According to the QSI, organizational and case-specific priorities must be established and objectives developed to ensure that individual case tasks are performed efficiently and effectively. If the decision is to initiate an investigation, the organization should begin any necessary immediate actions and establish, if appropriate, an investigative plan of action (Exhibit 41, p. 10).

There was no investigative plan

SEC OIG policy, Chapter 2: [redacted] The case file or documents reviewed did not contain an investigative plan. This was also a finding on NSF OIG's D1 peer review checklist (Exhibit 51).

Executing Investigations

The QSI state that investigations must be conducted in a timely, efficient, thorough and objective manner (Exhibit 41, p. 11). ED OIG's investigation found the following non-compliance with executing investigation standards:

1. Conducting Interviews - According to the QSI, appropriate warnings should be provided to those individuals suspected of violating law or regulation. Additionally, all interviews are subject to inclusion in reports and should be properly documented (Exhibit 41, p. 12).

No rights advisements were provided to [redacted]

SEC OIG Investigations Policy, Chapter 4, [redacted]. As previously discussed, no rights advisements were provided to [redacted].

Three subject interviews were not memorialized in accordance with SEC OIG policy

Chapter 4 of SEC OIG policy [redacted] As previously discussed, two interviews for [redacted] were not memorialized by audio recording or MOA and not documented in the ROI.

[11] 6/2014 version is applicable to the timeframe of the investigation.

(b) (6), (b) (7)(C) May 18, 2016, interview was not memorialized or documented in the ROI. (b) (6), (b) (7)(C) June 21, 2016, interview was not documented in the ROI.

Five witness interviews from May 2016 were not memorialized into MOAs until approximately 9 months after the interviews

Based on a review of case documents and Hoecker's response to IC890, witnesses were initially asked to provide written statements of their accounts of the interviews in lieu of the interviewer writing an MOA. On February 27, 2017, after the ROI was initially issued, MOAs of five witnesses[12] were completed by (b) (6), (b) (7)(C) and added as exhibits to the ROI. (b) (6), (b) (7)(C) however, was not present during those interviews and relied on the interviewers' notes to write the MOAs. During his interview on June 12, 2016, (b) (6), (b) (7)(C) stated that the interviews were written up and added to the March 3, 2017, version of the ROI to add exculpatory information (Exhibit 37, Tr. 62). (b) (6), (b) (7)(C) stated that around December 2016 and January 2017, the ROI was "rushed…because Hoecker wanted it done" (Exhibit 37, Tr. 61).

One of the five MOAs from witness interviews from May 2016 did not reflect all relevant information provided by the witness.

According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) relationship was not equitable compared to (b) (6), (b) (7)(C) relationships with other subordinates. (b) (6), (b) (7)(C) explained that (b) (6), (b) (7)(C) had greater access to (b) (6), (b) (7)(C) as a supervisor than (b) (6), (b) (7)(C) other subordinates did. When (b) (6), (b) (7)(C) was asked to review the MOA of her interview on May 19, 2016, she believed that she conveyed the inequity of (b) (6), (b) (7)(C) relationships and support for (b) (6), (b) (7)(C) during that interview, but it was not captured in the MOA (Exhibit 21, p. 3).

Hoecker conducted witness interviews that were not documented

(b) (6), (b) (7)(C) both advised during their interviews that, on May 18, 2016, Hoecker interviewed them separately from their interviews with (b) (6), (b) (7)(C) and OIG Counsel regarding (b) (6), (b) (7)(C) (Exhibit 20 and 35). Hoecker advised in his interview that he did conduct those interviews, stating, "I think it was shortly after we got the complaint, and it was part of a triage that I felt I needed to do to get an assessment of what needed to happen" (Exhibit 38, Tr. 19). These interviews were not documented in the case file or ROI.

2. Conducting Progress Reviews

No supervisory reviews were documented in the case file

Supervisory reviews of case activities should occur periodically to ensure that the case is progressing in an efficient, effective, thorough and objective manner (Exhibit, 41 p.13).

This was also noted in NSF OIG's D1 checklist (Exhibit 51). During his interview, Hoecker stated that (b) (6), (b) (7)(C) was the level of supervision for this investigation (Exhibit 38, Tr. 121). However, no

[12] SEC OIG ROI exhibits (b) (6), (b) (7)(C)

documentation of supervisory reviews by [redacted] were found. Additionally, during his interview, [redacted] stated that he conducted the investigation and noted that Hoecker received "metadata" type status briefings (Exhibit 37, Tr. 46). However, no supervisory reviews were documented by Hoecker either.

Reporting

The QSI state that reports must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely and objective. All reports should accurately, clearly and concisely reflect the relevant results of the investigator's efforts (Exhibit 41, p.13).

The ROI did not include [redacted] June 21, 2016, interview as an exhibit

The June 21, 2016, interview was only one of four interviews in the case file that was recorded and transcribed. However, it was not included as an exhibit to the ROI. When asked who made the decision to leave this information out, [redacted] stated that she did not know and did not remember if it was ever discussed (Exhibit 34, p. 4). [redacted] stated that its exclusion from the ROI was an oversight. [redacted] agreed that the interview was important (Exhibit 37, Tr. 63-64).

Allegation 1.2

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative—circumstantial evidence of a sexual relationship. The report appears to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that [redacted] spend together, exceeding the time that they spend with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which [redacted] were found in the evidence room and the door was blocked, where one witness observed [redacted] zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that [redacted] gave [redacted] an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) ED OIG could not substantiate whether the ROI understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C)

ED OIG found the following:

1. The SEC OIG did not develop information related to the April 2016 meeting between (b) (6), (b) (7)(C) in Frederick, MD and the inconsistent accounts of that meeting.

2. The SEC OIG did not address (b) (6), (b) (7)(C) refusal to corroborate his account regarding a hotel guest in Charleston, SC.

3. The SEC OIG did not corroborate information received about other possible hotel stays by (b) (6), (b) (7)(C) by requesting information, including possible security video recordings, from the hotels. In her June 21, 2016, interview, (b) (6), (b) (7)(C) was questioned about her March 16, 2016, stay at the Marriott Marquis in Washington, DC, upon her return home from a work related trip with (b) (6), (b) (7)(C) to Boston, MA. (b) (6), (b) (7)(C) stated that she did not meet (b) (6), (b) (7)(C) and was supposed to meet her cousin for the stay, but her cousin cancelled via phone or text. (b) (6), (b) (7)(C) was unable to provide her cousin's telephone number to the interviewers at that time (Exhibit 49, Tr. 27-28). After (b) (6), (b) (7)(C) interview, the interviewers never asked for the telephone number to corroborate the planned stay. During her interview with ED OIG, (b) (6), (b) (7)(C) stated that she had no intention of providing that information to SEC OIG investigators since she was not compelled (Exhibit 25, p. 3).

According to (b) (6), (b) (7)(C) she did not know why (b) (6), (b) (7)(C) did not attempt to corroborate information about (b) (6), (b) (7)(C) hotel stays by contacting the hotels. (b) (6), (b) (7)(C) said that they may have discussed gathering information from hotel video but it was outweighed by concerns of resources, time, and the possible value of the evidence that would be collected. (b) (6), (b) (7)(C) said she would have liked to do more work with regard to the time and attendance allegations, such as going through (b) (6), (b) (7)(C) emails in an effort to corroborate dates and times (Exhibit 34, p. 3).

During his interview, (b) (6), (b) (7)(C) stated he did not follow up on information regarding hotel stays because he was not sure that activities, such as hotel stays outside of SEC OIG work time, was relevant to determining employee misconduct related to SEC OIG work. (b) (6), (b) (7)(C) stated, "I do recall some conversations about how far can you push into someone's personal life when what they're doing doesn't actually violate anything? If they were having sex, so what. What we focused on after this point, in looking at the records, was there any evidence that she got

different assignments, that he went easier on her on deadlines? Did she get awards that others didn't? Did she get a promotion that others didn't? Right? Or was there some type of prohibited personnel practice that was occurring as a result of the relationship that would establish some type of quid pro quo" (Exhibit 37, Tr. 56).

(b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) could have been compelled to provide information. The June 21, 2016, transcripts of (b) (6), (b) (7)(C) make reference to both interviews being voluntary. Consideration for use of a Kalkines advisement should have been made because both subjects provided inconsistent statements and showed a lack of cooperation providing information to the interviewers. In fact, during (b) (6), (b) (7)(C) June 21, 2016, interview, (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) whether she needed to be compelled to provide information based on the answers she was providing (Exhibit 49, p. 16-17). As previously reported, (b) (6), (b) (7)(C) stated she had no intention of providing certain corroborating information to the SEC OIG investigators unless she was compelled.

After (b) (6), (b) (7)(C) stated he did not find (b) (6), (b) (7)(C) credible and (b) (6), (b) (7)(C) refused to provide requested information, the SEC OIG did not attempt to compel (b) (6), (b) (7)(C) by using a Kalkines advisement.

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C), who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

Finding 1.3

ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) time out of the office was spent on official activities. (b) (6), (b) (7)(C), (b) (5) [redacted].

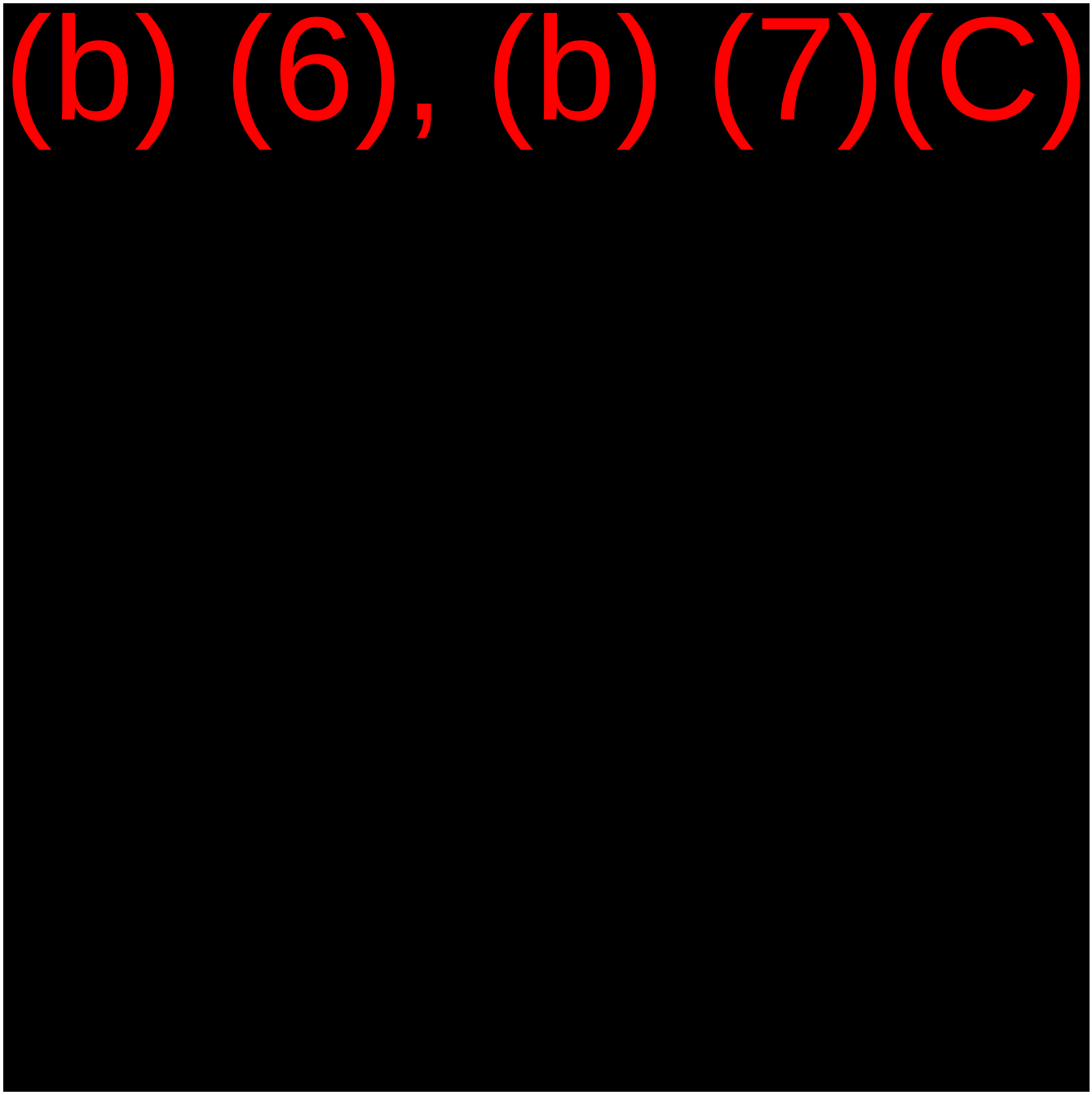
According to (b) (6), (b) (7)(C) investigators did not attempt to corroborate (b) (6), (b) (7)(C) statements about conducting official liaison activities when out an extended time from the office. (b) (6), (b) (7)(C) did not know why. On the decision not to corroborate time and attendance issues, (b) (6), (b) (7)(C) stated that the time and attendance was difficult to figure out. The information received regarding the swipe cards was "tricky." Her plan was to compile the universe of missing time and provide this to (b) (6), (b) (7)(C) as part of any proposed disciplinary action and allow them the opportunity to respond and corroborate the information. (b) (6), (b) (7)(C), (b) (5) [redacted] (Exhibit 34, p. 3).

According to (b) (6), (b) (7)(C) SEC OIG reviewed internal records (time and attendance submissions, travel documents, emails and calendar appointments) to attempt to corroborate that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) time out of the office was spent on official duties, but they did not contact

external parties (Exhibit 37, Tr. 114). (b) (6), (b) (7)(C) advised that it was a resource issue that prevented them from corroborating (b) (6), (b) (7)(C) time out of the office spent on official duties. (b) (6), (b) (7)(C) also stated there was an inconsistency issue because the card swipe data was generally not used to account for time and attendance (Exhibit 37, Tr. 115-116).

Additionally, ED OIG's investigation determined SEC OIG special agents were not required to use a mechanism to log time dedicated to specific investigations or other official activities.

(b) (6), (b) (7)(C)



Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

Additional allegations of inappropriate comments made by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) were not addressed as part of the SEC OIG investigation.

On or around July 1, 2016, (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) and Hoecker separately and informed them that on more than one occasion (b) (6), (b) (7)(C) had made comments to her regarding how she looked and dressed that made her uncomfortable. In 2014, she had shared information with (b) (6), (b) (7)(C)

regarding other comments [redacted] made to her that made her uncomfortable. [redacted] did not follow up with [redacted] nor did [redacted] go back to [redacted] According to [redacted] in the third quarter of 2017, she told Hoecker that she did not think that the incidents with [redacted] and her reporting of them was handled well. [redacted] recalled that Hoecker acknowledged [redacted] position and apologized for how he handled the matter (Exhibit 31).

When asked about [redacted] claims during his interview, Hoecker stated that, "I said, what do you want to do? And she didn't want to do anything. I believe it was after the, I think there's a time period involved where you have to report these things, and I think that had expired" (Exhibit 38, Tr. 98) Regarding his alleged apology to [redacted] Hoecker stated, "I don't know how the OIG handled these remarks. I may have apologized that it had happened to her. But the handling of it, I, I don't think we actually handled it because it was reported after a certain time" (Exhibit 38, Tr. 99).

[redacted] recalled that in the spring or summer of 2017, [redacted] SEC OIG, informed her that her assistance may be necessary regarding additional allegations against [redacted] explained that everyone else was "conflicted out." [redacted] understood this to mean that senior staff, Hoecker, [redacted], all had potential or actual conflicts of interest. [redacted] explained to [redacted] that she would have a potential or actual conflict if she were to have any role regarding the additional allegations against [redacted] and advised him of the incidents regarding [redacted] behavior toward her. [redacted] was unaware of the information provided by [redacted] and indicated there was no documentation of her reported incidents in the investigation conducted involving [redacted]. [redacted] (Exhibit 31).

When asked if [redacted] reporting was considered [redacted], [redacted] explained that he did not know if it was specifically listed, but it was generally considered among [redacted] interactions (Exhibit 37, Tr. 74).

Hoecker stated that he did not know whether [redacted] reported information about [redacted] comments was considered [redacted] (Exhibit 38, Tr. 101). Although her allegations were made to Hoecker and [redacted] while the investigation of [redacted] was active, [redacted] was not interviewed for that investigation.

[redacted] **SEC OIG Counsel advised Hoecker** [redacted] **was not negotiating in good faith** [redacted]**. However, Hoecker made the decision to continue** [redacted]**.**

On March 23, 2017, [redacted] created a "memorandum for file" documenting an event that occurred on March 21, 2017, [redacted]. (Exhibit 37, attachment 13) According to [redacted] memorandum, on March 21, 2017, he attempted to meet with [redacted]. Because [redacted]

office door was "fully closed," [redacted] knocked on it and heard a voice believed to be [redacted] stating, "I need a minute." After waiting for two minutes, [redacted] opened the door partially. He was holding his iPhone facing towards his chest and appeared to be interrupting a call. He pointed to the phone and said he was on a call. [redacted] handed him the folder [redacted] and told him to review it.

Later that afternoon [redacted] stopped by [redacted] office to discuss [redacted]. Fillinger asked [redacted] who was in his office with him when [redacted]. [redacted] said, "No one. I was by myself."

According to the memorandum, because of two additional hotline complaints that had been received related to the internal investigation, [redacted] asked the Office of Security Service to provide him security camera footage between March 16 and March 21. The footage covered the area outside [redacted] office. The memorandum further noted that a review of the video footage from the camera showed [redacted] entering [redacted] office about an hour before [redacted] knocked on the door and leaving shortly after [redacted] left [redacted] office.

Regarding the event on March 21, 2016, [redacted] explained in his interview with ED OIG that he advised Hoecker that they should stop negotiating [redacted] with [redacted] He stated, "so we're negotiating a resolution, and at that point, I didn't believe he is negotiating in good faith. You know, if this were opposing counsel that lied to me, okay, the deal is off the table. You know, we're going kind of thing. That, that was my preference. That was my opinion. That was what I expressed to the IG should happen next" (Exhibit 37, Tr. 93).

[redacted] During his interview, [redacted] also expressed concerns about [redacted] likelihood for rehabilitation (Exhibit 37, Tr. 80).

During his interview with ED OIG, Hoecker – [redacted] stated [redacted] told him about the March 21, 2017, event but made the decision to proceed [redacted]. He stated, "I told [redacted] that I thought this conduct was similar to what we have in the investigation [redacted]" (Exhibit 38, Tr. 102).

[13] [redacted].

Allegation 2

The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented NSF OIG from completing the peer review.

Allegation 2.1

They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1

ED OIG substantiated that the SEC OIG offered varying justifications for why the investigation should not have been subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

NSF OIG conducted its on-site peer review of SEC OIG during the week of May 22, 2017. (b) (6), (b) (7)(C) NSF OIG, was the team leader of the peer review. At the end of the on-site review, an exit conference was conducted and SEC OIG passed the peer review in accordance with CIGIE standards, with some items of improvement suggested (Exhibit 33).

In June 2017, while preparing the peer review report, NSF OIG received multiple allegations that the investigation into (b) (6), (b) (7)(C) was conducted below (not in accordance with) CIGIE standards (b) (6), (b) (7)(C) (Exhibit 33).

(b) (6), (b) (7)(C)

NSF OIG did not finalize its peer review report and requested SEC OIG provide the case file to NSF OIG in order to resolve the allegations that the peer review was obstructed. However, after multiple meetings between the two OIGs, SEC OIG would not provide NSF OIG with access to the subject case file. On September 14, 2017, unable to resolve this issue, NSF OIG suspended the issuing of the peer review report and forwarded the allegations it received on this case to the IC (Exhibit 33).

(b) (6), (b) (7)(C) was present on a telephone conference between the NSF OIG's IG Allison Lerner (Lerner), NSF OIG counsel, Hoecker and (b) (6), (b) (7)(C) to discuss access to the investigation. During the call, (b) (6), (b) (7)(C) was defensive, arguing that the matter had attorney/client privilege and did not agree with the case law presented by NSF OIG's counsel supporting why there was not

attorney/client privilege. Hoecker was less resistant than [redacted] to negotiating a resolution to the issue (Exhibit 33).

According to Lerner's letter to the IC on September 14, 2017, "[o]ver the course of several conversations, SEC OIG provided differing reasons as to why we could not see the file and proposed work-arounds to avoid sharing the file," which are summarized below (Exhibit 65, p. 3-4):

1. "The IG determines what is covered by the peer review: IG Hoecker informed us that he believed the internal investigation was not relevant to the peer review and offered to give us his representation as to what cases fell within the peer review scope, so we could rely on that. He stated his belief that it is the IG's prerogative to determine whether the investigation in question should be within the ambit of the peer review, and noted that he did not believe that the internal investigation implicated investigative operations because it was performed by his Counsel and [redacted] played no role in it. We noted our disagreement with that approach, given that the SEC OIG itself had reported and described the matter as an investigation in its March 2017 Semi-Annual Report to Congress (SARC) (exhibit 66), that SEC OIG presented the case for prosecution (and therefore appeared to have concluded that it dealt with potentially criminal conduct) and that SEC OIG had recently conducted similar investigations of SEC employees in which they would have had to comply with investigative standards. Choosing not to hold an internal investigation of senior investigative personnel to the same standards to which similar investigations of agency personnel were held did not seem appropriate."

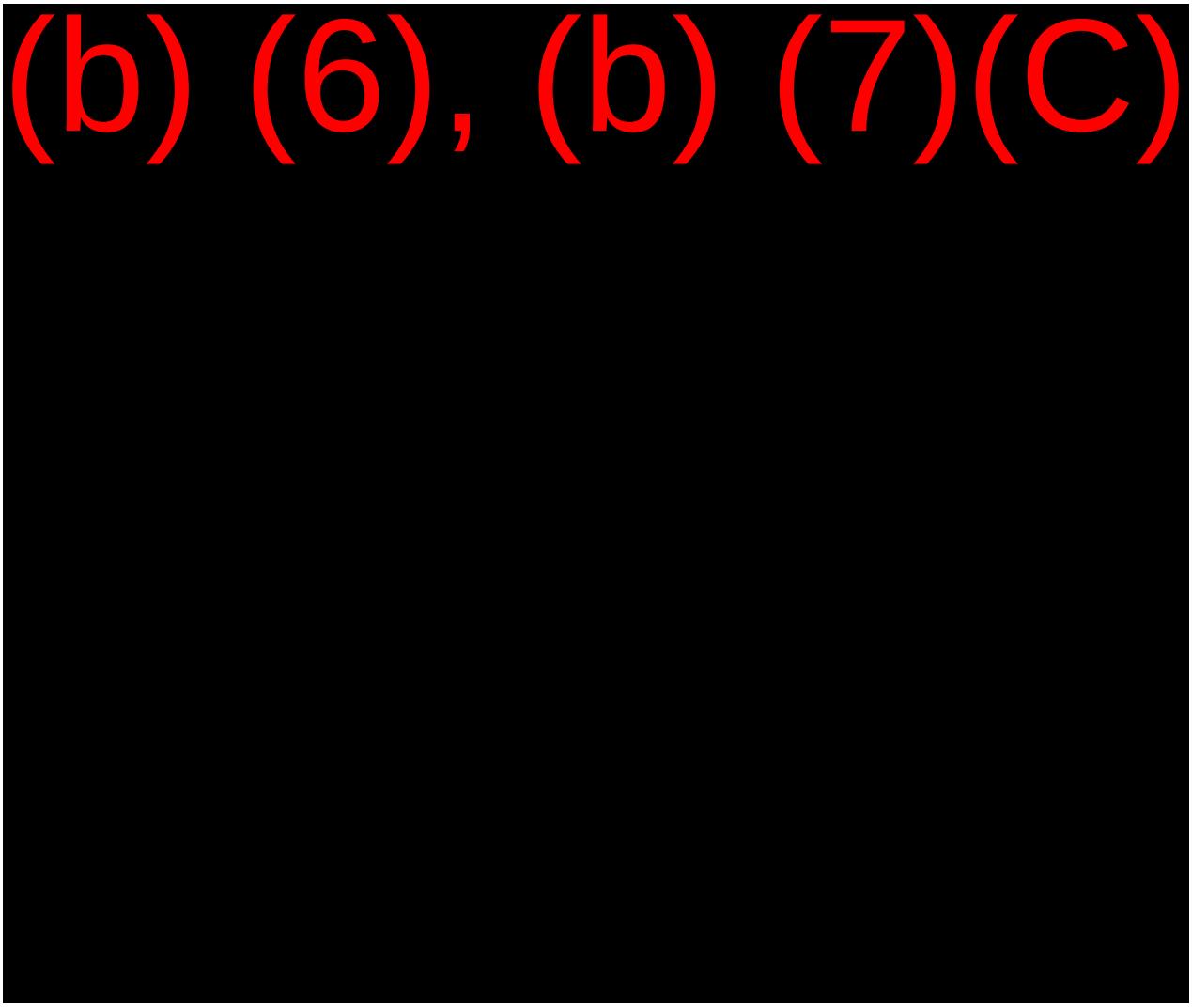
2. "Allowing us to review the file would waive privileges they want to assert in other contexts: According to Hoecker and [redacted] the investigation is privileged because it was conducted by counsel, and they did not want to waive any privileges by providing us with access to the report in light of ongoing EEO and FOIA matters."

3. "We can't allow you to see the file, but we can give you access to metadata: [redacted] asked if we would accept metadata from their investigative case management system in lieu of access to the report file."

Subsequent discussions between NSF OIG and SEC OIG were conducted and ultimately, SEC OIG agreed to provide NSF OIG access to review the investigation. On October 25, 2017, NSF OIG was given access to the investigative file at SEC OIG and reviewed the file as the 21st case file selected for the peer review (Exhibit 33, p. 2).

According to NSF OIG, Hoecker's above representation to NSF OIG was that he did not believe the internal investigation implicated investigative operations because it was performed by his Counsel and [redacted] played no role in the investigation. However, SEC OIG's ROI reporting (Exhibit 4, p. 2) and Hoecker's response to the IC on June 29, 2017 (Exhibit 40, p. 2) indicated that the investigation was initially started as a joint effort by [redacted]. As previously discussed, ED OIG's investigation established that [redacted] conducted the

material interviews, including the subject interviews, and major document reviews (Finding 1.1.a, p. 20).



Allegation 2.3

The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by SEC OIG Counsel). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Although access was ultimately granted to NSF OIG, Hoecker, (b) (6), (b) (7)(C) were opposed to providing the investigation to the peer reviewers. During his interview, Hoecker

explained that he felt compelled to allow NSF OIG to review the investigation because he needed NSF OIG to complete its peer review of SEC OIG. He stated, "my office needed a peer review. She (Allison Lerner, IG, NSF) wasn't going to do it. I let her look at the case" (Exhibit 38, Tr. 83). Although he identified it as an investigation, Hoecker did not believe the investigation should have been reviewed under the QSI because it was overseen by SEC OIG Counsel.

In response to the investigation being subject to peer review, [redacted] stated, "my view was I had prepared this product as an attorney. It's attorney work product. It's not even attorney-client privilege. It was not the IG's work product" (Exhibit 37, Tr. 111). Believing the ROI was actually attorney-work product, [redacted] did not believe the ROI should have been subjected to peer review.

[redacted] stated he did not discuss with anyone whether or not to include the investigation for peer review. [redacted] did not object to the NSF OIG reviewing the investigation, but opposed the idea on philosophical grounds, because it was conducted outside of his operation, OI, and he did not want to be judged based on the work of something outside of his supervision. (Exhibit 36, Tr. 96)

Allegation 2.4

Respondents designated or allowed [redacted] to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

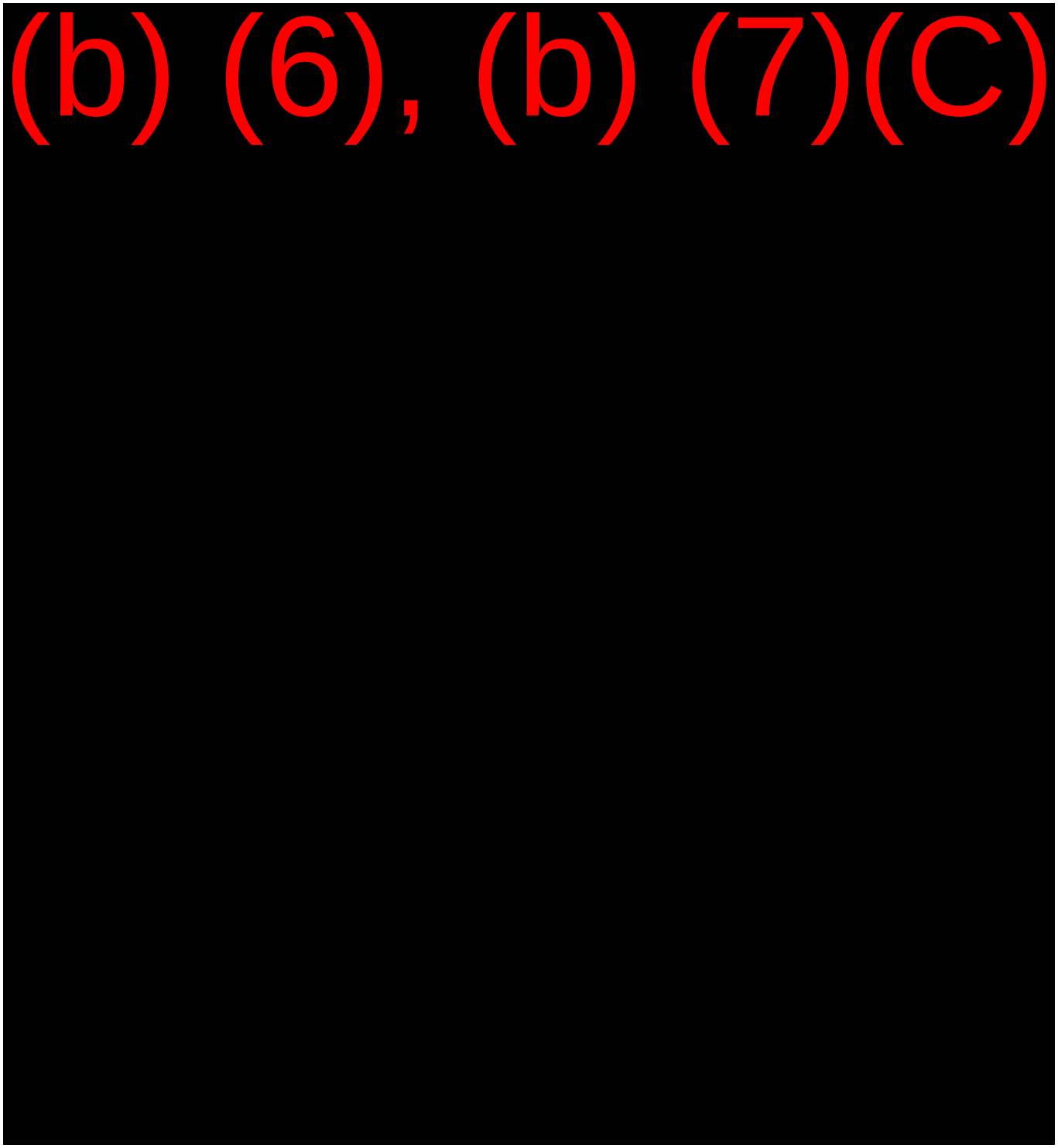
Finding 2.4

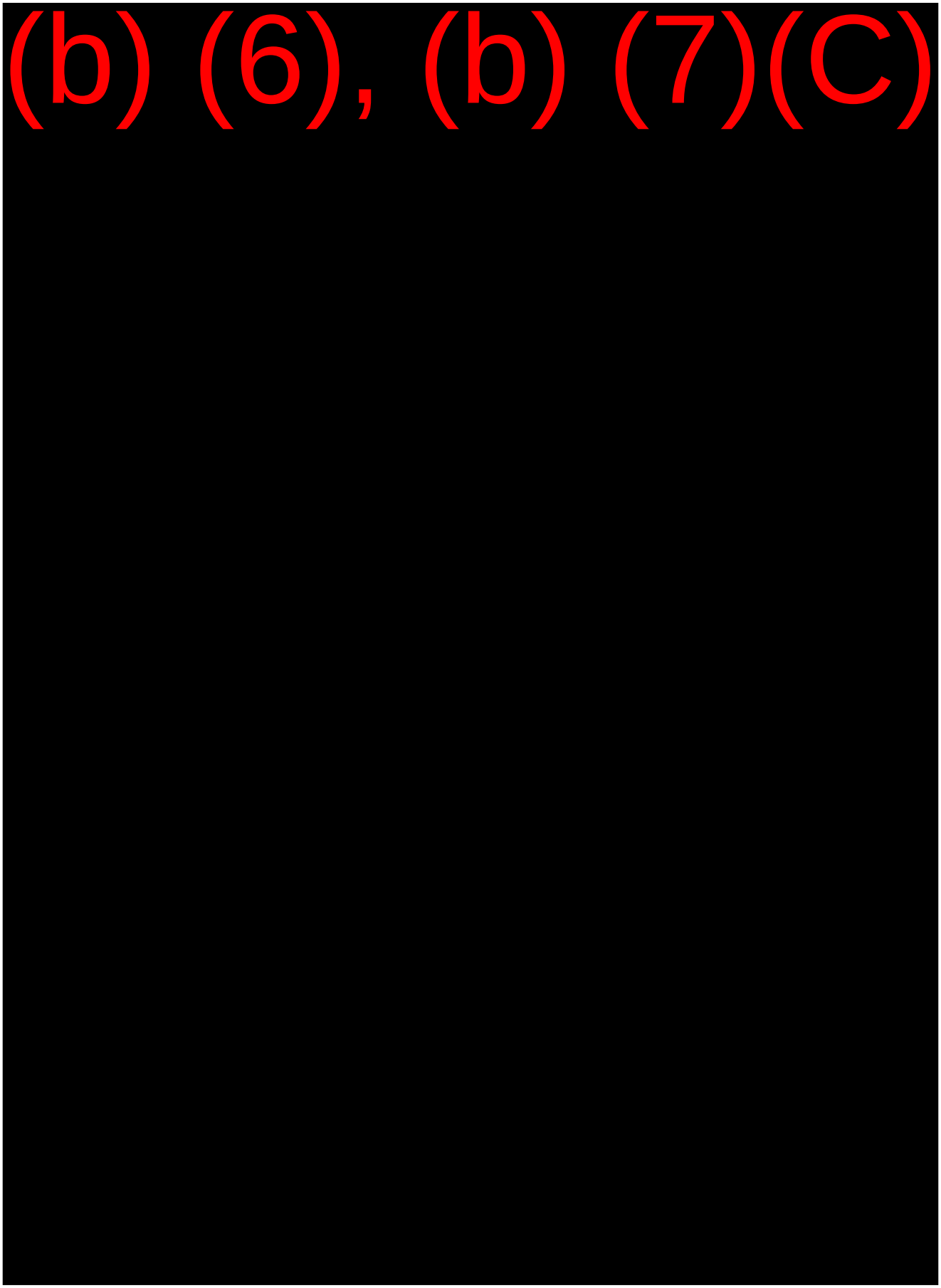
ED OIG substantiated that [redacted] served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the OIG, but did not substantiate his serving in this role obstructed the peer review.

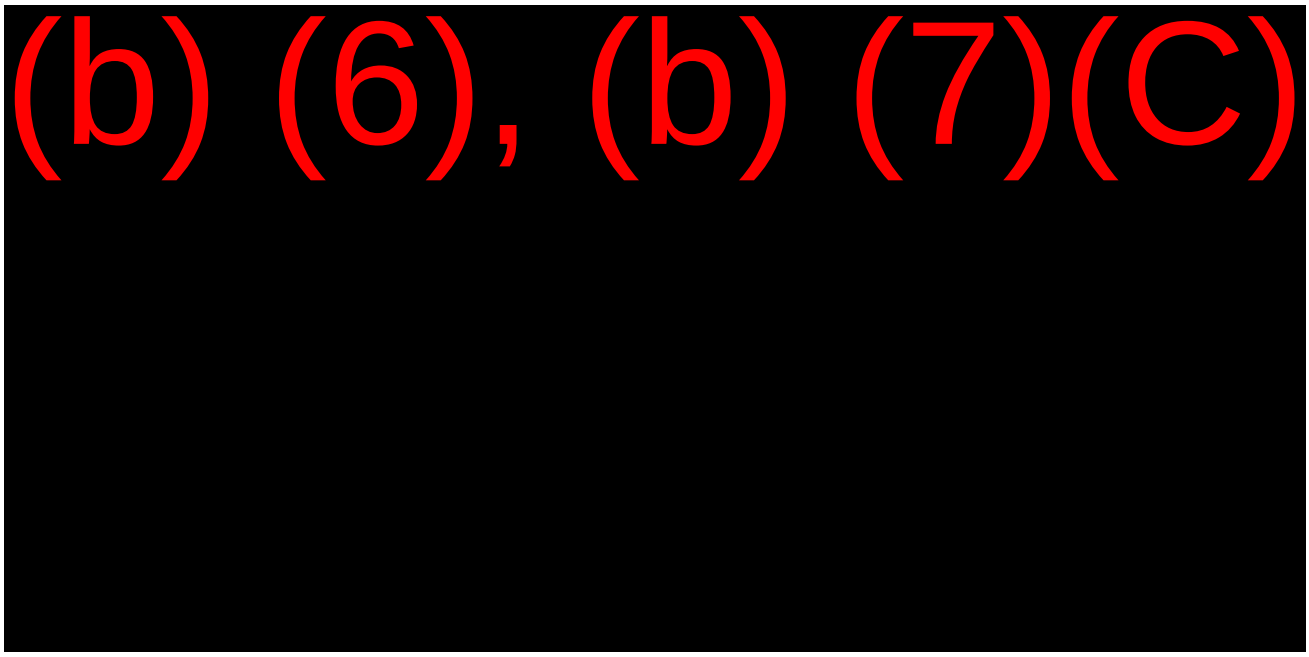
Due to a realignment in OI, [redacted] switched roles ([redacted] to Investigations Support and [redacted] to Investigations). According to [redacted] upon his return to the SEC OIG OI suites, he was assigned as [redacted], Investigations Support Branch, and as such, assumed the role as point of contact for the SEC OIG upcoming peer review. In his role, he was not responsible for the scope or content that was provided for the peer review. The incoming peer review team had already been provided all documents needed to conduct the peer review. [redacted] needed only to ensure the team had access to the building and workstations. Prior to [redacted] being placed in the Investigative Support [redacted] position, [redacted] already had provided all the necessary documentation to NSF OIG. During his interview on March 27, 2018, [redacted] stated there was nothing [redacted] could have done to manipulate the peer review (Exhibit 12, p. 2).

Additionally, NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review. According to [redacted] after seeing NSF OIG's list of people to interview during the on-site review, [redacted]

made suggestions on interviewing other people but NSF OIG did not change its list (Exhibit 33, p. 2).




(b) (6), (b) (7)(C)



Allegation 5

On or about October 10, 2018, Hoecker engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 12, 2018, containing information that, on October 10, 2018, Hoecker contacted (b) (6), (b) (7)(C) and questioned her regarding information she provided to ED OIG during the IC investigation.

Finding 5

ED OIG substantiated that Hoecker contacted (b) (6), (b) (7)(C) on October 10, 2018, regarding statements attributed to (b) (6), (b) (7)(C) in the draft ROI. Hoecker stated that he did not contact any other witnesses about the IC investigation or their interviews.

Purpose of the call

(b) (6), (b) (7)(C) memo stated, "the IG [Hoecker] explained that he was calling to question me [(b) (6), (b) (7)(C) about the basis for certain statements attributed to me that apparently appear in a report he is in possession of from a recent CIGIE Integrity Committee (IC) investigation conducted by the Department of Education OIG. (NOTE: I have not seen the report in question.) Specifically, he stated that the IC report states that, according to me, on the same day that I reported to the IG unwelcome attention and comments from (b) (6), (b) (7)(C), that he (the IG) apologized to me for how he (the IG) handled the situation with (b) (6), (b) (7)(C)."

In her interview on November 5, 2018, (b) (6), (b) (7)(C) stated that her understanding of Hoecker's purpose for questioning her was to clarify what she said to ED OIG, because what Hoecker said was reported in the ROI did not match his recollection of events. (b) (6), (b) (7)(C) also stated that Hoecker questioned whether she was making a formal complaint against (b) (6), (b) (7)(C) when she reported (b) (6), (b) (7)(C) behavior to (b) (6), (b) (7)(C)

In his interview on December 6, 2018, Hoecker stated that while reviewing the draft ROI, he noticed a statement inconsistent with his recollection and wanted to ensure there was not an underlying issue that needed to be addressed. Hoecker stated, "I saw what was reflected of something about a complaint, or allegations that we didn't consider during our internal investigation… I didn't know if my subordinate, which is (b) (6), (b) (7)(C), still had an issue out there that I needed to act upon as, as a manager, because a manager has certain responsibilities. That was the purpose of the call" (Exhibit 70, Tr. 7-8).

When asked if he discussed with (b) (6), (b) (7)(C) her interviews with ED OIG, Hoecker stated, "I discussed the issue, it may have got into what she spoke to you guys about, but I, I don't know" (Exhibit 70, Tr. 8). When asked if he talked to (b) (6), (b) (7)(C) about what reports from her interviews with ED OIG would say if he were to look at them, Hoecker stated, "I don't recall saying that at all. No. Or asking that" (Exhibit 70, Tr. 10). Hoecker further stated, "You mentioned when I asked her about her conversation with the Department of Education, I don't think that's the way I asked the question" (Exhibit 70, Tr. 17).

When asked why he contacted (b) (6), (b) (7)(C) instead of referring to the draft ROI exhibits that he could have access to, Hoecker (and his attorney) explained that exhibits have been requested but have not been received (Exhibit 70, Tr. 10-11).

(b) (6), (b) (7)(C) stated that she was reluctant to answer Hoecker's questions but responded honestly.

(b) (6), (b) (7)(C) stated in her memo, "Despite my surprise at being asked to discuss statements I made to Education OIG investigators with the IG (who is my supervisor and whom I am aware was a subject of the IC investigation) and my reluctance to do so, I answered his questions honestly." During her November 5, 2018, interview, (b) (6), (b) (7)(C) stated that she was very surprised Hoecker was questioning her, but she was aware that Hoecker was working on something related to the IC investigation, perhaps a response to the draft ROI. (b) (6), (b) (7)(C) stated that she did not express to Hoecker her reluctance to speak at that time. (b) (6), (b) (7)(C) explained that she was not sure what she could or should say regarding her statements to ED OIG. She thought that Hoecker questioning her, as a witness, was "ill-advised" and not something she would have done if she were in Hoecker's place (as the subject of an IC investigation). (b) (6), (b) (7)(C) stated that Hoecker did not make any statements to her regarding her obligation to answer his questions. (b) (6), (b) (7)(C) felt that she could have told Hoecker that she did not want to answer his questions and end the conversation if she wanted to.

During her interview, (b) (6), (b) (7)(C) stated that she felt uncomfortable being questioned by Hoecker but she was not coerced into the conversation. She attributed her discomfort to being asked about a document (the draft ROI) she did not see. She believed that Hoecker's questioning her was "not a good idea" and "bad judgment."

Hoecker's statements regarding the IC's notifications and redactions to the draft ROI

ED OIG asked Hoecker to review language in the subject notification letters dated November 15, 2017 and November 27, 2017, that he received from the IC, which advised, "it is important to ensure that appropriate measures are in place to prevent retaliation or other prohibited

personnel practices from being taken against an employee based on the employee's disclosure of information that he or she reasonably believes evidences administrative misconduct." When asked if he considered the potential impact, or perception that contacting (b) (6), (b) (7)(C) could have had, Hoecker stated, "I contact these people every day for work, so in my mind this was not about the Integrity Committee investigation, this was about work, this was about whether there was some action I needed to take. And not retaliatory action, action that is required under policy, and good governance, and good management" (Exhibit 70, Tr. 13).

During his interview, Hoecker acknowledged that the draft ROI that he received had redactions and that based on the particular circumstance described in the draft ROI, he was able to deduce that (b) (6), (b) (7)(C) provided the information to ED OIG. Regarding (b) (6), (b) (7)(C) personal information being redacted, Hoecker stated that he was not concerned that calling (b) (6), (b) (7)(C) could have had an impact or perception of any kind of violation of the direction from the IC, because he would not have taken retaliatory action against her (Exhibit 70, Tr. 14-15).

Hoecker also stated that he did not contact any other SEC OIG employees or individuals interviewed by ED OIG pursuant to the IC investigation, except for (b) (6), (b) (7)(C) Regarding his contact with (b) (6), (b) (7)(C) Hoecker explained, "He's a respondent… I didn't think he was a witness. But when I got the e-mail from my Counsel about you guys [ED OIG] wanted [sic] to talk to me today about this I asked him, I said what is, what is this, and then he explained that, you know, he had referred something to Integrity Committee, I didn't know he did, which is fine" (Exhibit 70, Tr. 21-22).

ADMINISTRATIVE STATUS

The findings detailed in this report are referred to the IC for its consideration.

SUBJECTS OF INVESTIGATION

1. Carl Hoecker, Inspector General, U.S. Securities and Exchange Commission
2. (b) (6), (b) (7)(C) Office of Inspector General, U.S. Securities and Exchange Commission
3. (b) (6), (b) (7)(C) Office of Inspector General, U.S. Securities and Exchange Commission

EXHIBITS

1. IC890 Request to ED OIG for Investigation 11/8/17
2. IC Notification to Subjects 11/27/17
3. IC Notification re: (b) (6), (b) (7)(C) 3/6/18
4. SEC OIG Report of Investigation, 3/3/17
5. (b) (6), (b) (7)(C), (b) (5)
6. (b) (6), (b) (7)(C), (b) (5)
7. Initial Document request 11/22/17
8. Forensic Request 11/30/17 (amended from 11/22/17)
9. Supplemental Request 2/22/18
10. Memorandum of Activity - Internet Profile 3/7/18
11. Memorandum of Interview, (b) (6), (b) (7)(C), 1/25/18
12. Memorandum of Interview, (b) (6), (b) (7)(C), 3/27/18
13. Memorandum of Interview, (b) (6), (b) (7)(C), 6/21/18
14. Memorandum of Interview, (b) (6), (b) (7)(C), 6/22/18
15. Memorandum of Interview, (b) (6), (b) (7)(C), 3/13/18
16. Memorandum of Interview, (b) (6), (b) (7)(C), 4/10/18
17. Memorandum of Interview, (b) (6), (b) (7)(C), 6/21/18
18. Memorandum of Interview, (b) (6), (b) (7)(C), 3/13/18
19. Memorandum of Interview, (b) (6), (b) (7)(C), 2/13/18
20. Memorandum of Interview, (b) (6), (b) (7)(C), 2/13/18
21. Memorandum of Interview, (b) (6), (b) (7)(C), 3/14/18
22. Memorandum of Interview, (b) (6), (b) (7)(C), 4/16/18
23. Memorandum of Interview, (b) (6), (b) (7)(C), 4/20/18
24. Memorandum of Interview, (b) (6), (b) (7)(C), 5/30/18
25. Memorandum of Interview, (b) (6), (b) (7)(C), 4/12/18

26. Memorandum of Interview, (b) (6), (b) (7)(C), 5/21/18
27. Memorandum of Interview, (b) (6), (b) (7)(C), 4/30/18
28. Memorandum of Interview, (b) (6), (b) (7)(C), 3/15/18
29. Memorandum of Interview, (b) (6), (b) (7)(C), 2/14/18
30. Memorandum of Interview, (b) (6), (b) (7)(C), 4/6/18
31. Memorandum of Interview, (b) (6), (b) (7)(C), 3/19/18
32. Memorandum of Interview, (b) (6), (b) (7)(C), 3/27/18
33. Memorandum of Interview, (b) (6), (b) (7)(C), 12/20/17
34. Memorandum of Interview, (b) (6), (b) (7)(C), 5/1/18
35. Memorandum of Interview, (b) (6), (b) (7)(C), 3/14/18
36. Memorandum of Interview, (b) (6), (b) (7)(C), 6/8/18
37. Memorandum of Interview, (b) (6), (b) (7)(C), 6/12/18
38. Memorandum of Interview, Carl Hoecker, 6/13/18
39. SEC OIG Policy, Chapter 1: (b) (6), (b) (7)(C), (b) (5), (b) (2)
40. Hoecker Response Letter to IC, 6/29/17
41. CIGIE Quality Standards for Investigations (11/15/2011)
42. Quality Standards for Federal Offices of Inspector General (Silver Book) (8/2012)
43. Email between (b) (6), (b) (7)(C), 1/23/15
44. (b) (6), (b) (7)(C) Memo to (b) (6), (b) (7)(C) - Supervisory Views, 6/15/16
45. Email re: June 15, 2016 Referral to USAO and Declination
46. SEC OIG Memorandum of Interview, (b) (6), (b) (7)(C) 11/2/16
47. Memo from (b) (6), (b) (7)(C) 5/16/16
48. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 5/18/16
49. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/21/16
50. Rolling Stone Article, “SEC Rocked by Lurid Sex and Corruption Lawsuit,” 11/19/12
51. NSF OIG Review of File (b) (6), (b) (7)(C), 10/26/17

52. SEC OIG Policy - Ch. 4 (b) (6), (b) (7)(C), (b) (5), (b) (2)
53. Notes of SEC OIG interview of (b) (6), (b) (7)(C) 5/18/16
54. Notes of SEC OIG interview of (b) (6), (b) (7)(C) 5/24/16
55. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/3/16
56. SEC OIG Transcript of Interview, (b) (6), (b) (7)(C) 6/21/16
57. (b) (6), (b) (7)(C) Email Clarification, 6/6/16
58. SEC OIG Policy, Chapter 2: (b) (6), (b) (7)(C), (b) (5), (b) (2)
59. Additional Complaint Documents, IC890/901/909
60. IC909 NSF OIG Letter, 12/4/2017
61. SEC OIG Policy, Chapter 7: (b) (6), (b) (7)(C), (b) (5), (b) (2)
62. Qualitative Assessment Review Guidelines for Investigative Operations of Federal Offices of Inspector General (7/2017)
63. SEC OIG Policy, Chapter 8: (b) (6), (b) (7)(C), (b) (5), (b) (2)
64. (b) (6), (b) (7)(C), (b) (5)
65. Letter to IC from Lerner, 9/14/17
66. SEC OIG's March 2017 Semi-Annual Report to Congress
67. IC Request to ED OIG, 10/19/18
68. Email from (b) (6), (b) (7)(C) dated October 12, 2018 with (b) (6), (b) (7)(C) email, dated October 11, 2018
69. Memorandum of Interview with Attachments for (b) (6), (b) (7)(C) 11/5/18
70. Memorandum of Interview with Attachments for Hoecker, 12/6/18

ATTACHMENTS

1. Hoecker response to the Draft ROI, 3/5/19
2. (b) (6), (b) (7)(C) response to the Draft ROI, 3/1/19
3. (b) (6), (b) (7)(C) response to the Draft ROI, 10/4/18

(b) (6), (b) (7)(C)

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Tuesday, March 5, 2019 9:05 PM
To: Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: IG Hoecker Response to IC890.909 Draft ROI and Addendum
Attachments: IG Hoecker Response to Draft ROI_CIGIE IC Request_IC 890 and IC909_030519_SIGNED.pdf; Tab A_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab B_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab C_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab D_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Tab E_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit List_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 1_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 2_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 3a-e_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 4_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 5_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 6a-c_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 7a-b_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; Exhibit 8_IG Hoecker Response to Draft ROI_CIGIE IC Request_IC890 and IC909_030519.pdf; IG Hoecker Response to Addendum to Draft ROI_CIGIE IC Request IC890 and IC909_030519_SIGNED.pdf

Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

Please find attached IG Hoecker's Response to the Draft ROI and Addendum thereto in the matters of IC890 and IC909.

The Response consists of the following documents, which are password protected (password to follow in a separate email):

Response to Draft ROI

Letter Response dated March 5, 2019
Tabs A-E
Exhibit List
Exhibits 1-8

Response to Addendum to Draft ROI

Letter Response dated March 5, 2019

A hard copy will be delivered tomorrow, Wednesday, March 6.

If you have any questions, please let me know.

Thank you.

Best,

Chun Wright

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

March 5, 2019

By Email and Overnight Delivery

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington, DC 20006

Re: Draft Report of Investigation, dated August 21, 2018
Ref: Request IC890 and IC909, I18EAS0038

Dear Integrity Committee:

I am writing in response ("**Response**") to the United States Department of Education Office of Inspector General ("**ED-OIG**") Draft Report of Investigation, dated August 21, 2018 ("**Draft ROI**").[1] My decision to investigate a staff matter internally, through my Office of Counsel (also "**Counsel**"), in the best interests of my office is the reason this matter is before you. Our actions were proper, as I discuss below.

I. Executive Summary

This matter has profound policy implications. As such, it is critical that the Integrity Committee carefully consider the wide latitude and judgement statutorily granted to an Inspector General ("**IG**") and the information in this Response when examining the findings in the Draft ROI. The outcome will affect the entire IG community in areas of discretion and independence; the practice of the Council of Inspectors General on Integrity and Efficiency ("**CIGIE**") on adopting standards and guidelines; and the Integrity Committee's investigative process.

The first established principle that is at jeopardy is an Inspector General's statutory independence, discretion, and judgment. Here, I used my discretion and professional judgment to conduct an internal investigation of allegations of staff misconduct in order to assess their credibility and to determine whether further investigation or discipline was warranted. I assigned the internal matter to my counsel and received his 51-page completed report of investigation,

[1] I designated Chun T. Wright to serve as my representative in this matter. On September 28, 2018, I advised the Integrity Committee of this designation in an email, which the Integrity Committee acknowledged. See email string between me and the Integrity Committee, dated September 28, 2018, Exhibit ("**Exh.**") 1. This response was prepared with the advice of counsel from Chun T. Wright.

which was sufficient for me to take corrective action in the matter ("**Internal Investigation")**. The Inspector General Act of 1978, as amended[2] ("**the IG Act**"), assigns to each IG the responsibility to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of in their agency or department.[3] The Act also grants the authority to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the IG, necessary or desirable. Yet the Draft ROI second guesses my valid discretionary judgment.[4]

The next issue at stake is whether an Integrity Committee investigation can create new policies, thereby upending a long-standing CIGIE policy and circumventing the well-established CIGIE practice of having the entire CIGIE membership vote on changes to CIGIE policies and guidelines.[5] First, the Quality Standards for Investigations ("**QSI"**), since its inception in 1997, have been designated for those investigations under the auspices of the Assistant Inspector General for Investigations ("**AIGI**") and *are not mandatory* across every function within an OIG. Functions and units outside of the AIGI *may voluntarily* adopt the QSI for their work products. Exh. 62 to Draft ROI at 6 (articulating existing practice).[6] Second, there is absolutely no CIGIE requirement that internal matters be conducted by an external entity.[7]

Closely related is whether an IG conducting an investigative peer review *can circumvent the Qualitative Assessment Review Guidelines* ("**QAR Guidelines**") for Investigative Operations of Federal Offices of Inspector General *and simultaneously investigate and peer review an OIG*.

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[2] 5 U.S.C. App.

[3] 5 U.S.C. App. 3 § 6(a); see also Council of the Inspectors General on Integrity and Efficiency, "The Inspectors General," July 14, 2014 ("CIGIE 'The Inspectors General' Paper"), Exh. 2, at 9.

[4] See CIGIE "The Inspectors General" Paper, Exh. 2, at 1 ("It is these guarantees of independence that make statutory IGs unique) and 2 n.1 ("this paper summarizes authorities granted by statute to Federal IGs. This is not intended to change the existing authority of each IG to exercise legal discretion and professional judgment to interpret and execute those authorities for his or her Office in particular circumstances.).

[5] See the IG Act, which states that CIGIE's mission is, among other things, to increase the professionalism and effectiveness of personnel *by developing policies, standards, and approaches* to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspectors General. 5 U.S.C. § 11(a)(2)(B) (Emphasis added.)

[6] Note that when an Exhibit to the Draft ROI is cited in this Response, it is referenced as "Exh. [No.] to Draft ROI." Exhibits attached to this Response are simply identified by exhibit number.

[7] The IG Act requires that allegations against an IG or "staff member" who reports directly to the IG be referred to the Integrity Committee for disposition. In the SEC OIG internal matter, there was no such staff member. See 5 U.S.C. § 11.4.

The QAR Guidelines outline a protocol by which disputes between IGs during the peer review process are resolved. See QAR Guidelines at 19, attached as Exh. 62 to Draft ROI. Although this protocol was one of the first things I suggested to the NSF IG when we disagreed over the scope of the peer review, she inexplicably chose to ignore it. Instead, after my staff and I spoke with her on June 29, 2017, and 30, 2017, about the Internal Investigation, the NSF IG waited three months to craft a so-called analysis of the complaint she had received about the Internal Investigation and transmit it to the Integrity Committee on or about September 14, 2017.[8] (b) (6), (b) (7)(C) [redacted] I received no feedback after their October 2017 review. [redacted] I discovered in June 2018 during my interview in this matter that the NSF OIG, nine months earlier, in October 2017, produced a "Memorandum of Investigation" as a result of their review of Counsel's Internal Investigation.[9] I was unaware that the peer review team was conducting an undisclosed investigation in tandem with the peer review. I was not notified by the Integrity Committee that this effort was underway. Endorsement of this apparent NSF investigation will thwart CIGIE's mandate for transparency and its standards and guidelines, including the QAR Guidelines. Ultimately, it will erode IGs' confidence in the integrity of the peer review process.

Lastly, the findings as presented in the Draft ROI remove the discretion and independence granted by the IG Act to an Inspector General to investigate internal administrative matters as he or she sees fit. As the Draft ROI **admits**, the ED-OIG arbitrarily applied the Quality Standards for Investigations ("**QSI**") to an internal administrative matter. They had no basis to do so. Adopting the conclusions and findings in the Draft ROI would substitute the investigating agency's judgment for those of the responsible official at the time and would effectively change the IG authorities granted by the IG Act and the CIGIE standards and guidelines. Imposing new standards and requirements on Inspectors General can only be done by the entire membership of CIGIE. The findings in the Draft ROI should be rejected for this reason alone.

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[8] See Lerner Letter to IC, dated September 14, 2017, Exh. 59 to Draft ROI.

[9] See Digitally Recorded Interview of Carl Hoecker, dated June 13, 2018, at 78, lines 8-22, at 74-78, Exh. 38 to Draft ROI ("***I never received any of that memo there. That's the first time I've seen it***." (emphasis added)) and Attachment 9 thereto ("**NSF Memorandum of Investigation**").

In addition to the above policy issues, the Draft ROI should be rejected because it does not comport with CIGIE's QSI in tone, in substance, and is biased.[10] The Draft ROI's findings and conclusions are flawed and are not supported by preponderant evidence. As discussed below, the Draft ROI reaches its findings based on a one-sided and incomplete version of the facts, faulty conclusions, and a failure to properly consider an IG's role and responsibilities, including his/her discretionary authority. My testimony, as well as favorable testimony by other witnesses, were not adequately presented. Further, there are at least 45 instances in the Draft ROI that violate the QSI.

Finally, when one compares the Draft ROI to the NSF OIG's Memorandum of Investigation and the NSF IG's September 14, 2017, letter, it becomes obvious that the Draft ROI tracks those documents and adopts their faulty information and opinions without independently evaluating and critically analyzing the evidence.

The Draft ROI is antithetical to the values, authorities, standards and guidelines, and norms of CIGIE and the IG Act. As such, I respectfully request that the Integrity Committee reject all findings in the Draft ROI as unsubstantiated and issue an exonerating report.

II. Procedural Background

A. On September 24, 2018, I received from the Integrity Committee the "Draft Report of Investigation" prepared by the U.S. Department of Education, Office of the Inspector General, dated August 21, 2018, Request IC890 and IC909, I18EAS00388. The Draft ROI sets forth several findings relating to four separate allegations arising out of an internal administrative investigation conducted by my office into allegations of misconduct by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). The Draft ROI identifies in a section titled "Violations," violations expressly identified as: 1) Lack of compliance with SEC OIG investigative policy, and 2) Lack of compliance with Quality Standards for Federal Offices of Inspector General (Silver Book) and CIGIE QSI. See Draft ROI at 6. I vehemently disagree with the Draft ROI's contention that there were any violations, as explained further below.

B. My detailed responses to the Draft ROI's findings and conclusions are set forth in Sections I above and IV below. In addition, I incorporate by reference my February 2, 2017, response to the Integrity Committee's Requests regarding (b) (6), (b) (7)(C), as well as my June 29, 2017, letter to the Integrity Committee, both of which also addressed versions of the same Allegation 1 in this Draft ROI ((b) (6), (b) (7)(C)). I also incorporate by reference the IC's December 23, 2016, February 21, 2017, and May 30, 2017 letters, which relate to the preceding responses that I submitted to the IC. (b) (6), (b) (7)(C).

[10] The Integrity Committee in its policy has adopted the QSI for investigations done on its behalf. CIGIE Policies and Procedures 2018 at § 9.B, attached as Exh. 62 to Draft ROI.

All of these documents are related to this investigation, IC890 and IC909, and must be incorporated into this matter and considered alongside the allegations. The preceding letters are attached as Exhibit 3 to this Response. Note that my June 29, 2017, letter is also attached as Exhibit 40 to the Draft ROI.

C. I was given a deadline of ten (10) calendar days from the date of receipt of the Draft ROI to submit my comments and supporting evidence.

D. On September 26, 2018, Chun T. Wright, my counsel in this matter, requested the 66 exhibits attached to the Draft ROI, as well as any transcript or summary memorandum. See Exh. 4. On September 28, 2018, the Integrity Committee advised that it would provide the Exhibits after performing necessary redactions. See id. On February 1, 2019, the Integrity Committee advised that it had completed the necessary redactions and would make the redacted Exhibits available for our review at CIGIE's offices from February 6, 2019, until February 19, 2019. See Exh. 5. Pursuant to my counsel's request, the Integrity Committee provided copies of certain Exhibits to us, provided additional time to review the Exhibits in CIGIE's offices, and extended the time to respond to the Draft ROI to March 5, 2019. See id.

III. IG Hoecker's 40-Year Distinguished and Unblemished Federal Government Career as the IG of the Securities and Exchange Commission, IG of the Capitol Police, Deputy Assistant IG for Investigation ("DAIGI") and Special Agent at the Treasury Department and Law Enforcement positions with the U.S. Army.

A. I have been the Inspector General at the Securities and Exchange Commission ("**SEC**"), Office of the Inspector General (**"OIG**") since February 2013. I was the inaugural IG for the U.S. Capitol Police from 2006 through 2013.

B. I have been on the CIGIE Investigations Committee since 2006 and have been elected and re-elected as Chairman of the Committee since 2009. As the DAIGI, I provided substantive comments for CIGIE's first investigative peer review guidelines, which were issued in 2003. The current version of the Qualitative Assessment Review Guidelines for Investigative Operations of Federal Office of Inspector General (7/2017) is attached as Exh. 62 to the Draft ROI. My first CIGIE project as an IG was to develop CIGIE guidance for reporting peer review results in the IG Semiannual Report to Congress. This guidance was unanimously adopted by CIGIE'S membership in 2009. I have led revisions of the following CIGIE standards and guidelines: QSI (2011); Investigative Peer Review Guidelines (2009, 2011, 2017); Quality Standards for Digital Forensics (co-lead 2012 and current revision); and Undercover Review Guidelines (2010, 2013). The CIGIE membership unanimously adopted all of the aforementioned documents. I have also instituted the only investigative peer review training for the CIGIE community. My most recent CIGIE project was to develop CIGIE guidance pursuant to the Administrative Leave Act. It was also adopted unanimously.

C. I began my federal government service more than 42 years ago in the U.S. Army as a member of the Military Police, Military Police Investigator and Special Agent with the Army Criminal Investigations Command. As a Special Agent, I was hand-picked to conduct investigations of the most sensitive and classified programs within the U.S. government. I concluded my service at the grade of Chief Warrant Officer 4 when I retired from the Army. Some of my military awards are: Global War on Terrorism Service Medal, National Defense Service Medal, Army Meritorious Service Medal, multiple Army Commendation Medals, Army Achievement Medals, Army Good Conduct Awards, Army Service Ribbon, Overseas Ribbon.

D. I have established a commendable record during my federal government tenure. This record includes an unblemished disciplinary record in 40 years, during which I have handled or overseen many investigations and worked with numerous colleagues and agencies throughout the country and overseas. Upon my departure from the US Capitol Police, I was awarded the Distinguished Service Medal, the highest award that can be given to a civilian. During my 6-year tenure at SEC-OIG, I have opened and closed over 150 investigations, including prior internal investigations, without any complaints about those investigations. When I arrived at the SEC in 2013, the Federal Employee Viewpoint Survey ("**FEVS**") scores for the OIG were the second to the last for SEC offices and divisions and the agency had no confidence in the office. I put a management team in place, listened to OIG staff, and made great strides to improve morale. As a result, the 2015 and 2016 FEVS scores put OIG the top two or three offices and divisions at the SEC. In 2015, Chair Mary Jo White presented the Chair's Award for "inspirational leadership of OIG and lifting OIG performance to new levels."

E. I have earned an excellent reputation as an IG and am well-respected for my leadership, knowledge, experience and dedication. I share this expertise with newly appointed IGs.

F. My record reflects that I am a long-time, dedicated government employee who takes my job responsibilities and the SEC's mission very seriously. I have made valuable contributions to the SEC and IG community over my 27-year tenure in the community and consistently represented the SEC well, as evidenced by my record. I enjoy my work and being a part of the IG community immensely. I strive to do my best in advancing the IG missions and goals using the resources and authorities granted to IGs under the IG Act. For this reason, I welcome this opportunity to correct the record and clear any suggestion that there were any violations during the Internal Investigation conducted by my office.

IV. Detailed Response to Draft ROI

(b) (6), (b) (7)(C) [redacted]. The Draft ROI concludes that there were violations, specifying two, i.e., 1) lack of compliance with SEC OIG Investigative policy; and 2) lack of compliance with Quality Standards for Federal Offices of Inspector General ("**Silver Book**") and CIGIE QSI. These findings have no merit. As

discussed below, I, through my Office of Counsel, conducted an objective and extensive investigation in accordance with the IG Act and IG policies, procedures and guidelines.

This response addresses those alleged violations and respectfully requests that the Integrity Committee deem them meritless on the grounds that 1) the Draft ROI cannot set or change CIGIE policy, 2) the findings in the Draft ROI are not supported by the evidence, and 3) the Draft ROI does not comport with CIGIE QSI.

As discussed throughout this response, the Draft ROI jeopardizes CIGIE's structure, standards and guidelines. Substantively, the Draft ROI's findings are incorrect and not supported by the record. A careful review of the Draft ROI shows that it exhibits bias, including, but not limited to, its characterization of the evidence and its inclusion of unsubstantiated allegations. Further, the Draft ROI appears to treat the underlying investigation conducted by my office differently than other IG internal investigations by arbitrarily applying the QSI to it. It also reveals troubling transgressions of IG protocol during the peer-review process, which resulted in a "Memorandum of Investigation" by another IG that was not revealed to me until my June 2018 interview in this matter, violating due process and CIGIE's mandate for transparency. The path of this investigation, as illuminated by the Draft ROI, leaves the impression that I may have been improperly targeted by this investigation.

This response first elaborates on the important policy matters that are in jeopardy here.

A. The Draft ROI Improperly Eliminates IG Authority and Discretion and Sets New Policy

The Draft ROI's enormous policy implications cannot be overstated. As explained above in the Executive Summary, a fundamental issue threatened by the Draft ROI is the underlying autonomy, independence, discretion and judgment that IGs have to objectively conduct internal investigations of alleged misconduct within their individual offices and take appropriate action as 1) provided for by the IG Act, 2) reinforced by the Silver Book, and 3) as an agency head. See Quality Standards for Federal Offices of Inspector General ("Silver Book") (8/2012), Exh. 48 to Draft ROI, at 11.[11] The Draft ROI is fundamentally flawed in that it fails to recognize this discretion, while wrongfully trying to change CIGIE policy through an IC investigation. This undermines CIGIE's well-established framework and contravenes CIGIE's standards, guidelines, and norms. Only CIGIE can approve and adopt policy changes.

A chief flaw of the Draft ROI is that it eliminates the IG's discretion with respect to internal administrative matters. The Draft ROI unilaterally imposes an investigatory framework,

[11] See Silver Book, Exh. 42 to Draft ROI, IG Act, and CIGIE "The Inspectors General" Paper, Exh. 2.

i.e., the QSI, on an IG's internal investigation of its own staff after incorrectly suggesting that no other standards applied to the Internal Investigation. This is without precedent or proper justification, upends the IG's authorities, and offends fundamental notions of fairness. There is no mandate that internal investigations conducted by the Office of Counsel must follow the QSI. **This is a fact that even the Draft ROI admits**. See Draft ROI at 22.[12] The SEC OIG Investigative policy (my office's investigative handbook for the Office of Investigations) and the CIGIE QSI did not apply to the Internal Investigation. The Internal Investigation conducted by the Office of Counsel complied with the Silver Book, as well as the IG Act and CIGIE standards and guidelines.[13] The IC should summarily reject the Draft ROI's attempt to ensnare my office in a series of "gotchas" based on an investigatory framework, i.e., the QSI, that did not apply to the internal investigation and that was not adopted by my Office of Counsel.

(b) (6), (b) (7)(C), (b) (5)

Should the IC wish to apply the QSI to my office's Internal Investigation, it must ensure that there is no disparate treatment of my office. To do so, the Integrity Committee should propose that the Investigations Committee reverse their long-standing practice of **not** requiring QSIs to apply to the many types of investigations conducted by all functions or components outside of the AIGI. This standards reversal, applicable to all IGs, will be required to ensure a fair and transparent process.

[12] IGs have the authority and discretion regarding 1) the response and method of investigating administrative matters, and 2) using resources as the IG determines to be necessary in their environment, so long as the IG follows applicable standards and guidelines, which I did here.

[13] To the extent it did not, as must be proven by a preponderance of the evidence, it does not support a finding of any misconduct.

Finally, adoption of the findings in the Draft ROI would put the Integrity Committee in an untenable position. Specifically, it would circumvent established guidelines and policy interpretations codified by CIGIE subject matter expertise committees of jurisdiction and adopted by CIGIE membership. CIGIE policy is set through this committee work and engages the entire CIGIE membership,[14] not through reports of investigation such as the Draft ROI. The Integrity Committee should summarily reject the findings in the Draft ROI on the ground that it would effectively and improperly set new CIGIE policy without CIGIE review and vote, binding the entire IG community. This would be an unwarranted outcome and controversial deviation from CIGIE practice.

B. Key CIGIE Standards and Guidelines Omitted from the Draft ROI

Below are additional CIGIE standards and guidelines that are relevant to this matter, which are not mentioned at all or only in part in the Draft ROI:

Quality Standards for Federal Office of Inspector General, August 2012 ("Silver Book")

The Silver Book mandates that IGs perform their work with integrity. The elements of integrity include not only objectivity, independence, and confidentiality, but professional judgment. See Silver Book at 7, Exh. 42 to Draft ROI. (The Draft ROI fails to consider professional judgment.)

"Professional judgment requires working with competence and diligence. Competence is a combination of education and experience and involves a commitment to learning and professional improvement. . . . . Diligence requires that services be rendered promptly, carefully, and thoroughly, and by observing the applicable professional and ethical standards." Id. at 7-8. (The Draft ROI fails to consider the diligence.)

"The IG and OIG staff must be free both in fact and appearance from personal, external and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence so that opinions, conclusions, judgments and recommendations will be impartial and will be viewed as impartial by ***knowledgeable third parties***. The IG and OIG staff should avoid situations that could lead ***reasonable third parties*** with ***knowledge of the relevant facts and circumstances*** to conclude that the OIG is not able to maintain independence in conducting its work." Quality Standards for Federal Office of Inspector General, August 2012 at 10. (Emphasis added.) (The Draft ROI fails to correctly use this standard, as required, in reaching its findings.)

[14] (b) (6), (b) (7)(C), (b) (5) [redacted]

"Where a situation is not covered by a specific standard set forth in the Ethical Standards or in supplemental agency regulations, the Inspector General and OIG staff shall apply the principles underlying the standards in determining whether their planned or actual conduct is proper. Silver Book at 10." (The Draft ROI fails to consider this.)

"The steps to assessing OIG independence are as follows: a) identify threats to independence; b) evaluate the significance of the threats identified, both individually and in the aggregate; and c***) apply safeguards as necessary to eliminate the threats or reduce them to an acceptable level."*** Silver Book at 12 (emphasis added). (The Draft ROI discounts these steps.)

"Each OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction. OIGs derive much of their credibility to perform their work by demonstrating the ability to efficiently and effectively use and account for public funds." Id at 20. (The Draft ROI fails to consider this.)

C. Background of Internal Investigation

The allegations underlying the Draft ROI involved an investigation conducted by my office into allegations of misconduct by my staff, i.e., the Internal Investigation. The allegation was that the Internal Investigation was a "whitewash," **which the Draft ROI nowhere substantiated**. To the contrary, the evidence shows that we strived to and did conduct an objective and thorough investigation in accordance with the IG Act and CIGIE standards, guidelines and norms. Even so, the Draft ROI contends there were some deficiencies in the Internal Investigation, all of which I disclaim as explained below.

First, however, in order to properly evaluate the information in the Draft ROI, it is important for the Integrity Committee to have an accurate, fair and complete understanding of the Internal Investigation that my office conducted. This Internal Investigation underpins the allegations in this matter. Although the Draft ROI is a lengthy 45 pages, in reaching its conclusions, the Draft ROI fails to accurately portray the Internal Investigation conducted by my office and curiously omits critical facts and context. The Draft ROI fails to clearly articulate my office's decision-making process in its effort to conduct the Internal Investigation in a comprehensive, effective and expeditious manner in accordance with the policy and principles in the Silver Book, as well as my discretionary authority under the IG Act.

In addition, the Draft ROI fails to properly take into consideration our goal to investigate the allegations with minimal disruption to our office morale and productivity during and following the investigation, especially on the heels of a very disruptive and public external investigation by another agency[15]. The Draft ROI also fails to provide the extensive actions we immediately took after receiving the May 16, 2016 complaints. Nowhere does the Draft ROI discuss the mountain of evidence that we collected and analyzed during the investigation, which included interviews of all OI staff (15), record reviews and analysis of thousands of emails, mobile phones, SEC

[15] See Draft ROI at 18, and Digital Transcript of Carl Hoecker Interview, Exh. 38 to the Draft ROI at 56-57 (would have taken at least 30 days to get an outside entity on the case).

Entry and exit swipes, gym access, hiring actions, VPN and internet logs, travel and training records, time and attendance documents and other relevant records. As stated in my June 29, 2017, letter to the IC Chairman, the final report from Counsel addressed approximately 34 allegations (some developed by my staff), was 51 pages long, and included 63 exhibits, which amounts to approximately 1,279 pages. These omissions are inexplicable and result in a one-sided and biased portrayal of the Internal Investigation.

I am hopeful that the following background information, which was omitted in the Draft ROI, will be insightful for the Integrity Committee so that they can present a Final Report that is accurate, balanced, and fair. A more detailed overview of my actions and decision making in the Internal Investigation is provided in Tab A to this Response; the following is a summary.

Situation: In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C) It was necessary to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were based on hearsay, not direct evidence of any misconduct, and, therefore, I determined that we needed to conduct an initial investigation to determine if the allegations had any merit.[16]

Context: In February 2013, I took over as the IG at SEC and I inherited an organization whose morale was destroyed by an outside OIG investigation. There was no effective leadership and employee engagement scores ("FEVS") were at the bottom of the agency.

I rebuilt the OIG by hiring staff and good leaders. Our FEVS scores were at the top of the agency for 2015 and 2016. The SEC OIG now had a very good professional reputation.

In May 2016 when I received the complaints, I needed an effective, efficient inquiry to determine the facts and truth so I could swiftly issue discipline, if warranted, and get the organization back to normal[17]. I assigned the matter to Office of Counsel, in particular (b) (6), (b) (7)(C) , to examine and follow up on the allegations to determine if there was any merit to them. (b) (6), (b) (7)(C) , would assist (b) (6), (b) (7)(C) until he retired within 30 days. (b) (6), (b) (7)(C) were not identified in the complaints as involved parties, nor did they did have impairments to their independence, in reality or in appearance in my view. As such, I reasonably concluded my office, through the GC, with investigative support from (b) (6), (b) (7)(C), could conduct an objective, thorough and efficient

[16] I briefly spoke to two OI staff members about an allegation involving the evidence room to apprise the situation while (b) (6), (b) (7)(C) spoke to the other witnesses. I gave the information to (b) (6), (b) (7)(C) to include in their interview of those witnesses. Each call lasted about ten minutes. I thanked both for their time and informed them that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) will be talking to him about this issue. The information I obtained during this contact was in the Counsel report. The Draft ROI incorrectly states on page 28 that these conversations were not documented in the case file or ROI.

[17] Exh. 38 to Draft ROI at 56-57.

investigation, with less disruption than if I referred it to an outside OIG[18]. Neither (b) (6), (b) (7)(C) nor (b) (6), (b) had a personal or close working relationship that compromised or appeared to compromise the outcome of the investigation.[19] Moreover, (b) (6), (b) (7)(C) was about to retire soon, as all OIG staff were aware, and would have no involvement in the full investigation, or any report or discipline. (b) (6), (b) (7)(C) had announced his retirement in April 2016 at an all hands meeting for OI. My testimony on these facts appear in Exh. 38 to the Draft ROI at 52-56.

Action: To immediately mitigate the situation, we decided to move (b) (6), (b) (7)(C) out of the Office of Investigations. On his first day back from training, which was within six calendar days of receiving the complaints, he physically moved out of the Office of Investigation. Additionally, as the investigation continued on, I sought outside assistance from DOJ OIG should the results of the inquiry merit DOJ attention or should allegations continue to come in, as they had been, which would deplete OIG resources in our small office. Specifically, upon my direction, (b) (6), (b) (7)(C) called DOJ OIG on October 25, 2016, to see if they could assist. My testimony on these facts appears in Exh. 38 to the Draft ROI at 136-153.

Within 30 days of our initial investigation into the allegations to determine if they were unsubstantiated on the one hand or warranted further investigation on the other, it was apparent that the Internal Investigation was not criminal and that it was an administrative matter in nature at best.[20] Thereafter, I decided the inquiry should remain internal with Counsel who was conducting an objective, thorough and efficient investigation. During the course of the Office of Counsel's investigation, despite the Draft ROI's suggestion otherwise, we received and developed additional potentially related administrative allegations from the original complainants and anonymous sources. The final complaint was received in November 2016. My testimony on these facts appears throughout Exh. 38 to the Draft ROI.

Interviews of 15 OIG staff and document analyses were conducted for eight months, from May 17, 2016, to January 2017. As discussed above, the Office of Counsel interviewed every person who was in OI when the investigation commenced in May 2016, reviewed relevant

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[18] As one witness confirmed, "the IG chose to conduct the investigation internally because of SEC OIG's previous experience with an outside agency was not good." Exh. 22 at 2; see also Exh. 37 ((b) (6), (b) (7)(C) discussion regarding postal IG investigation). In addition, the witness advised that before SEC OIG employed federal agents, the attorney's employed by SEC OIG conducted investigations. This supports my testimony that it was not out of the ordinary for an attorney to conduct an investigation of this nature at the SEC. Id.

[19] Exh. 37 ((b) (6), (b) (7)(C) testifies "I believed it was objective even doing so as an attorney, as an inquiry, it was objective.")

[20] See Exh. 37 ((b) (6), (b) (7)(C) stating that cases can start as management inquiry and then be handed off for criminal investigating, that "most of the criminal allegations were on their face, frivolous," and that "just because you initially see this shortage [time and attendance] does not automatically make it criminal").

information, documents and records including, but not limited, to emails, cell phone records, SEC entry and exit swipes, gym access records, hiring action records, time and attendance records, travel and training records and security incident reports.

Outcome Results: I received a 51-page completed counsel report of investigation sufficient to take corrective action. See Exh. 4 to Draft ROI. We were left with a few administrative violations, specifically the appearance of improper relationship and improper comments, as we learned within 30 days that the US Attorney's Office had no interest in the matter.[21] (b) (6), (b) (7)(C), (b) (5) [redacted].

I stand by my decision in handling this matter through an internal investigation upon receipt of the complaints. I acted with the information that I had, strived to have an objective, thorough and timely investigation conducted, which I believe I got, and resolved the matter appropriately. In the end, based on the limited nature of the sustained administrative allegations, I determined that a negotiated settlement was in the best interest of the organization and the U.S. Government as it reflected the seriousness of the offense, imposed appropriate discipline, and was the least destructive to my office.[22] The Silver Book itself requires "[e]ach OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction." Exh. 42 to Draft ROI at 20.

It cannot be genuinely disputed that the Internal Investigation was anything but a fair, objective and thorough investigation.[23] In the event that the IC believes my decision to handle the matter internally was an erroneous one, there would still be no basis to find misconduct or to

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[21] See Memorandum of Interview, Exh. 23 at 2 (witness, in discussing time and attendance abuse allegations against (b) (6), (b) (7)(C) [redacted] and referral to the USAO, stated that it was normal practice that a referral to the USAO was made even when it was apparent that the USAO would likely not accept prosecution of the matter).

[22] That I could have referred the matter to another IG or that another may have taken another approach for their office is not sufficient grounds to find misconduct or to recommend any discipline. Each IG Office is unique, with its own considerations and circumstances, resources and needs. This is the reason why IGs are afforded discretion, or "management intervention," under the IG Act and IG policies and practices to conduct its work. Management discretion or "intervention" is necessary because it is recognized that policies cannot be designed to anticipate and mitigate every risk. Management discretion/intervention, which is a built-in feature of policies, is qualitatively distinct from an "override" of policies for nefarious purposes. The Draft ROI overlooks the discretion of IGs.

[23] I submit that this is why the Investigators did not attempt to substantiate the allegation that our investigation was a whitewash or find that it lacked objectivity. If they thought there was any merit to those claims, I trust they would have sought to substantiate them, given that they were at the heart of the allegations, rather than sidestep those issues altogether.

recommend discipline as I diligently and in good faith undertook and completed what I believed to be an objective and thorough investigation.

D. Draft ROI Inaccuracies and Inflammatory Language

In addition to the serious policy concerns covered above, I have well-founded concerns about the Draft ROI's purported "substantiated" findings to the allegations, as well as inflammatory language that permeates the report.

First, the Draft ROI uses biased language throughout the report that prejudices the reader. It uses the term "substantiated" when confirming a fact even when it found no violation. The term "substantiated" is commonly used when a finding of wrongdoing is established. I recommend that any resulting report from the Draft ROI adopt the wording "confirmed" when establishing a fact where there is no violation of law, rule or policy rather than the prejudicial wording "substantiated."

The Draft ROI also casually characterizes the Internal Investigation as "substandard," see page 20, presumably because it allegedly did not meet all QSI standards, which I contend do not apply. Nonetheless, this wording suggests that the Internal Investigation was inadequate or poor quality, which is belied by the fact that 1) the Draft ROI in no way shows that the Internal Investigation was a "whitewash," nor does it define or explain what the term means; and 2) my office conducted a successful 8-month long investigation that amassed a large amount of evidence and resulted in disciplinary action. It is important to consider that to the extent any IG investigation falls short of any QSI standard, including as assessed during a peer review, it is at risk of being arbitrarily characterized as "substandard," and subject to an IC investigation. The IC should reject this inflammatory label, which is not explained, clearly defined, or informed by a CIGIE standard or guideline.

Second, as explained below, among other things, the Draft ROI misses the mark in numerous key respects in reaching the conclusion that there were violations. As discussed in more detail below and in Tab B to this response, the Draft ROI omits key information and context, contains significant inaccuracies, including misstatements of sworn witness testimonies, relies on speculation and innuendo to my detriment, and takes statements taken out of context.[24] It also understates testimony and other evidence helpful to me. In this manner, the Draft ROI paints an erroneous and negative picture of the Internal Investigation, as well as my independence and credibility, to support its findings of violations. This narrative comes across as pre-determined, given the careless and biased portrayal of the evidence in a manner and tone that are inconsistent with the QSI. Moreover, the alleged violations are grounded in faulty reasoning.

Given that this information and the findings in the Draft ROI are used to call into question my independence and credibility, I would address each piece of evidence, including every witness statement, that is speculative, vague and ambiguous, unsupported by the evidence, insignificant, opinion and so on, in order to further demonstrate why the Draft ROI's findings

[24] I note that the Draft ROI does not discuss whether it considered the credibility of the witnesses.

should be rejected. Given the breadth of problems, this is not practicable. Tab B highlights many (45), but not all, instances violative of the QSI upon which the Draft ROI's findings and conclusions appear to be based. These examples provide a sufficient basis for the IC to reject the Draft ROI's findings as unreliable. For instance, the Draft ROI claims that a conversation between an unidentified individual and (b) (6), (b) (7)(C) was not memorialized. Id. at 28. That is plainly incorrect; the memorialization is found in Exhibit 59 to the SEC OIG Report. Should the IC have any questions about statements that have gone undiscussed, I would welcome the opportunity to address them.

In addition, the Draft ROI fails to make any of the necessary credibility determinations or to even attempt to explain why certain witnesses were more believable than IG Hoecker and other witnesses. The Draft ROI does not reference any biases or motives that may have underpinned testimonies or why some witnesses testified differently in the Internal Investigation interview in 2016 and the interview with ED-OIG in 2017. Nor does the Draft ROI mention the inconsistencies between the statements given by the other witnesses, as well as internal inconsistent statements given by witnesses in different interviews. For these and other reasons, the Draft ROI presents serious issues of reliability. For instance, see the analysis in Tabs B and D.

E. Response to Investigative Findings

Allegation 1, Finding 1.1a (pages 10-20)

I strongly disagree with these allegations and the resulting finding and urge the IC to reject it as unfounded. As discussed below, (b) (6), (b) (7)(C) and I were impartial and independent and free in appearance from impairments to independence.

First, it is important to note that the Draft ROI portrays part of Allegation 1 that the "investigation was a whitewash" yet nowhere in Allegation 1 or its sub-allegations 1.1-1.4 is the term "whitewashed" defined or the question of "whitewash" resolved. The Draft ROI does not attempt to address the allegation of "whitewash." That is because everyone would agree that our investigation was not a whitewash given our extensive 8-months long investigation. Allegation 1 "the investigation was a whitewash" should be answered as unsubstantiated.

The Draft ROI also fails to show that (b) (6), (b) (7)(C) and SEC OIG had impairments to independence. That is because it could not. Instead, the Draft ROI finds fault with the fact that I decided to investigate the matter through my Counsel Office, with short-term support from (b) (6), (b) (7)(C) [redacted], concluding that both (b) (6), (b) (7)(C) and SEC OIG were not free "in appearance" from impairments to independence simply because the "SEC OIG OI staff had a general knowledge of the past and current professional relationships between Hoecker, (b) (6), (b) (7)(C) [redacted]." Id at 15. The Draft ROI refers to the fact that we previously worked together at the U.S. Department of Treasury.

There are three key problems with this conclusion, among others. First, the Draft ROI failed to use the standard mandated by the Silver Book, which requires that impartiality be assessed by an objective standard, i.e., "reasonable third parties with knowledge of the relevant

facts and circumstances." Here, the Draft ROI collects bits and pieces of testimonies (possibly self-serving in many cases) from unnamed OIG staff to weave an inaccurate narrative that there was an appearance issue. It also heavily cites one witness's testimony on pages 14-15, but fails to explain why this witness's testimony should be credited, especially when this witness had not raised any concerns about impartiality during the Internal Investigation to SEC OIG. Assessing impartiality based on OIG staff speculation, as this Draft ROI does, is improper under the Silver Book. The correct test is based on a reasonable third person.

Second, the Draft ROI discounts the fact that the opinions, conclusions, judgments and recommendations were going to be issued by the Office of Counsel under my purview, even though it agrees that the Office of Counsel had no impairments.

Third, under the Draft ROI's logic, whenever an IG investigation is conducted and any of the subjects, witnesses, investigators, deciding officials, counsel have a prior or current working relationship, there would be an appearance of impairment to independence for this reason alone. This could even impact the ability of a supervisor to discipline, award, or take any action with respect to a subordinate or another co-worker. Recusal and referral would be required in all these instances. In addition, staff could easily make appearance claims based on working relationships, requiring an IC investigation.

On the merits, there is nothing in the Draft ROI that supports a finding that (b) (6), (b) (7)(C) and SEC OIG were not impartial or seen as impartial by knowledgeable and reasonable third parties. I have always conducted internal investigations using internal staff; there were two others before this 3rd internal investigation during my tenure. The prior internal investigations were performed objectively, effectively and efficiently and protected the OIG staff from the potentially destructive effects of an external investigation handled by another OIG office, which had previously undercut the morale of the OIG's office before I became the SEC OIG.

In determining how to conduct the Internal Investigation, I believed that knowledgeable and reasonable third parties who were aware of the relevant facts and circumstances would conclude that the OIG conducting the Internal Investigation was free both in fact and appearance from personal, external and organizational impairments to independence.

I tasked (b) (6), (b) (7)(C), who was one of my best investigators, with doing the investigative legwork (conducting interviews, gathering evidence, etc.) for his remaining time in the agency (30 days) for the following reasons:

a) I had known him professionally for years and was confident in his ability to conduct an objective, thorough and efficient investigation;

b) he was one of the best and toughest interviewers internally and, thus, best positioned to get to the truth of the matter; [25]

[25] The Draft ROI mentions that (b) (6), (b) (7)(C) was interviewed by (b) (6), (b) (7)(C) as a fact witness in the Internal Investigation after his retirement. The Draft ROI also spends significant time outlining numerous statements made by one of the complainants (name is redacted in the

c) he had impeccable credentials and was of the highest integrity, not influenced by anything other than the search for the truth;

d) he had a reputation for treating all persons the same; those he has known or worked with for a long time and those he has known for a short time – holding their feet to the fire of even his longest-tenured professional colleagues. (b) (6), (b) (7)(C) did not play favorites;

e) I was not aware (and am still not aware) of (b) (6), (b) (7)(C) having any personal relationships with those involved in the Internal Investigation, other than the typical professional relationships that exists in any office. Nor did I have any personal relationship with those involved in the Internal Investigation[26];

f) because (b) (6), (b) (7)(C) had already announced his planned retirement one month before the first allegation was made, I concluded that this reinforced his objectivity given that the results of the investigation would have no impact on him professionally and he would not have a stake in its outcome;

g) (b) (6), (b) (7)(C) understood the concept of recusal and never invoked it here, although he could have at any time.

Finally, to the extent there were any concerns about impairment, they should have dissipated by my assignment of the Internal Investigation at the outset to the Office of Counsel. See Draft ROI at 17, #8 (witness "thought that it was good that (b) (6), (b) (7)(C) was asked to conduct the investigation with (b) (6), (b) (7)(C) for objectivity purposes.") I purposefully placed the investigation under the auspices and control of the Office of Counsel, specifically with (b) (6), (b) (7)(C), to ensure independence in fact and in appearance in accordance with the Silver Book. (b) (6), (b) (7)(C) office is physically separated from the Office of Investigations and the lawyers, i.e., (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not have daily interactions with the witnesses, subjects and complainants in the Internal Investigation. (b) (6), (b) (7)(C) is outside the Office of Investigations chain of command and directly reports to the IG. See Exh. 38, Digital Transcript of my interview at 13-14. All of these facts and factors were discussed in a meeting that I held with (b) (6), (b) (7)(C)

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report) in his interview to (b) (6), (b) (7)(C) suggesting that there was a perception that (b) (6), (b) (7)(C) impartiality was impaired. As I advised during my interview, I was not aware of some of this information, such as the statements made by a complainant to (b) (6), (b) (7)(C) during their interview, and as I noted to the investigators, witnesses can say many things (hearsay, speculation, etc.), which is why credibility determinations are a must in investigations. Such statements have to be assessed for credibility and motive in view of the evidence. In any case, this information does not alter my position that there was no impairment to independence, either in fact or in appearance.

[26] All of the witnesses who were interviewed confirmed that both (b) (6), (b) (7)(C) and I had a professional working relationship with staff and that neither one of us had a personal or outside relationship with staff, including those investigated.

and (b) (6), (b) (7)(C) at the outset of the Internal Investigation. (b) (6), (b) (7)(C) and I arrived at the decision that conducting the investigation in this manner made the most sense. Even the Draft ROI admits that the investigator "did not find evidence that (b) (6), (b) (7)(C) had personal impairments." Draft ROI at 18.

(b) (6), (b) (7)(C), who is the focus of this finding in the Draft ROI, was assigned to work on the case for only 30 days and only in support of the Office of Counsel.[27] Indeed, as far as I am aware, 15 persons were interviewed by (b) (6), (b) (7)(C) and no one complained about independence issues during (b) (6), (b) (7)(C) involvement in the matter.[28] Further, when (b) (6), (b) (7)(C) arrived, we decided not to include him in (b) (6), (b) (7)(C) investigation in order to maintain his objectivity in case he was the Deciding Official. See Exh. 37 at 14. Only after the case was closed did I learn of anyone raising impartiality as an issue.

Contrary to the statements in the Draft ROI, at no time did (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) suggest or state that they should recuse themselves, nor did we receive any information from OIG staff that there was a recusal issue due to any impairments, actual or in appearance, of independence.[29]

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[27] (b) (6), (b) (7)(C) was not the lead investigator as claimed in the Draft ROI at 13. He conducted most of the material interviews with Counsel and worked under the auspices of Counsel, which was always responsible for the Internal Investigations. See Exh. 38 to Draft ROI, Digital Transcript of my testimony at 13-14; Exh. 37 to Draft ROI at 12-13 ((b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) oversaw the investigation). Major document reviews were conducted by Counsel. That my June 29, 2017, response referred to the investigation as a "joint investigation" is of no moment. See Exh. 40 to Draft ROI. I did not use joint to mean that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were equal; rather it was "joint" in that (b) (6), (b) (7)(C) initially conducted the witness interviews and, therefore, participated in the investigation along with Counsel.

[28] The ROI states that (b) (6), (b) (7)(C) expressed discomfort that he and (b) (6), (b) (7)(C) were conducting the investigation and would also be responsible for advising the proposing and deciding officials during the investigation. (b) (6), (b) (7)(C) did not tell me this; the ROI was the first time I heard of this. This does not impact the validity of the investigation.

[29] The ROI contends that (b) (6), (b) (7)(C) expressed concerns about the investigation being conducted internally. Id at 17. The Draft ROI places undue weight on (b) (6), (b) (7)(C) testimony to support its flawed finding. (b) (6), (b) (7)(C) purported statements were vague and uncertain on this point (perhaps due to the passage of time), as admitted in the ROI, and he testified that the concerns were about being a small IG and resources. On the topic of impartiality, he said he was concerned about appearances but "I don't know that I picked up on it at the time we did the interview" because there were so many other allegations." Exh. 37 (did not state that he actually recommended that the investigation be handled by an outside agency). In any case, whenever a case is handled internally, we consider courses of action, including whether a matter should be referred outside OIG. If (b) (6), (b) (7)(C) had expressed any reservations, he did not communicate to me any significant concerns about handling the matter internally and he certainly did not advise me that there was an impartiality problem or an appearance thereof that dictated our recusal. See

The Draft ROI nonetheless contends there was an appearance of impairments to impartiality because of "(b) (6), (b) (7)(C) longstanding relationship with the subjects of the SEC OIG Investigation, and with (b) (6), (b) (7)(C) in particular," see Draft ROI at 11. The Draft ROI also comments that (b) (6), (b) (7)(C) and I had worked together in the past at the U.S. Department of Treasury, although the evidence shows that I had little interaction, if any, with (b) (6), (b) (7)(C) while I was at Treasury. The Draft ROI focuses its discussion on (b) (6), (b) (7)(C), listing (b) (6), (b) (7)(C) then-current and past working relationship with (b) (6), (b) (7)(C), a single visit by (b) (6), (b) (7)(C) along with an unnamed (redacted) colleague to (b) (6), (b) (7)(C) home right after his wife had a baby to deliver celebratory gifts while he was on leave, (b) (6), (b) (7)(C) trust and reliance on (b) (6), (b) (7)(C) to get work done, and a 2015 email exchange between (b) (6), (b) (7)(C) in which (b) (6), (b) (7)(C) wished (b) (6), (b) (7)(C) a happy birthday and expressed gratitude that (b) (6), (b) (7)(C) was a boss, mentor and good friend. Upon closer scrutiny of these allegations and the circumstances, it is apparent they do not have significant bearing on the issue of impartiality.[30]

The Draft ROI simply links bits and pieces of witness testimonies together in a manner that leaves the reader with the false impression that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were personal friends or were in close relationships that impaired (b) (6), (b) (7)(C) objectivity. When one reads the witness testimonies in their entirety, it becomes apparent that (b) (6), (b) (7)(C) maintained a professional working relationship with (b) (6), (b) (7)(C) (he did not socialize with them) and questioned them aggressively during the Internal Investigation.[31] A review of the file of the Internal Investigation, including the witness statements, plainly demonstrates as much.

The Draft ROI finds an appearance issue based solely on garden-variety professional work relationships. The implications for the IG community and its work are immense.

I address the allegations underpinning this finding in more detail in Tabs A, B and D to this response. There, I explain why they should be discredited or at least found not to have

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Exh. 38, Digital Transcript of my testimony at 36 ("I'm sure if there was a problem, (b) (6), (b) (7)(C) or (b) (6), (b) (7) would have said I have an impairment or something like that).

[30] I was not aware during May 2016 in initiating the investigation of the following: 1) any visit by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) house to deliver a gift for his newborn child; any "keep in touch" communication that (b) (6), (b) (7)(C) had with (b) (6), (b) (7)(C); any flattering email sent by (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) on his birthday. Nonetheless, this information would not have convinced me to change my decision to assign the matter to the Office of General Counsel and have (b) (6), (b) (7)(C) assist for about 30 days, all in the best interest of my office to investigate this matter objectively, thoroughly and expeditiously.

[31] See Exh. 27 ((b) (6), (b) (7)(C) stating that he thought the investigation was conducted objectively, based on how he was treated); Exh. 37 to Draft ROI (in discussing whether there was any favoritism, (b) (6), (b) (7)(C) stated "no, quite the opposite. At time there were conversations where there was extreme displeasure expressed" by those under investigation).

impacted my office's impartiality. For instance, keeping in touch with a professional contact such as networking or having a past and current working relationship does not automatically breach independence or create an appearance issue.[32] A visit to someone's home to drop off a gift exempted by 5 CFR § 2635.304 does not constitute a relationship that would impair [redacted] appearance. Furthermore, the cited visit and exempted gift occurred approximately 10 years ago.

In addition, Tabs A, B, C methodically outline how the Draft ROI leaves out favorable and exculpatory witness statements on the issue of independence. These omissions demonstrate that this Finding 1.1a falls short of the preponderance of the evidence standard. For instance, one witness stated that "they did not have any concerns whether the investigation could be handled objectively because [redacted], was conducting the investigation." Exh. 16 to Draft ROI at 2. Another witness stated that they "never considered whether objectivity would be an issue regarding SEC OIG's investigation of [redacted] and [redacted] and that they would have expected [redacted] and counsel to have conducted an objective investigation into the matter. See Exh. 21 to Draft ROI at 3. [redacted] also saw no objectivity issues, testifying that she did not have any concerns about she and [redacted] conducting the investigation objectively and knew it needed to be conducted outside of SEC OIG's OI. Exh. 34 to Draft ROI at 2. Another witness agreed with these opinions, telling the ED investigators that they "believe[ ] the investigation was conducted above board." Exh. 35 at 2.[33] When viewing the evidence as a whole, it is plain that it does not support a finding that an "appearance of impairment to independence" existed. On page 13, the Draft ROI contends that [redacted] perceived [redacted] relationship as close. A review of her testimony makes clear that in stating that "That's your boy," she was speculating on why [redacted] may have given her preferential treatment and opining that [redacted] went to [redacted] when he wanted to get work done. This in no way equates to being "close," as the Draft ROI states.

Nonetheless, after acknowledging that my Office of Counsel had no impairments, actual or in perception, the Draft ROI attempts to challenge the internal investigation another way. See Draft ROI at 18-19. Specifically, the Draft ROI takes issue with my assignment of the investigation to the Office of Counsel on the ground that counsel was not trained in conducting criminal or administrative investigations.[34] Id. at 18. This has no merit. The Office of Counsel was qualified and competent to conduct the investigation. [redacted] Counsel for

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[32] Nor should it given the prior and current working relationships that abound in the IG community. For instance, if relationships are a sufficient basis to require recusal, one questions whether the IG on this matter could have handled the investigation and whether IGs should be involved in a host of other matters currently and in the future.

[33] The Draft ROI cites to this witness's testimony on this topic but leaves out this key sentence, giving the reader the impression that the witness had some doubt about the objectivity of the investigation. See Draft ROI at 16-17. This is yet another example of the Draft ROI selecting evidence to support what appears to be a foregone conclusion on regarding certain allegations, rather than engaging in a careful analysis of lack of impartiality.

[34] I note that the underlying allegation does not raise this issue.

approximately two years and he has been in the IG Community as counsel for nearly 20 years. (b) (6), (b) (7)(C) is also a very experienced attorney with relevant experience.

Based on my working relationship with (b) (6), (b) (7)(C), I had full faith and trust in his and (b) (6), (b) (7)(C) ability, to complete the investigation and report in an objective and thorough manner. Furthermore, (b) (6), (b) (7)(C) had extensive experience with personnel matters, Merit Service Protection Board proceedings involving federal government employee disciplinary actions, EEO cases, and other employment-HR related proceedings and venues. (b) (6), (b) (7)(C) also had significant relevant experience, which is downplayed and minimized in the Draft ROI. She handled federal personnel actions and litigation at the (b) (6), (b) (7)(C) office, similar to her duties at SEC OIG. Prior to federal employment, she was in private practice as a litigation associate where she conducted internal investigations on behalf of clients. See Exh. 34 to Draft ROI at 1. She told the ED investigators that the interviews were similar to the one they were conducting of her. Id. Both (b) (6), (b) (7)(C) had the necessary experience and ability to conduct an internal investigation into an HR and personnel matter with time and attendance aspects and both testified that they conducted an objective and thorough investigation. Exhs. 34 and 37 to Draft ROI. I agree.

Moreover, (b) (6), (b) (7)(C) testified to the same experience at the (b) (6), (b) (7)(C), i.e., regarding "(b) (6), (b) (7)(C) against IG employees, including 1811s within my office. We handled them both internally within the (b) (6), (b) (7)(C) and we also handled them by retaining the services of other OIGs. So, in my experience, I have personally handled them in multiple ways, depending on the individual involved, the fact pattern." Exh. 36 at 15.

In final, albeit futile, attempts to discredit the Internal Investigation, the Draft ROI calls into question my credibility on page 20, third full paragraph, which I must address. The Draft ROI suggests that I provided conflicting information about why my office contacted the Office of Inspector General of the DOJ, asking for assistance. We contacted DOJ because the investigation was expanding dramatically, with new allegations being lodged by the same complainants as the investigation went on, and we wanted to move quickly to conclude the matter. We hoped DOJ could assist by providing some resources to help out my team. They could not. Regardless, my team worked hard to and did provide a thorough, complete and timely review. There is nothing inconsistent with those set of facts. To suggest otherwise is to ignore the chronology of events.

Furthermore, on page 20 of the Draft ROI, first paragraph, the Draft ROI recites a series of speculative comments by someone at DOJ OIG regarding the objectivity of the Internal Investigation. For instance, it states that this person "**inferred** that there were issues related to objectivity and impairments in SEC OIG's investigation" and that this person also "**reasoned** that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments." (Emphasis added). These statements are nothing more than speculation and have no place in the Draft ROI. As such, they should be disregarded by the IC.

I stand by this decision to conduct the Internal Investigation internally through my Office of Counsel with 30 days of support by (b) (6), (b) (7)(C), the best interviewer I know (fair, objective,

and tough with everyone), before he retired from federal government service. It was based on my professional judgment, my experience, my confidence in my staff to conduct an objective investigation, and the experiences of this office predating my arrival at the SEC. I felt it was the best way to proceed.

Allegation 1, Finding 1.1.b (pages 20-28)

This allegation and Finding 1.1b is without merit as it is not supported by the evidence. The claim that the SEC investigation was substandard because it was not conducted in accordance with any standards such as the SEC OIG Policy is incorrect. The IC should summarily reject the Draft ROI's finding that the Internal Investigation was "substandard" because it was not performed under the QSI.

As I have steadfastly stated throughout this investigation, and as the IG community well knows, the QSI does not apply to internal investigations conducted by functions outside of investigative operations, including those conducted by the Office of Counsel, which has not adopted the QSI, nor should it. The Draft ROI completely discounts my testimony and other evidence on this point, fails to examine applicable CIGIE standards and guidelines, and failed to include any testimony from other IGs in this regard. Instead, the Draft ROI conveniently marches through a checklist of QSI factors that match those listed in the "Memorandum of Investigation" and summarily concludes, in lockstep with the NSF "Memorandum of Investigation," that the Internal Investigation fell short in various areas. It would be improper and unfair to measure the investigation against the QSI and its specific framework, as I discussed above.[35]

ED OIG boldly advises in the Draft ROI "***Absent another standard governing the investigation, ED OIG used the QSI to determine whether the investigation was substandard, as alleged***." Draft ROI at 22 (emphasis added). They concluded that "this method was appropriate" for a few different reasons, i.e., the QSI are supposed to accommodate various types of investigations, the Internal Investigation involved potential time and attendance fraud, and a criminal investigator conducted the majority of the investigation. The Draft ROI ignores or fails to ascertain the proper applicability of the QSI. For the reasons stated above, it is wholly improper to simply apply the QSI to investigations they were not meant to cover. The IC should refuse the Draft ROI's invitation to do so as improper on its face and as a wrongful attempt to create policy outside of normal CIGIE standards, guidelines and norms. Further, the Draft QSI fails to acknowledge that the Internal Investigation was overseen and handled by Counsel.

I address the applicability of the QSI in detail in Tabs B and C and provide a summary here. Nowhere does the Draft ROI state the following relevant information that I provided during my interview, which is concerning. (b) (6), (b) (7)(C), (b) (5) [redacted]

[35] On pages 23-29, the ROI assesses the Internal Investigation against the QSI, which is improper given that the QSI does not apply to the investigations. As such, this analysis should be disregarded. For the reasons discussed above, the Internal Investigation was conducted properly and in accordance with applicable policies and standards.

(b) (6), (b) (7)(C), (b) (5) [redacted].

Contrary to the Draft ROI's contention that my office had no standards in place that applied to the Internal Investigation (regardless of what is was called by my staff, i.e., management inquiry or investigation[36]), as discussed below, the IG Act and IG policies and procedures applied to the investigation, as well as other applicable laws and rules as referenced below. The overarching standard or requirement was to conduct a fair and impartial investigation, which we did. Whether the QSI applied turned on who was leading the investigation (and whether their department had adopted the QSI), not on what it was called.

As noted above, my rationale in placing this investigation under the auspices of the Office of Counsel was driven by the goal of ensuring independence and the perception of independence. The fact that the investigation was not conducted pursuant to QSI was never a concern because 1) I believed and had confidence in my counsel doing the investigation – in part because of (b) (6), (b) (7)(C) extensive and varied experience with employment law and [redacted] experience in private sector investigations; and 2) I believed the standards of professional responsibility within the legal profession were very high and had power to ensure an accurate, objective, and professional assessment. I believe that is what I received from my Office of Counsel.

To second-guess what methodology should be employed in these investigations would be comparable to second-guessing whether an audit should be done pursuant to the blue book and an evaluation/inspection pursuant to the yellow book.

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[36] The Draft ROI and underlying investigation's focus on whether the Internal Investigation was a "management inquiry" or an "investigation" is misguided and places undue weight on the mere label applied to the internal investigation. See Exh. 37 to Draft ROI at (b) (6), (b) (7)(C) discussing inquiry versus investigation and referring to Hoecker states, "he's a former 1811. His vocabulary is investigation. . . . But my understanding was that we were conducting an internal inquiry. I'm not a 1811.") (b) (6), (b) (7)(C) own experience prior to joining the SEC reveals that different agencies use different terminology to describe different types of investigations. In discussing the terminology "inquiry" and "investigation," (b) (6), (b) (7)(C) testified that he conducts preliminary "inquiries," which are "essentially a stage 1 of an investigation," and one that he is planning to convert to a Stage 1 investigation, Stage 2 investigation, and that this was language he was used to from his time at the (b) (6), (b) (7)(C). He further advised that he believes "preliminary inquiry" is a common usage in the IG community for the equivalent of a preliminary investigation or a Stage 1 investigation.

While it might be argued that under certain circumstances, a criminal investigation can only be conducted using QSI, investigations, including those that involve alleged time and attendance matters (technically criminal), are often conducted by counsel and/or individuals who are not criminal investigators without using QSI. In this case, I asked my Counsel if they believed there was any criminal activity based on their initial investigation. They said no. To make sure, I personally asked Counsel to double-check with the U.S. Attorney's Office. They did. The AUSA confirmed their conclusion that this was not something that required or met the threshold of criminal prosecution.[37]

(b) (6), (b) (7)(C), (b) (5) . There is no evidence that the outcome or conclusions would have been any different or the outcome harsher had this been done using QSI standards or reviewed by another OIG. It would be improper to apply the QSI to my office's Internal Investigation here for the reasons given above.

Allegation 1: Finding 1.2 (pages 29-31)

The underlying allegation is without merit. The SEC ROI properly characterized and stated the significance of the evidence. Finding 1.2, which does not address the actual relationship between (b) (6), (b) (7)(C) , suggests, without expressly stating, that the Internal Investigation was not objective or thorough because ED OIG "uncovered" information that was not reported in the SEC ROI and my office did not further investigate certain information (e.g., hotel stays). The term "uncovered" is inflammatory as it suggests that the information was purposely hidden, when it was not, or a lack of thoroughness in conducting the investigation. Although the Draft ROI fails to specify the information that was not included in the SEC ROI, it is apparent that the information was developed by my team, who included that information in the file and/or SEC ROI, and that they had reasonable explanations for why they did not further pursue certain information (while pursuing a host of other information and investigatory leads). All information in the report and file were considered during the issuance of the disciplinary agreement.

This finding is nothing more than second-guessing reasonable investigatory decisions and tactics. We had enough evidence to show appearance of an improper relationship and improper

[37] In trying to support its rationale for employing the QSI, the Draft ROI incorrectly implies that this should have been treated as a full criminal investigation at the outset and that criminal investigations necessarily apply the QSI. See Draft ROI at 20-21. If the SEC Counsel believed there had been criminal activity or the U.S. Attorney's Office indicated that there might be criminal activity warranting potential prosecution, I would have referred the matter out right away. See also Exh. 37 ((b) (6), (b) (7)(C) discusses fact that cases may start off as an internal management investigation and then be referred out if criminal allegations are developed). Internal investigations must have the leeway to obtain basic facts and to determine if there is any merit to allegations of misconduct, including the extent and type of any misconduct, as a threshold matter. It is common for agency officials to use management to conduct administrative investigations, which underscores the discretion.

comments for which we entered into the disciplinary agreement. Some evidence we did not pursue because it was not necessary to do so, resources did not warrant further development in light of the evidence, and so forth.[38] This suggestion is especially offensive, given that the Draft ROI does not refute my position that the Internal Investigation was thorough, effective and impartial.

This is but one of the Draft ROI's failings. Here, it narrowly focuses on investigative procedures and tactics under specific frameworks, such as the QSI, but loses sight of other policies, procedures and directives under which IGs must operate. One such policy ignored by the Draft ROI is the Silver Book's following language: "Efficient and Effective Operations: "OIGs should strive to conduct their operation in the most efficient and effective manner. Each OIG should manage available resources at the least cost to produce the greatest results in terms of public benefit, return on investment, and risk reduction." Silver Book at 20.

This finding also appears to raise concerns about an "overt investigation" being conducted by my office instead of a "covert, active" (i.e., undercover) investigation and seems to take issue with my briefing of the staff that there was an investigation. To put this into context, I used my professional judgment to notify OI staff that I had received an allegation of misconduct. I was not specific as to the type of allegation. As noted in Tab B, my briefing had multiple legitimate purposes. Further, regarding the cover/overt investigation, a covert operation would not have been successful in light of our resources, nor would it have provided results as outlined in Tab B. This was an appropriate judgment call on my part, which the draft report fails to recognize. As presented in the report, it appears that ED OIG is substituting their judgment for mine. As the IG, I am in the best position to exercise judgment for SEC OIG.

Again, our Internal Investigation was objective and thorough and accurately articulated the significance of the evidence, as discussed above, to take corrective action. The investigation spanned eight months, resulted in 15 interviews and a large record, as underscored by [redacted] detailed 51-page Report of Investigation. Note that we looked into the underlying allegations and could not substantiate many of them, for instance, the claim that [redacted] gave [redacted] an expensive birthday present.

It is important to note that the Draft ROI does not -- and cannot -- substantiate the overarching allegation that the investigation was a so-called whitewash, yet it implies as much throughout the report. Contrary to the Draft Report's suggestion that this investigation was a

[38] As [redacted] noted in her testimony, the team may have discussed gathering hotel video but that was outweighed by certain concerns (records, times) balanced against the possible value of any evidence collected. See Exh. 34 to Draft ROI at 3. [redacted] also confirmed that I did not have day-to-day oversight of the Internal Investigation. See id. at 3; see also Exh. 37 to Draft ROI ([redacted] confirmed that I received progress updates but was not involved in the actual investigative steps.) Regarding the discussion around warnings, I would have expected the interviewers to have given any required warnings. In any event, the failure to give any appropriate warnings does not warrant a finding that the Internal Investigation was "substandard."

whitewash, the fact is that all involved took this investigation seriously and did their best to conduct an objective and thorough investigation. As discussed above, the following sequence of key events not included in the Draft ROI demonstrate that: we received the allegations, took immediate action to move (b) (6), (b) (7)(C) to another office, immediately did triage, began the investigation, developed and added further allegations as the investigation progressed, and engaged in a negotiated settlement, which had the benefit of quick closure, no further lengthy litigation, and the ease of escalated discipline for further transgressions.

Allegation 1, Finding 1.3 (page 31)

The allegation and finding are misguided. First, the SEC ROI does not "speculate" in a manner favorable to (b) (6), (b) (7)(C). Rather, in evaluating the evidence, the SEC ROI properly set forth plausible explanations based on that evidence about the subjects' activities in view of their work responsibilities. It ultimately concluded that there was an appearance of an improper relationship. In reaching this finding, the Draft ROI states that "[U]ltimately, however, neither (b) (6), (b) (7)(C) received any proposed disciplinary action." Draft ROI at 31, Finding 1.3, ¶ 2. This is incomplete and leaves the misimpression that no corrective action was issued. (b) (6), (b) (7)(C), (b) (5) [redacted][40]

(b) (6), (b) (7)(C)

[39] The Draft ROI fails to acknowledge that we developed and evaluated evidence on this issue and found that there was no evidence that (b) (6), (b) (7)(C) were missing time for personal reasons or for work-related reasons. As such, we did not believe that the evidence would be supportable in any future proceedings (b) (6), (b) (7)(C), (b) (5) [redacted].

[40] (b) (6), (b) (7)(C) made clear during the investigation underlying the Draft ROI that "I never felt that I was being directed, encouraged, induced or influenced to go easy on (b) (6), (b) (7)(C) I did not witness, I did not participate in any meetings nor witness anything that would cause me to believe there was a concerted effort or a conspiracy or a desire to go light on them. See Exh. 36 to Draft ROI at 81-82.

(b) (6), (b) (7)(C) [redacted]

Allegation 1, Additional Allegations of Misconduct Related to Allegation, not Addressed by SEC OIG (pages 33-25)

The Draft ROI wrongfully suggests that my office should have addressed certain allegations of misconduct. We handled the situations appropriately.

Regarding Additional Allegation 1 and the claim that I apologized for how I handled the matter, I apologized for not being more verbally empathetic and sensitive when she told me what had happened weeks before. It was not for how we handled her matter, which I believed we handled appropriately. As I informed ED OIG, I asked the individual what she wanted to do and she said she did not want us to do anything. I understand that she had told (b) (6), (b) (7)(C) via email that she did not welcome those comments and he did not make any further comments to her. In view of the matter, we believed it would be appropriate to respect her wishes. This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

(b) (6), (b) (7)(C), (b) (5) [redacted]

However, even if I would have had an outside entity conduct the internal on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) I would have still retained the responsibility to consider disciplinary action. The fact that complainants did not raise independence as an issue until after (b) (6), (b) (7)(C) was reassigned to the Office of Investigations, leads me to believe that the complainants would not have been satisfied with any investigative outcome or disciplinary action taken. No OIG staff member asked during the investigative field work that the matter be taken outside of the agency, which I would expect if they had actual concerns about impartiality. As stated above, the Draft ROI on its face does not represent a thorough, careful and impartial investigation.

Allegation 2.1, Finding 2.1 (pages 36-38)

I vehemently disagree with Allegation 2, 2.1 and Finding 2.1.

As an initial and critical point to this discussion, the Draft ROI, in an egregious oversight, fails to discuss, much less acknowledge, the fact that 1) the Integrity Committee had received a

[41] (b) (6), (b) (7)(C), (b) (5) [redacted].

complaint that the Internal Investigation was a whitewash around December 2016, and 2) I had responded to that complaint in February 2017 and offered the entire file of the Internal Investigation to the IC in June 2017.

I have attached a timeline of the following events, along with other significant dates in this matter, as Tab E. In January 2017, I received a letter from the IC with a discussion regarding (b) (6), (b) (7)(C) (unrelated to the Internal Investigation) and requesting a response to a new allegation IC (b) (6), (b) (7)(C) which claimed that I "failed to ensure than an appropriate and objective investigation into the complaints took place in a timely fashion. Rather [I] assigned an individual to investigate the complaints who had a close and longstanding relationship with the subjects. . . . The manager conducting the investigation then retired." See Exh. 3.a, which is a copy of the IC letter dated December 23, 2016. I responded to the allegation in a letter dated February 2, 2017, providing background about the investigation and stating that I believed advising that the Internal Investigation was objective and that it was still pending. See Exh. 3.b, which is a copy of my February 2, 2017, letter to the Integrity Committee. In a letter dated May 30, 2017, the IC advised that additional complaints were made in (b) (6), (b) (7)(C), which added that I had or was conducting a "phony investigation" and "are engaging in a cover-up to protect your senior managers." The IC asked me to keep them apprised of the status of the investigation, including the outcome, any potential action taken as a result of the findings, and a copy of the report of the investigation. See IC Letter to Hoecker, dated May 30, 2017 (IC #890 Request for Information), Exh. 3.d.

On June 29, 2017, I responded to the Integrity Committee's May 30, 2017 letter regarding the allegations that I "**failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion**" and that I was engaged in a cover-up. In the response, I provided the Integrity Committee with a redacted copy of the internal investigation conducted by my Counsel. Further to expeditiously clarify the issue and be transparent, in my **June 29, 2017**, letter, I expressly offered the Integrity Committee the opportunity to review the unredacted report and all exhibits to resolve the complaint. See Exh 3.e. The Integrity Committee did not review the unredacted report or the exhibits at that time.

Separately, in approximately late June 2017, the NSF IG contacted me and insisted on reviewing the Internal Investigation as part of its peer review, apparently due to similar complaints it had received about the investigation being a whitewash, (b) (6), (b) (7)(C) [redacted]. In the NSF IG's **September 14, 2017**, letter to the IC, IG Lerner expresses concerns about "the lengths" to which I and my senior staff went to keep the Internal Investigation out of the peer review and speculates throughout that " '[t]hese efforts seem to stem from their desire to avoid any external review of the internal investigation," and "[t]heir reluctance to allow us to verify the information (b) (6), (b) (7)(C) [redacted] – suggests that they do not believe that the investigation could withstand scrutiny." These speculations are plainly refuted by the record, which shows that I have been transparent about the Internal Investigation, which my entire staff knew about, the IC knew about, and various persons at other agencies knew about (DOJ OIG and Counsel and

(b) (6), (b) (7)(C)). See Exhs. 37 and 38 to Draft ROI and Tab E (timeline of events). It was also reported in the SEC OIG Semiannual Report to Congress, October 1, 2016-March 31, 2017, at page 23. In speculating throughout her letter and ascribing ill intent to my office, IG Lerner appears not to have been aware that I had been providing responses to the Integrity Committee about allegations that the Internal Investigation was a "whitewash" and offered the full investigative file to them. Her letter has led to false and damaging allegations that my team and I tried to obstruct the peer review to keep the Internal Investigation from being scrutinized.

Even though the Draft ROI does not make an express finding of misconduct, this allegation and Finding 2.1 connote wrongdoing, i.e., that my staff and I were trying to hide something. This is belied by the record, which the Draft ROI fails to appropriately consider in assessing this allegation.

Finding 2.1 that the SEC OIG offered "shifting" justifications is inaccurate. The implicit suggestion in the word "shifting" is that these reasons were specious at best and fabricated at worst is factually incorrect. The Draft ROI fails to mention, let alone address, my position as set forth in documentary evidence and my interview. In reality, I provided multiple reasons why the Internal Investigation was not subject to peer review. All were applicable and not mutually exclusive. In addition, (b) (6), (b) (7)(C) advised that he was unaware of the peer review. See Exh. 37 to Draft ROI. This finding, which is an insidious attack on my credibility, is significant because the Draft ROI seeks to use it to summarily discount my position, while omitting exculpatory information. Further, this finding is particularly troubling because it is inconsistent with information set forth in Finding 2.4 of the Draft ROI, specifically that "NSF OIG ultimately determined that the investigation would not have been selected for review since it did not fall within the scope of the peer review." Draft ROI at 39, last paragraph. The implicit attack on my credibility is unwarranted and not supported by the record.

It is correct that my office did not include the Internal Investigation in the peer review conducted by NSF OIG during the week of May 22, 2017. However, there were no "shifting" reasons as for why my office did not believe the investigation was subject to peer review. Rather, there were multiple, valid justifications for not including it, which I articulated to the NSF OIG.[42] The Draft ROI's characterization of the reasons as "shifting" implies that my office refrained from including the Internal Investigation in the peer review under pretext. This attack on me and my Counsel's credibility is unwarranted and not supported by the evidence. I had reasonable articulable bases to support my position and the NSF OIG ended up agreeing that the investigation was not appropriate for the peer review as it was outside the peer review time frame. It was within my discretion to determine which investigations were included in the peer review. I also understandably sought to preserve any applicable attorney-related privileges and protections over an investigation (e.g., attorney work product doctrine, attorney-client privilege). (b) (6), (b) (7)(C), (b) (5) .

[42] See Exh. 8, which consists of various email strings over the course of the NSF peer review that discuss among other things, dispute resolution and the scope of peer review.

Given the genuine disagreement between my office and the NSF's OIG office, the appropriate course of action would have been for the NSF's OIG to enlist help from the investigations committee, which I head, and seek a resolution there. This procedure is not acknowledged in the Draft ROI. I would have recused myself and the vice-chair would have stood in my stead. I suggested this to the NSF's IG in June 2017 and she declined. The investigative peer review resolution process that I described above is clearly articulated in the Quality Assessment Review Guide.

(b) (6), (b) (7)(C), (b) (5) [redacted]

In short, The NSF OIG and I had a genuine dispute regarding whether internal investigations of staff conducted outside the auspices of investigative operations are included peer reviews during her pending peer review of my office. I sought to resolve the matter through the available process. At the same time, the IC was well aware of the Internal Investigation, had the SEC OIG report, and could have reviewed the entire file any time. It is absurd to claim that my office obstructed the peer review process to avoid the Internal Investigation from being scrutinized given these facts.

It is apparent that the Draft ROI does not go so far as to find any violations with respect to this allegation and Finding 2.1 because there was no basis to do so. That said, this finding and the negative implication therein should be rejected.

I would be remiss not to discuss what appears to be a serious and explicable departure from CIGIE standards, guidelines and norms l that I did not become aware of until the middle of my first interview with ED OIG. This transgression raises serious questions about transparency, objectivity/fairness, due process and protocol, and whether this investigation has been tainted. This entire investigation should be closed for this reason alone.

The following timeline of events sheds a light on this issue:

- May 26, 2017: Peer Review exit conference with NSF OIG via telephone. NSF completed review of a sample of 20 case files which resulted in a pass.

- June 29-30, 2017: NSF requested access to the Internal Investigation for review base on a complaint they received. I did not provide it for the reasons discussed above, including the fact that it was outside the peer review time frame, which was later confirmed by NSF OIG on October 25, 2017. NSF claims it cannot complete peer review due to our disagreement.

- August 29, 2017: I request and am granted an extension for the peer review completion from Vice Chair of the Investigations Committee.

- September 14, 2017: NSF IG submits a letter to IC, in which she disagrees with my position that the Internal Investigation should not be peer reviewed. The letter, which I had not seen until my interview in **June 2018** in this case, is accusatory. This letter was outside CIGIE standards and guidelines. It lacked transparency and open discussion as required during a peer review as articulated in the peer review guide.

- September 28, 2017: I email the Vice Chair of the Investigations Committee requesting assistance with the dispute with IG Lerner.

- October 16, 2017: I email NSF IG, telling her I will make the Internal Investigation available for her review, otherwise, my peer review was not going to be completed.

- October 25, 2017: NSF OIG reviews Internal Investigation (for 2 hours)

- October 26, 2017, NSF OIG issues a Memorandum of Investigation for Case Number (b) (6), (b) (7)(C), titled "Review of SEC OIG Case (b) (6), (b) (7)(C)." **I was not aware of this until 8 months later during my interview as a subject in this case**. The "Memorandum of Investigation" states that the NSF reviewed SEC OIG case File (b) (6), (b) (7)(C) the Internal Investigation, on October 25, 2016, (b) (6), (b) (7)(C)
[redacted]
(b) (6), (b) (7)(C), (b) (5)
[redacted]

- November 13, 2017: I received a peer review report and letter of observations from IG Lerner, with the results of the peer review. (b) (6), (b) (7)(C), (b) (5)
[redacted]

(b) (6), (b) (7)(C), (b) (5) [redacted]

- November 15, 2017: I sent a letter to IG Lerner, NSG OIG, thanking her for the peer review, unaware of the September 14, 2017 side letter and Memorandum of Investigation.

- November 15, 2017: IC notifies me of Allegation 2.

- December 4, 2017: NSF IG Lerner sends letter to Chairman Dahl, apprising him of additional developments since her September 14, 2017, letter, i.e., that I had provided the file to her team (b) (6), (b) (7)(C) [redacted] (b) (6), (b) (7)(C) [redacted].

[43] (b) (6), (b) (7)(C), (b) (5) [redacted].

[44] (b) (6), (b) (7)(C), (b) (5) [redacted].

- June 13, 2018: The ED Investigators confronted me with the above Memorandum of Investigation (MOI) during my interview. I was very surprised, as this was the first time I had seen the MOI. MOIs are used during investigations, not peer reviews (which use checklists). I was not given a copy of the document during my interview.

The NSF IG September 14, 2017, letter and the October 26, 2017, NSF IG Memorandum of Investigation are very troublesome. These documents indicate that the NSF IG undertook some sort of investigation, either on its own initiative or at some unspecified person's direction, while conducting the peer review. This is highly inappropriate and outside of protocol. If the NSF had concerns, they should either have shared them with me during the peer review or, after recusing itself from the peer review, provided them to the Integrity Committee, which could have formally opened an investigation to review our Internal Investigation. These actions by the NSF have infected this Integrity Committee investigation. The Draft ROI's findings look suspiciously similar and, in some instances, they mirror the notes in the October 26, 2017, Memorandum of Investigation, which also assessed, in a very cursory way, the Internal Investigation against QSI. Both share many of the same findings and both assessed the Internal Investigation using the QSI. It appears that the investigators here did not independently and objectively evaluate the evidence. Instead, because the NSF Memorandum of Investigation used the QSI, the Draft ROI used the QSI. Because the NSF stated that "(b) (6), (b) (7)(C) involvement in the investigation raises concerns about his independence," the Draft ROI finds that there is an appearance of lack of impartiality without critical analysis. I urge the IC to compare the allegations and findings in this Draft ROI against these NSF IG documents.

(b) (6), (b) (7)(C)

[redacted]

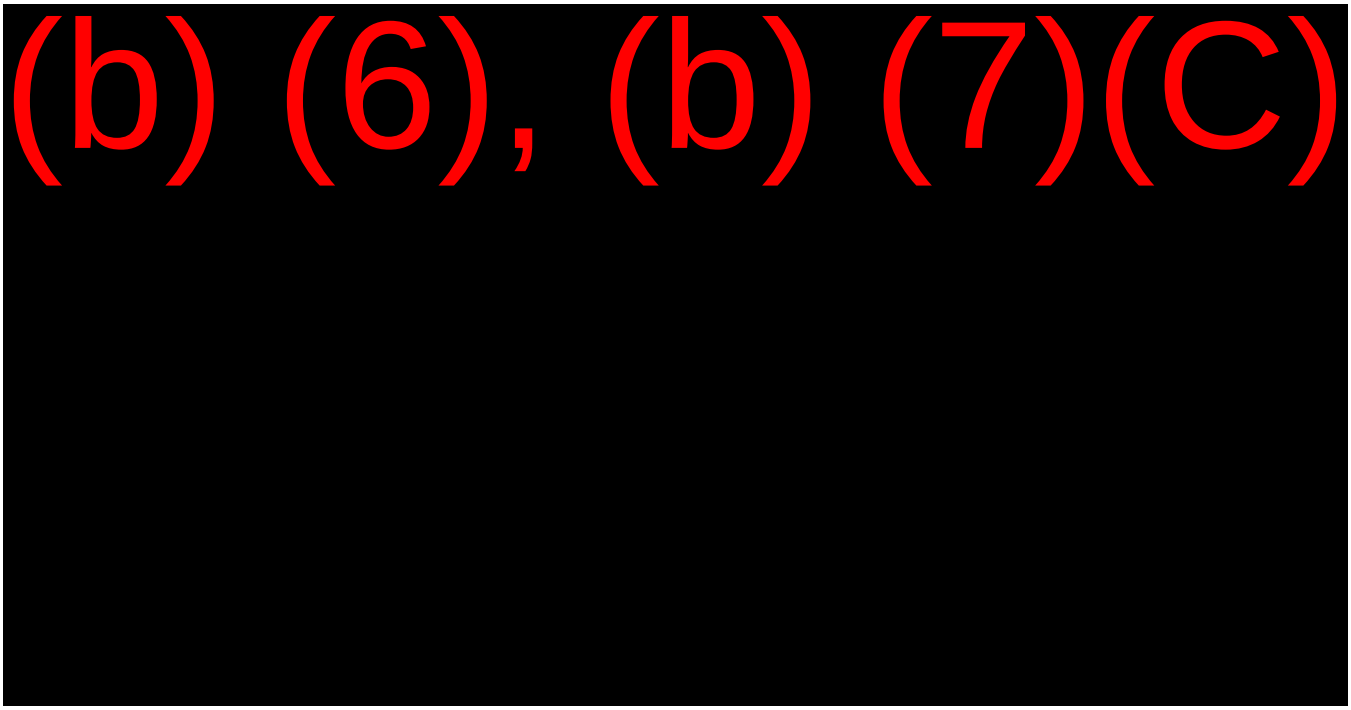
.

(b) (6), (b) (7)(C)

Allegation 2.3, Finding 2.3 (pages 38-39)

This finding does not expressly contend that there was any violation or wrongdoing although it suggests as much, nor does it explain why (b) (6), (b) (7)(C) called the Internal Investigation an inquiry. The allegation, coupled with the finding, a) implies that my staff and I used different labels to describe the Internal Investigation as a pretext to avoid peer review, and b) implies that my agreement to include the Internal Investigation was an admission of some sort, i.e., that my office offered pretextual reasons for excluding the Internal Investigation from peer review when we knew it should have been included, which I strongly dispute. Any such

implications should be dismissed as unfounded and improper given the evidence. That I referred to the Internal Investigation as an investigation and (b) (6), (b) (7)(C) referred to it as an inquiry had no substantive impact on the Internal Investigation, including whether or not it was included in the peer review. As I explained to NSF OIG and CIGIE, internal investigations conducted outside investigative operations, whether called an investigation or inquiry, conducted by the OIG GC were not subject to peer review. The key factor is who was responsible for the investigation, not what is was labeled. Further, see Tab B, page 2, to this response, which explains the reason why we placed this matter in the "Investigations" section rather than create a new section for internal or counsel investigations. This was a judgment call on my part, which the Draft ROI fails to appreciate. This allegation is unsubstantiated and should be dismissed.



V. Conclusion and Requested Relief

The conclusions and findings in the Draft ROI are antithetical to an IG's statutory independence. Adopting the Draft ROI's findings of violations would be contrary to the IG Act and CIGIE standards and guidelines and result in wide-reaching and unintended consequences across the IG community. Further, the Draft ROI is not credible as it appears to have stemmed from the NSF IG September 14, 2017, letter and Memorandum of Investigation that influenced the findings. Even if that had not been the case, the Draft ROI has failed to establish the facts of alleged wrongdoing by a preponderance of the evidence and those facts fail to provide a reasonable basis to conclude that I engaged in the alleged violations. As such, the allegations and purported violations should be dismissed as unsubstantiated and this investigation closed, with

an appropriate exonerating report from CIGIE. See Integrity Committee Policies and Procedures 2018 at 10.C.i.[45]

I submit that should CIGIE believe that the investigations similar to those referenced in this section that may forego peer review should instead be included in peer review, CIGIE has the option to change its policies and procedures to reflect this. Further, if CIGIE believes that OIGs should not conduct internal investigations of its OIG staff any time there is evidence of prior or current work history among staff or that QSI should apply to internal investigations, it can expressly specify this in its policies and procedures. Any changes to CIGIE policy or narrowing of an IG's discretion should not take place by way of a Draft ROI that has far reaching implications across the IG community.

Should the IC believe any recommendations are necessary, I suggest that they should be in the nature of recommendations to improve or clarify the peer review process and recommendations regarding the scope and applicability of the QSI, which is within the scope of its authority. See Integrity Committee Policies and Procedures 2018 at 10.C.ii.

In short, I have fully cooperated with the investigation and provided truthful, accurate, and complete information in this matter, as evidenced by my written statements and interview. [46]

I respectfully request that the Integrity Committee conclude that a) I did not engage in any violations or fall below applicable standards in my handling of the Internal Investigation, and b) that I did not engage in any violations by taking the position that the Internal Investigation was not subject to CIGIE peer review.

I look forward to your careful consideration of the allegations and findings in the Draft ROI and the due process required under the Integrity Committee's procedures.

---

[45] Even if the evidence is "equipoise," i.e., equally worthy of belief, the ROI still has failed to meet its burden.

[46] I recognize that the ROI disagrees with some of my team's investigatory processes and tactics and that some IC members may have approached the investigation differently. These differences in opinion are common and do not constitute misconduct.

If you have any questions about this response or require more information, please do not hesitate my counsel, Chun T. Wright, at (b) (6), (b) (7)(C) .

Sincerely,

(b) (6)

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission

Cc: Chun T. Wright, Esq.

Encls.: Tabs A-E
Exhibits 1-8

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

March 5, 2019

By Email and Overnight Delivery

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington, DC 20006

Re: Addendum to Draft Report of Investigation
Ref: Request IC890 and IC909, I18EAS0038

Dear Integrity Committee:

I am writing in response ("**Response**") to the United States Department of Education Office of Inspector General (**OIG**") Addendum to the Draft Report of Investigation in Request IC890 and IC909 (**"Addendum to Draft ROI")**.[1]

I. Procedural Background

A. On February 1, 2019, I received the Addendum to Draft ROI from the Integrity Committee. I was interviewed in advance of the Addendum on December 6, 2018, after being notified on November 16, 2019, through my counsel Chun T. Wright, that the ED OIG expanded the scope of its investigation to include an additional allegation, as described below.

II. Response to Addendum to Draft ROI

I informed (b) (6), (b) (7)(C) regarding the contact underlying the allegations, as discussed below, and the reason for it. I respectfully submit that there was no wrongdoing, as I only contacted this individual to ensure that there were no unresolved workplace issues that I needed to address. The allegations and my detailed response are as follows:

Allegation: On or about October 10, 2018, IG Hoecker, SEC OIG, engaged in wrongdoing. This allegation arose out of information provided in an email, received by the IC on October 1 2, 2018, containing information that, on October 10, 2018, Hoecker contacted [redacted] SEC OIG, and questioned [redacted] regarding information [redacted] provided to ED OIG during the IC investigation.

[1] This Response was prepared with the advice of counsel from Chun T. Wright.

Finding: ED OIG substantiated that Hoecker contacted [redacted] on October 10, 2018, regarding statements attributed to [redacted] in the draft ROI. Hoecker stated he did not contact any other witnesses about the IC investigations or their interviews.

General Response:

In the afternoon and into the evening of October 10, 2017, when I reviewed pages 33-34 of the Draft ROI IC890 and IC909, dated August 21, 2018, I noted that an unnamed person claimed:

> On or around **July 1, 2016** [unnamed person] met with (b) (6), (b) (7)(C) and Hoecker separately and informed them that on more than one occasion (b) (6), (b) (7)(C) had made comments to her regarding how she looked and dressed that made her uncomfortable. **In 2014, she had shared information with (b) (6), (b) (7)(C) regarding other comments (b) (6), (b) (7)(C) made to her that made her uncomfortable.** (b) (6), (b) (7)(C) did not follow up with [unnamed person] nor did [unnamed person] go back to (b) (6), (b) (7)(C) According to [unnamed person] in the **third quarter of 2017**, she told Hoecker that she did not think that the incidents with (b) (6), (b) (7)(C) and her reporting of them was handled well. [Unnamed person] recalled that Hoecker acknowledged [unnamed person] position and apologized for how he handled the matter (Exhibit 31) . When asked about [unnamed person] claims during his interview, Hoecker stated that, "I said, what do you want to do? And she didn't want to do anything. I believe it was after the, I think there's a time period involved where you have to report these things, and I think that had expired " (Exhibit 38, Tr. 98) Regarding his alleged apology to [unnamed person] Hoecker stated, "I don't know how the OIG handled these remarks. I may have apologized that it had happened to her. But the handling of it, I, I don 't think we actually handled it because it was reported after a certain time." Exhibit 38 to at Tr. 99 (emphasis added).

Summary of phone call:

My memory was that (b) (6), (b) (7)(C) was a person who talked to me about (b) (6), (b) (7)(C) comments to her fitting the above passage. After thinking about the way the draft ROI presented the information, I was concerned as a leader that (b) (6), (b) (7)(C) still was receiving unwelcome remarks from (b) (6), (b) (7)(C) and/or perhaps she had a diminished trust of me. I had no concern that she (or any other witnesses for that matter) had spoken to ED OIG during the Integrity Committee investigation or with her testimony. By making this phone call, I had no intention of intimidating, threatening, or retaliating against (b) (6), (b) (7)(C). (In fact, in November 2018, I rated (b) (6), (b) (7)(C) performance at the top of the scale.) I work with (b) (6), (b) (7)(C) and wanted to ensure that there were no outstanding issues that I needed to address (and to address any that did exist). I decided to call her in the late afternoon or early evening of October 10, 2018, on her personal cell as is customary. I also occasionally call her and (b) (6), (b) (7)(C) at this time to catch up on issues of the day or to learn about emerging issues.

When she answered the phone, I asked her if she would talk to me about the information in the draft ROI. She agreed. I told her that way I read the draft ROI, it appeared that when she met with me in July 2016 that she may have been making a complaint and if so, she might have expected me to take requisite action. I was also concerned about the way the draft ROI

characterized my apology to her as it seemed to suggest that I had been made aware of a complaint against [redacted] but did not address it.

What I took away from our conversation is that she made no complaint to me in July 2016, just as I recalled. If she had made a complaint (and I had misunderstood any request for action), I would have addressed it now. Further, she told me that I apologized during her subsequent quarterly performance conversation, probably a month later. This apology was for the way I handled our conversation in July 2016 for not being as empathetic as I felt I could have been. After reflecting on my interaction with her in July 2016 in preparation for her performance conversation, I thought I could have shown more empathy and I apologized for that. I also wanted to make sure that our July 2016 conversation did not adversely affect her trust in me [redacted].

The following workday I proactively informed my counsel what I had done and the reason for the phone call. The Addendum to the Draft ROI does not articulate any violations and I respectfully submit that there were none.

If you have any questions about this response or require more information, please do not hesitate my counsel, Chun T. Wright, at [redacted].

Sincerely,

[redacted]

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission

Cc: Chun T. Wright, Esq.

TAB A

TAB A

Additional Background Information re Internal Investigation

In February 2013, when I took over as the IG at SEC, I inherited an organization whose spirit and morale were broken in the aftermath of an outside OIG investigation of IG SEC staff and the abrupt departure of the IG and the Deputy IG. There was no effective leadership, and employee engagement scores ("FEVS") were at the bottom of the agency. The SEC viewed the OIG as not competent and, instead, bent on embarrassing the agency without cause.

I helped rebuild the OIG by hiring staff and good leaders. Our FEVS scores moved to the top the top of the agency for 2015 and 2016, as did our professional reputation.

During May 2016, the SEC OIG had a total of 51 full time employees (FTE). The OIG Office of Investigations consisted of 18 people. The Office of Investigations was led by an (b) (6), (b) (7)(C) AIGI with three (b) (6), (b) (7)(C) SACs. There was one administrative assistant, two investigative analysts, one IT specialist, one administrative investigator, and 9 criminal investigators.

As the SEC IG, I have used internal staff to conduct objective *internal* OIG inquiries and investigations of allegations against OIG employees without issue. More specifically, prior to the (b) (6), (b) (7)(C) matter that resulted in the Internal Investigation, I had two other instances in which I used internal staff for this purpose. Both internal investigations were executed effectively, efficiently, and fairly.

In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C). I had to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were from non-direct witnesses and did not provide corroborating evidence nor details of personal knowledge of the alleged wrongdoing.

There were no prior conduct issues with (b) (6), (b) (7)(C). In fact, they had the reputation of being (b) (6), (b) (7)(C) able to get things done, particularly new initiatives and special projects. Prior to the two complaints, I had no reason to believe there were any issues with their professional and personal conduct.

Upon receipt of the allegations, I wanted an effective, efficient inquiry to determine the facts and truth so that I could make a proper disposition while minimizing any disruption to our office. I assigned the matter to the Office of Counsel, in particular (b) (6), (b) (7)(C), and asked my outgoing (b) (6), (b) (7)(C) to assist (b) (6), (b) (7)(C) until he retired, within 30 days. Everyone in OIG knew (b) (6), (b) (7)(C) was departing. He had announced it in April 2016. Since he was departing, (b) (6), (b) (7)(C) had no interest or stake in the outcome of the investigation other than to assist Counsel in obtaining the facts. Neither (b) (6), (b) were identified in the complaints and (b) (6), (b) (7)(C) was retiring in 30 days. Nor did they have an independence impairment, whether actual or in appearance.

As far as I knew at the time and even today, (b) (6), (b) (7)(C) did not have any personal relationships with (b) (6), (b) (7)(C), other than, at most, the typical professional relationships that exist in any office. There had been no previous complaints about (b) (6), (b) (7)(C) independence or objectivity. They did not recuse themselves from the investigation (nor did they ask) as they certainly could have done. In fact, a review of

their interviews of (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) were aggressive in their search for the truth.

When the investigation began, I promptly tried to defuse the situation by moving [redacted] out of the Office of Investigations. I did so on Monday, May 23, 2016, within six calendar days of receiving the complaints. This date was (b) (6), (b) (7)(C) first day back to the office following training/leave. Within 30 days of starting the investigation and based on the evidence that had been gathered to date, we concluded that this matter was not criminal, but rather administrative in nature—at best. Upon (b) (6), (b) (7)(C) advisement that the case was not criminal, in an abundance of caution and to reinforce that (b) (6), (b) (7)(C) were not being given any preferential treatment, we sought an USAO decision. It was declined. At this point, had this matter involved agency employees, the most I would have done would be to refer it to agency management for action.

Given that the matter was administrative in nature, that I had prior success with conducting *internal* OIG inquiries, and given the morale-deflating experience from a previously conducted *outside* OIG investigation, I decided the inquiry should remain internal with Counsel who I believed could conduct an objective investigation.

During the course of Counsel's investigation, we identified and developed, on our own, additional, potentially related administrative allegations from the original complainants and anonymous sources. The final complaint related to this matter was made in November 2016; allegations continued to come in as we investigated the matter. Planning ahead, I took further steps to seek outside assistance from DOJ OIG in the event the results of the Internal Investigation merited DOJ action or taxed our internal resources through the continuing allegations. Ultimately, DOJ OIG was not able to assist, but my Counsel was able to properly and professionally complete the investigation.

On January 19, 2017, I received a completed Counsel report of investigation which resulted in corrective action. Each page of that report was marked "Attorney Work Product." [redacted] was the action official. We were left with a few administrative violations: an appearance of improper relationship and making improper comments on the part of (b) (6), (b) (7)(C). (b) (6), (b) (7)(C), (b) (5) [redacted]

I stand by my decision to internally investigate the allegations against the OIG staff when the complaints were received. It was based on my professional judgment; my experience in leadership and the investigative process; and the experiences of this office where another OIG conducted an investigation that predated my arrival at the SEC. It was the best way to proceed and was consistent with the discretion provided by the IG Act and the Silver Book.

TAB B

TAB B
Draft ROI Does Not Adhere to QSI

This document depicts some of the inaccurate, incomplete, and mischaracterized facts, which do not adhere to the Quality Standards for Investigations (QSI), that are contained in the Draft Report of Investigation Integrity Committee IC 890 and 909, dated August 21, 2018 (Draft ROI).

Standards Applicable to the Draft ROI

QSI Page 8, DUE PROFESSIONAL CARE

Due professional care must be used in conducting investigations and in preparing related reports.

Guidelines:
Thoroughness—All investigations must be conducted in a diligent and complete manner, and reasonable steps should be taken to ensure that pertinent issues are sufficiently resolved
Impartiality—All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts.
Objectivity—Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or to resolve an issue. This includes inculpatory and exculpatory information.

QSI Page 11, EXECUTING INVESTIGATIONS

Investigations must be conducted in a timely, efficient, thorough, and objective manner. The investigator is a fact-gatherer and should not allow conjecture, unsubstantiated opinion, bias, or personal observations or conclusions to affect work assignments. He or she also has a duty to be receptive to evidence that is exculpatory, as well as incriminating.

QSI Page 13, REPORTING

Reports (oral and written) must thoroughly address all relevant aspects of the investigation and be accurate, clear, complete, concise, logically organized, timely, and objective.

QSI Page 14, REPORTING

Guidelines
2. The principles of good Draft ROI writing should be followed. A quality Draft ROI will be
logically organized, accurate, complete, concise, impartial, and clear and should be issued in a timely manner.
3. Reports should contain exculpatory evidence and relevant mitigating information when discovered during any administrative investigation.

TAB B
Draft ROI Does Not Adhere to QSI

The Draft ROI Executive Summary section is located on pages 1-5. I have briefly addressed my concerns for that section below. Following that, I bring a more detailed list of concerns applicable to the Background and Investigative Findings sections, which are pages 6-52 of the Draft ROI.

Executive Summary

Page 1-3, Biased Investigation and Reporting

The draft Report states:

> Allegation 1. The investigation was a whitewash: Inspector General Carl Hoecker (Hoecker), SEC OIG, caused and (b) (6), (b) (7)(C), SEC OIG, conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) SEC OIG, and (b) (6), (b) (7)(C) SEC OIG, that understated the significance of the evidence and seriousness of the misconduct.
>
> Allegation 1.1. Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew.
>
> Finding 1.1.a. ED OIG substantiated that Hoecker assigned the investigation to (b) (6), (b) (7)(C) and to OIG Counsel, although (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence.

IG Hoecker's Summary Response to 1.1.a: The term "whitewash" was not addressed by the Draft ROI. Further, the independence of (b) (6), (b) (7)(C) and the SEC was not impaired. Finding 1.1.a should be unsubstantiated. For further details see pages 10-27 of the Response.

The draft Report states:

> Finding 1.1b. ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Policy.

IG Hoecker's Summary Response to 1.1.b: The QSI apply to investigations conducted under the investigative operations (under the auspices of the AIGI) unless specifically

adopted by a function outside of investigative operations. (b) (6), (b) (7)(C), (b) (5) [redacted]. The SEC investigation was conducted by Office of Counsel who had not adopted the QSI. SEC OIG policy was not violated. Finding 1.1.b should be unsubstantiated. For further details see page 22-24 of the Response.

The draft Report states:

> Allegation 1.2. The Draft ROI stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative circumstantial evidence of a sexual relationship. The Draft ROI appeared to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of: [bulleted items a-f]
>
> Finding 1.2. Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C), ED OIG could not substantiate whether the Draft ROI of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

IG Hoecker's Summary Response 1.2: First, a sexual relationship between employees is not prohibited by SEC policy. Therefore, to prove a sexual relationship using any type of evidence would not be proper. In fact, pursuing investigative leads to prove something that is not a violation could be considered harassment or violation of privacy. Second, pursuing investigative leads are a matter of professional judgment. Third, we had sufficient evidence to take action on the related conduct and decided not to pursue leads that would not produce additional violations. (b) (6), (b) (7)(C), (b) (5) [redacted]. Finding 1.2. should be unsubstantiated. For further details see pages 24-26 of the Response.

The draft Report states:

> Allegation 1.3. The SEC OIG report 's author speculated in a manner favorable to (b) (6), (b) (7)(C), who could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].
>
> Finding 1.3. ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office was spent on official

activities. (b) (6), (b) (7)(C), (b) (5) [redacted].

IG Hoecker's Summary Response to 1.3: The Draft ROI omits a key fact. (b) (6), (b) (7)(C), (b) (5) [redacted] Further, we could not substantiate whether (b) (6), (b) (7)(C) [redacted] were out of the office working or not working. Based on their high level of individual performance results, we determined they were working. Finding 1.3. should be unsubstantiated. For further details see page26 of the Response.

(b) (6), (b) (7)(C) [redacted]

Page 4, Allegation and Finding 2, Biased Investigation and Reporting, Omitting Exculpatory Information

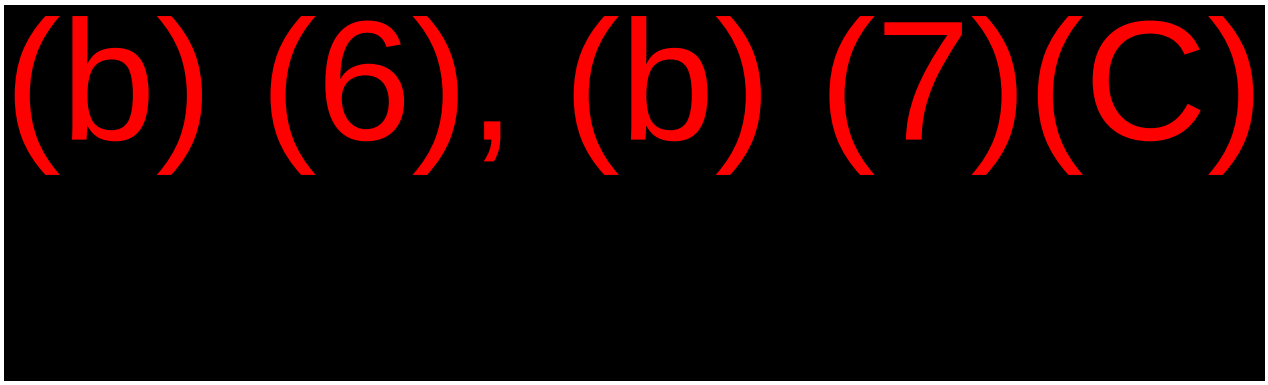
The draft Report states:

> The respondents (identified as Hoecker, (b) (6), (b) (7)(C) [redacted]) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) [redacted] improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented NSF OIG from completing the peer review.

IG Hoecker's Summary Response: The alleged "obstruction" is both inflammatory and wrong. The peer reviewers did not follow the protocol for dispute resolution between peer review teams and entity being peer reviewed as articulated in the Quality Assurance Review Guidelines, published by the Investigations Committee. The NSF OIG did not even seek policy interpretation or guidance from CIGIE Investigations Committee about the dispute. At the end, SEC OIG felt compelled to permit NSF OIG to review the internal matter. The NSF OIG reviewed the file and concluded that the investigation was properly closed outside the peer review scope period. By its own conclusion, NSF OIG substantiated that the internal investigation would not have been selected during this peer

review, yet the case was listed in the peer review report.[1] We did not prevent NSF from completing the peer review as evidenced by the peer review report being issued.

The entire allegation 2 should be unsubstantiated. See the details on pages 28-34 of the Response.



Background

Page 8, Ignoring Exculpatory Facts

The Draft ROI reflects:

> According to the QSI, "Recognizing that members of the OIG community are widely diverse in their missions, authorities, staffing levels, funding, and day-to-day operations, certain foundational standards apply to any investigative organization. As such, the standards out lined here are comprehensive, relevant, and sufficiently broad to accommodate a full range of OIG criminal, civil, and administrative investigations across the CIGIE membership" (Exhibit 41, p. Preface).
>
> At the time of this investigation, Hoecker served as the Chair of CIGIE's Investigations Committee responsible for advising the IG community on issues involving criminal investigations and criminal investigative personnel, and on establishing criminal investigative guidelines. As the chair, Hoecker's message included in the updated QSI in 2011, emphasized the QSI will continue to guide the community in high-quality investigative work, and that members of CIGIE shall adhere to professional standards developed by the CIGIE as stated in the IG Reform Act of 2008 (Exhibit 41).

[1] Another reason for the peer reviewers to not review the internal investigation is that investigative peer review assesses investigations for compliance with the QSI. The Investigations Committee determined in 2011 that the QSI would apply to functions within the AIGI purview, or by function outside the AIGI if the QSI were specifically adopted by that function. The SEC OIG internal investigation was conducted outside of the investigative operations, by my Counsel. My OC has not adopted the QSI and the QSI are not applicable for the OC internal investigation.

Additional QSI Message Quote (Emphasis added):

> The crafters of this QSI version, as did their predecessors, recognized the unique mission and varying statutory responsibilities of each CIGIE member. As a result, each OIG will **adhere to the QSI in accordance with its unique mission, circumstances, and department or agency.**

Proper Context:

> The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. (b) (6), (b) (7)(C), (b) (5) [redacted].
>
> The SEC OIG internal investigation was conducted by my Office of Counsel (OC), outside of the investigative operations. My OC had not adopted the QSI before or after my tenure began as IG and the QSI are thus not applicable for the OC investigation.
>
> At TAB C of this response, I have prepared a more detailed historical context for the proper applicability of QSI, to include those Investigative Committee and AIGI Committee Members who would have been knowledge of those deliberations.

References to the QSI as a criteria for measuring Counsel's investigation should be removed from the Draft ROI.

Page 8, paragraph 5, Omission of Key Information

The Draft ROI reflects:

> According to SEC OIG policy, Chapter 1, (b) (6), (b) (7)(C), (b) (5) [redacted]
> (Exhibit 39, [SEC OI Policy Chapter 1] p. 3).

Complete SEC policy cite is (Omitted words highlighted):

(b) (6), (b) (7)(C), (b) (5) [redacted]

Effect:

(b) (6), (b) (7)(C), (b) (5) [redacted] ED investigators seem to be encouraging the reader to wrongly assume that SEC OIG has adopted the QSI for investigations conducted outside of the OI.

The accurate quote should be used and this information removed from the Draft ROI as the QSI does not apply to this SEC internal investigation.

INVESTIGATIVE FINDINGS

Allegation 1

The investigation was a whitewash: Hoecker caused and [redacted] conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) [redacted] that understated the significance of the evidence and seriousness of the misconduct.

Allegation 1.1

Although each of the 15 staff members in the Office of Investigations was a potential witness, and [redacted] was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C) [redacted], tasking [redacted] to complete it after the retirement of [redacted] in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.

Finding 1.1.a

ED OIG substantiated that Hoecker assigned the investigation to [redacted] and to OIG Counsel, although [redacted] and SEC OIG were not free in appearance from impairments to independence.

Response: QSI Deficiencies

Page 10, Lack of Thoroughness in Reporting

The Draft ROI reflects:

> Allegation 1. The investigation was a whitewash: Hoecker caused and [redacted] conducted an irregular substandard investigation of allegations of sexual misconduct between (b) (6), (b) (7)(C) [redacted] that understated the significance of the evidence and seriousness of the misconduct.

Allegation not answered:

> The Draft ROI portrays part of allegation 1 that the "investigation was a whitewash" yet nowhere in allegation 1 or its sub-allegations 1.1-1.4 is the term "whitewashed defined or the question of "whitewash" resolved.

Effect and Implication:

> The Draft ROI does not convincingly address the allegation of "whitewash." I think everyone would agree that our investigation was not a whitewash. As written, the reader is left with the question of "whitewash" being unanswered.

Allegation 1 "the investigation was a whitewash" should be answered as unsubstantiated.

Page 10, Ignoring Exculpatory Information, Unconvincing Conclusion

The Draft ROI reflects:

> Allegation 1.1 Although each of the 15 staff members in the Office of Investigations was a potential witness, and (b) (6), (b) (7)(C) was about to retire, Hoecker assigned this investigation to (b) (6), (b) (7)(C), tasking (b) (6), (b) (7)(C) to complete it after the retirement of (b) (6), (b) (7)(C) in lieu of asking another OIG to conduct an objective investigation, an option that Hoecker as Chair of the CIGIE Investigation Committee knew existed.
>
> Finding 1.1.a. ED OIG substantiated that Hoecker assigned the investigation to (b) (6), (b) (7)(C) and to OIG Counsel, although (b) (6), (b) (7)(C) and SEC OIG were not free in appearance from impairments to independence.

Correct Facts:

> In May 2016, I received two complaints from OIG investigative staff of misconduct on the part of (b) (6), (b) (7)(C) I had to determine the validity and egregiousness of the complaints quickly and objectively. The complaints received were from non-direct witnesses and did not provide corroborating evidence nor details of personal knowledge of the alleged wrongdoing.
>
> As the SEC IG, I have used internal staff to conduct objective internal OIG inquiries and investigations of allegations against OIG employees without issue. More specifically, prior to the (b) (6), (b) (7)(C) matter that resulted in the Internal Investigation, I had two other instances in which I used internal staff for this purpose. Both internal investigations were executed effectively, efficiently, and fairly – and protected the staff from the destructive effects of an external investigation handled by another OIG office, which had previously undercut the morale of the SEC OIG's office before I became the SEC IG. Using

my prerogative as the IG, I decided to assign the matter to (b) (6), (b) (7)(C) and, for 30 days, (b) (6), (b) (7)(C). Another OIG would not find any different investigative results, had an external OIG been brought in.

I assigned the (b) (6), (b) (7)(C) matter to Counsel and (b) (6), (b) (7)(C) would assist for 30 days, because they both had no independence issues. To conclude otherwise is to ignore the following exculpatory facts. (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) departed from government service on June 26, 2016. The internal investigation began on May 16, 2016 and was reported final on January 19, 2017. There was much analyses, records reviews, follow up interviews, and report writing to be conducted between June 26, 2016 and January 19, 2017 for Counsel to complete after (b) (6), (b) (7)(C) departed. The internal matter took 8 months to complete. Everyone in OIG knew (b) (6), (b) (7)(C) was departing, as he announced it in April 2016. Accordingly, no one in the OIG had to be concerned about (b) (6), (b) (7)(C) trying to protect any interest he might have or that he could retaliate against anyone.

(b) (6), (b) (7)(C) did not have any personal relationships with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) other than the typical professional relationships that exists in any office. (b) (6), (b) (7)(C) testified that he was three or four levels down from me when we worked together at Treasury and had limited contact with me as DAIGI. He also had a professional relationship with (b) (6), (b) (7)(C) and never socialized with him. Exh. 27 to Draft ROI. There had been no previous complaints about (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) independence. They did not recuse themselves from the investigation.

(b) (6), (b) (7)(C) and the SEC OIG have no impairment to independence, either actual or in appearance. In fact, a review of their interviews of (b) (6), (b) (7)(C) revealed that (b) (6), (b) (7)(C) were aggressive, not characteristic of someone who lacks independence. (b) (6), (b) (7)(C) both commented in their interviews that Further, (b) (6), (b) (7)(C) developed additional findings independent of the initial complaints. See TAB A for more details on the assignment of this matter to my Office of Counsel (OC).

IG Discretion/Judgment:

At the end of the day, this is a judgment call on my part and that of any IG with their office. Both (b) (6), (b) (7)(C) and the SEC OIG were independent. I believed this was the best approach, given my experience with *outside* OIG investigations, my success with *internal* OIG investigations, and the administrative nature of the matter. We were successful in that we gathered the facts and took appropriate action. The perception by some OIG staff of the appearance of an independence impairment ignores the fact that they are not reasonable third parties with knowledge of the relevant facts and circumstances under the Silver Book.

Allegation 1 should be unsubstantiated.

TAB B
Draft ROI Does Not Adhere to QSI

Page 10, last paragraph, Inaccurate Quote

The Draft ROI reflects a quote from my 6/29/17 letter to the Integrity Committee:

> "Initially assigned [redacted] to conduct the investigation jointly with [redacted] and SEC OIG's Office of Counsel ([redacted]) assumed sole responsibility for the investigation once [redacted] retired."

Correct Quote from my letter:

> The investigation was initially started as a joint effort by [redacted] and [redacted].

Effect and Implication:

> ED OIG did not properly quote my statements. Although the sentences are similar, ED OIG's use and placement of "assigned [redacted] to conduct the investigation" gives a different meaning and obscures the fact that [redacted] was the long-term leader of the investigation and had sole supervisory responsibility for it from its inception. [redacted] assisted with the investigation, which is why I said it was jointly conducted with Counsel, but he was not the official responsible for it.

Allegation 1 should be unsubstantiated.

Page 11, paragraph 3, Omission of Exculpatory Information

The Draft ROI reflects:

> We referred to CIGIE's Silver Book (Exhibit 42), CIGIE's QSI (Exhibit 41), and SEC OIG policy to review the standards applicable to OIGs and OIG staff "to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties"

Complete Silver Book Independence Standard (Highlighted areas were omitted):

> The IG and OIG staff must be free both in fact and appearance from personal, external, and organizational impairments to independence. The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The IG and OIG staff should avoid situations that could lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the OIG is not able to maintain independence in conducting its work.

Context and Implication:

> Clearly the independence standard as written contemplated the statutory independence of an IG. In its Draft ROI, ED OIG quotes a partial standard. The omitted portion is critical for the reader to understand that while an OIG's work must be independent and must be perceived as independent. The required perception of independence is measured by reasonable third parties "with knowledge of the relevant facts and circumstances" – not to those who are only in a position to speculate. Considering independence requires an objective test, as measured by "reasonable third parties," not OIG staff members. That said, [redacted] and the SEC OIG were independent as measured by the Silver Book standard.

ED OIG should include the complete quote and make the proper conclusion that [redacted] and SEC OIG did not have an impairment to independence. Allegation 1 should be unsubstantiated.

Page 11, paragraph 5, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> The QSI state that, "[i]n all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude." According to the QSI, " [t]his standard places upon agencies, investigative organizations , and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties."

Proper Context:

> During 2010-2011, the Investigations Committee revised the QSI, which were adopted by CIGIE December 2011. The Committee landed on a decision that the QSI would be applicable to those investigations conducted under the supervision of an OIG's AIGI, which we defined in the standards as "investigative operations." The QSI does not apply to all functions of an OIG. A non-investigative operation function could opt to adhere to the QSI *or not*, but the QSIs are not imposed across the board to all functions of an OIG. This has been the practice for the past 10 years of investigative peer reviews.

Effect and Implication:

> My OC has not adopted the QSI for their work and, as such, I would not expect them to follow or be measured by the QSI. In other words, the fact that my OC does not follow QSI is proper and does not equate to a substandard investigation. For More details on the QSI application, see TAB C.

TAB B
Draft ROI Does Not Adhere to QSI

The ED OIG should remove all references to the QSI as it pertains to the SEC internal investigation as is does not apply.

Page 11, paragraph 5, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> According to SEC OIG policy, Chapter 1: (b) (6), (b) (7)(C), (b) (5) [redacted] (Exhibit 39, p.2).

Complete SEC Policy Cite (Omitted Policy Quote Highlighted);

> Chapter 1, (b) (6), (b) (7)(C), (b) (5) [redacted] ”

Effect:

> By excluding a key process and decision option articulated in our policy, ED investigators are denying the reader with information that supports my decision to assign the matter to (b) (6), (b) (7)(C) and have (b) (6), (b) (7)(C) assist for 30 days. Hence, there is no violation of SEC OIG policy.

The complete quote should be reviewed and this information removed from the Draft ROI.

TAB B
Draft ROI Does Not Adhere to QSI

Page 12, paragraph 1, Lack of Due Diligence, Omitting Exculpatory Information

The Draft ROI reflects:

> SEC OIG's policy on independence mirrors the independence standards out lined in the QSI (Exhibit 39, p. 3).

The referenced QSI cite from the Draft ROI is on QSI page 7, paragraph 1, reads:

> This standard places upon agencies, investigative organizations, and investigators the responsibility for maintaining independence, so that decisions used in obtaining evidence, conducting interviews, and making recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. There are three general classes of impairments to independence: personal, external, and organizational.

The complete SEC policy cite of Chapter 1, (b) (6), (b) (7)(C), (b) (5) is (highlighted sentence is material and not reflected in the ED Draft ROI):

(b) (6), (b) (7)(C), (b) (5)

Effect:

> In their Draft ROI, ED investigators omitted a key safeguard articulated in our policy, yet claim there was an appearance of impairment of independence and imply there was a violation of SEC OIG policy.
>
> By omitting the last sentence, ED investigators have denied the reader knowledge of a key control and safeguard to independence. I note that (b) (6), (b) (7)(C) did not notify the IG or Counsel that he believed he had any an impairment. As such, if the reader had the benefit of the highlighted sentence, they would have the opportunity to make a conclusion and the accurate determination that there was no violation.

The complete policy quote should be reviewed and this information removed from the Draft ROI.

TAB B
Draft ROI Does Not Adhere to QSI

Page 12, paragraph 4, Overweighing the Value of a Fact

The Draft ROI reflects:

> According to (b) (6), (b) (7)(C) she maintained a supervisor, subordinate relationship with (b) (6), (b) (7)(C) while at Treasury OIG and SEC OIG. She described the relationship as friendly but strictly professional. When (b) (6), (b) (7)(C) left Treasury OIG, she and (b) (6), (b) (7)(C) kept in touch via telephone and have continued to stay in touch through his retirement.

Judgment and Proper Context:

> I view keeping in touch with a professional contact as networking that would not cause a breach of independence by (b) (6), (b) (7)(C) in this situation. During her networking activities with (b) (6), (b) (7)(C) she did not seek employment or any other benefits from (b) (6), (b) (7)(C) Regardless, I did not know of this telephonic contact prior to our internal matter being finalized. And, even if I had, I would not have changed my decision.

Allegation 1 should be unsubstantiated.

Page 12, paragraph 4, Ignoring Exculpatory/Contextual Information

The Draft ROI reflects:

> According to [unnamed person] SEC OIG she and (b) (6), (b) (7)(C) visited (b) (6), (b) (7)(C) at his home when he was placed on administrative leave at Treasury OIG. The reason for the visit was because (b) (6), (b) (7)(C) wife just gave birth and they were bringing gifts to celebrate. [Unnamed person] described the gift giving and visit as a personal gesture out of friendship.

Proper context:

> Two individuals, including (b) (6), (b) (7)(C) visited (b) (6), (b) (7)(C) one time while he was on administrative leave to drop off a baby gift for his newborn child.

Exempted Gift:

> A single visit to someone's home to drop off a gift exempted by 5 CFR 2635.304 does not constitute a relationship that would impair (b) (6), (b) (7)(C) independence. This visit and exempted gift occurred approximately 10 years ago.

I did not know of this visit and gift prior to our internal matter being finalized. The activity did not violate the CFR and even if I had known about it, I would not have changed my decision to have (b) (6), (b) (7)(C) conduct the investigation.

Allegation 1 should be unsubstantiated.

Page 13, paragraph 3, Omitting Exculpatory/Contextual Information

The Draft ROI reflects:

> Subject of the investigation, (b) (6), (b) (7)(C) perceived (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) as close.
>
> (b) (6), (b) (7)(C) stated to (b) (6), (b) (7)(C) [Because] everybody knows I'm (b) (6), (b) (7)(C) girl, just like everybody knows (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) boy. I mean it is what it is.

Proper Context:

> The following is an excerpt surrounding the aforementioned quote on page 49-50 of the cited transcript in the Draft ROI:
>
> Page 49
> 14 Q Do you think anyone else might believe you get
> 15 preferential treatment?
> 16 A I'm sure people have their perceptions.
> 17 Q Why would that be the case?
> 18 A Because everybody knows I'm (b) (6), (b) (7)(C) girl, just
> 19 everybody knows (b) (6), (b) (7)(C) your boy. I mean, it is what it
> 20 is. People have their people that they know are going to
> 21 get the job done. And I don't think there's any arguing
> 22 that I've made great cases and I -- even apparently
> 23 though I take ridiculous, inordinate PT time and lunch
> 24 time, I'm one of the highest producers. You can't argue
> 25 that. And I would be missed if (b) (6), (b) (7)(wasn't one of your
> Page 50
> 1 highest producing (b) (6), (b) (7)(C)
> 2 Q I don't question your productivity. I don't
> 3 question (b) (6), (b) (7)(C) productivity. That's not the issue.
> 4 A So (b) (6), (b) (7)(is your person. It's no secret.
> 5 Q By you saying you're (b) (6), (b) (7)(C) girl, that means
> 6 you're his producer?
> 7 A No, I'm just saying that it -- when he wants
> 8 something done and he wants it done a particular way, he
> 9 knows that I'll get it done. It doesn't mean that every
> 10 thing he thinks I'm going to get it done. There's areas
> 11 that he's identified as my vulnerabilities. And when it
> 12 comes to those sorts of cases, he doesn't come to me.

Review of Subject's transcript:

> Reading the complete passage above, the subject is speaking about whether she received preferential treatment from [redacted] which she denies. In her testimony, she is clearly *speculating* on why others in the office may feel she has received preferential treatment.

Effect and Implication:

> Although important contextual information was just a few lines away, ED OIG did not include it in their Draft ROI. Specifically, she describes what is meant by "I am [redacted] girl. The Draft ROI as written does not accurately portray [redacted] testimony. As written in the Draft ROI, the reader is not given the benefit of context and the reader is wrongly left with the impression that even [redacted] knows there is favoritism—when in fact that is not her testimony. Further, the Draft ROI grossly overstates her testimony. The import of [redacted] testimony was not that [redacted] were "close." Rather, she was simply opining that [redacted] was the person [redacted] went to "to get the job done."

Proper contextual information should be added to the Draft ROI and this testimonial evidence should not be construed to support that [redacted] viewed [redacted] relationship with her nor [redacted] relationship with [redacted] as close, nor that [redacted] independence was impaired.

<u>Page 13, paragraph 4, Omitting Exculpatory/Contextual Information</u>

The Draft ROI reflects:

> Despite his role as the lead investigator until his departure, [redacted] also provided factual information to the investigation, which made him a witness.

Proper Context:

> [redacted] was not the lead investigator. The matter was assigned to Counsel with [redacted] assisting for 30 days. Counsel was in charge of the investigation.
>
> Also, it is common for investigators and fact gatherers to be witnesses in administrative proceedings, particularly as it relates to policy clarifications, factual matters and expertise.

The Draft ROI should be corrected to reflect the fact that [redacted] was one of the individuals assigned to conduct the investigation *under the supervision of Counsel*. The Draft ROI should also remove the inference that [redacted] as an investigator and witness is problematic.

TAB B
Draft ROI Does Not Adhere to QSI

Page 13, paragraph 5, Omitting Exculpatory/Contextual Information

The Draft ROI reflects:

> [redacted] was involved in decision-making that was considered in the investigation and in subsequent decisions regarding the appropriate discipline to impose on [redacted].

Proper Context:

> The performance evaluation that [redacted] provided was not only considered during the discipline process for [redacted], but also was provided as information to the USAO when the matter was declined for criminal prosecution consideration on June 15, 2016. [redacted] interpretation of the SEC OIG's physical fitness policy was necessary information to provide to the AUSA for consideration. Oftentimes, a manager provides this type of information so the prosecutor or decision-makers in administrative matters can render a decision.
>
> [redacted] was [redacted] and rated [redacted] annual performance. Because this was the middle of the 2016 evaluation period, Counsel needed information from the supervisor as to [redacted] current performance for the investigation. Upon request, [redacted] provided this via a memo. Because [redacted] was [redacted] supervisor of record for that same time frame, Counsel asked [redacted] to provide her performance information. [redacted] provided that via a memo.
>
> Had he not retired, [redacted] could have been the proposing official [redacted]. This is normal in a supervisor-subordinate relationship.

This contextual information should be factored into what the Draft ROI presents and it should not be used to support anything improper.

Page 14-15, Mischaracterization and Conflating Unrelated Information

In the Draft ROI:

> ED OIG concluded that "Redacted Name made the following statements during his interview to [redacted] that should have alerted [redacted] to perception of impairments within SEC OIG (Exhibit 48)." The Draft ROI on page 14-15 presents 10 bulleted quotes that should have alerted perception of impairments.

Proper Context:

> The complainant was being questioned to ascertain whether he had any direct knowledge of misconduct or knew the identity of OIG staff who had such

knowledge. Nothing in the complainant's testimony suggests even a hint of impairment to independence on the part of (b) (6), (b) (7)(C).

The Draft ROI picks and chooses various quotes from a complainant interview that are unrelated to (b) (6), (b) (7)(C) independence. The Draft ROI then conflates these quotes to create support that (b) (6), (b) (7)(C) have an impairment to their independence.

Please see TAB D for my analysis and comments for further details pertaining to page 14-15 of the Draft ROI.

This entire passage in the Draft ROI should be removed.

Page 15, First Paragraph, Conflating Testimony

The Draft ROI reflects:

When presented with the above remarks made by- Hoecker stated it was the first time he heard of such remarks (Exhibit 38, Tr. 39)

Quote From Transcript:

(b) (6), (b) (7)(C): Just some specific examples of (b) (6), (b) (7)(C) concern about reprisal, his concern that you and (b) (6), (b) (7)(C) were protecting (b) (6), (b) (7) and possibly (b) (6), (b) (7)(C) Several times he, he voices that opinion, and, and whether or not there is favoritism towards (b) (6), (b) (7)(C). Was this interview discussed after it was conducted with you?
MR. HOECKER: No. This is the first time I hear of such remarks.

Context:

The comments referred to by (b) (6), (b) (7)(C) are those made by (b) (6), (b) (7)(C) during his May 2016 interview. Prior to my interview with ED OIG, I was not aware of those comments. Had I known about (b) (6), (b) (7)(C) comments from May 2016, I would not have changed my decision to assign the internal matter to OC with (b) (6), (b) (7)(C) assisting for 30 days.

As far as (b) (6), (b) (7)(C) comments, a contextual review of his transcript reveals the participants in the interview are not speaking of independence, rather they are seeking answers as to why no one in the office of investigations has mentioned or complained about (b) (6), (b) (7)(C) behavior prior to May 16, 2016. For a more detail analysis and proper context of (b) (6), (b) (7)(C) comments see TAB D.

This entire passage in the Draft ROI should be removed as it has no value in terms of whether (b) (6), (b) (7)(C) should have known of potential impairments to independence.

Page 15-18, Biased Questioning, Omitting Exculpatory Information

The Draft ROI reflects:

> Some SEC OIG staff ED OIG interviewed did not believe the investigation was impartial or that it should have been conducted within SEC OIG.

Silver Book Standard:

> The IG and OIG staff has a responsibility to maintain independence, so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties.

Implications and Effect:

> According to the Draft ROI "some OIG staff" perceived impairments. The record shows that other others did not perceive impairments and I presume some staff members were not asked. Because the relevant Silver Book standard is "viewed by impartial knowledgeable third parties," questioning OIG staff about impairments of the internal matter has no evidentiary value and causes needless anxiety for the SEC OIG staff. As a result, this line of questioning asks for speculative information and did little more than incite poor morale.

This information should be removed from the Draft ROI.

Page 16-17, Omitting Exculpatory Information

The Draft ROI reflects:

> According to [Unnamed person] (b) (6), (b) (7)(C), and [different unnamed person] had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist (Exhibit 35).

Complete Quote (Omitted sentence highlighted):

> According to [unnamed person] (b) (6), (b) (7)(C), and [unnamed person] had a close working relationship where it almost seemed like they were really good friends. He believed the investigation could have been conducted fairly, however, he had not known (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to conduct investigations into inappropriate relationships. He did think the investigation could have appeared to

lack objectivity if (b) (6), (b) (7)(C) solely conducted the investigation. However, this perception was mitigated by having (b) (6), (b) (7)(C) assist (Exhibit 35). [unnamed person] stated he believes the investigation was conducted above board.

Effect:

If the reader had the benefit of the omitted quote, they would make the proper conclusion that this witness does not see an issue with (b) (6), (b) (7)(C) conducting the internal investigation.

This omitted information should be added to draft ROI to consider the accurate opinion of the OI staff.

Page 18, Placement of Exculpatory Information

The Draft ROI reflects:

… we did not find evidence that (b) (6), (b) (7)(C) had personal impairments.

Effect:

This information should also be also placed within Finding 1 and 1.1.a and considered throughout the Draft ROI.

Finding 1 should be unsubstantiated.

Page 20, finding 1.1.b, Omitting/Ignoring Exculpatory Information

The Draft ROI reflects:

ED OIG substantiated that the SEC OIG's internal investigation was substandard because it was not conducted in accordance with the CIGIE's QSI or the SEC OIG Policy.

Proper Context:

Section 6 (a)(2) of the IG Act gives the IG authority "to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable"

The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5) [redacted]

In my testimony, I tell ED OIG "Here is the readout as I'll tell you from, as a CIGIE chair and also from the SEC IG, is that those are for, the QSIs are for investigative operations. So, if somebody is supervised by investigative operations, which is an AIGI, then they are going to follow those unless there is a carve-out for a, what we do sometimes is an MIR, which is a Management Implication Report that is kind of like a flash report of a lack of internal controls."

In (b) (6), (b) (7)(C) [redacted] testimony, (b) (6), (b) (7)(C) [redacted] (Exhibit 36 of the draft ROI) he tells ED OIG: "I would not have thought of including it in the peer review process because it was not done by the office of investigations. It was not done under the quality standards."

The SEC OIG internal investigation was conducted outside of the investigative operations, by my Counsel. My OC has not adopted the QSI prior to or during my tenure as the IG and the QSI are not applicable for the OC investigation.

At TAB C of this response I have prepared a more detailed historical context for the proper applicability of QSI, to include those Investigative Committee and AIGI Committee Members who would have been knowledgeable of those deliberations.

SEC OIG's Investigative manual applies to our investigative operations—that is, investigations under the supervision of an OIG's AIGI.

References to the QSI as a criteria for measuring Counsel's investigation should be removed from the Draft ROI. References to Counsel's investigation violating SEC OIG Office of Investigations policy and violating SEC OIG policy should also be removed from the draft.

Finding 1.1.b should be unsubstantiated.

<u>Page 19 and 21, Lack of Due Care</u>

The Draft ROI reflects:

> According to Hoecker, the reason he requested DOJ OIG conduct the investigation was because he was not satisfied with the progress of the investigation. More specifically, Hoecker stated "I was unhappy with the progress of the investigation. In other words, it wasn't happening fast enough for me," (Exhibit 38, Tr. 84) and that he was " impatient " (Exhibit 38, Tr. 138).

Furthermore, in his response to the IC on June 29, 2017, Hoecker stated that he believed that the investigation was both timely and thorough, which conflicts with his stated reason for requesting DOJ OIG's assistance.

Proper Context:

When I responded to the Integrity Committee on June 29, 2017 our internal investigation was completed and action taken. I was overall satisfied with the timeliness and thoroughness of the investigation and resolution. However, during the investigation from May 2016 until November 2016, we were continuing to receive complaints about (b) (6), (b) (7)(C) . At some point I wanted to see if it made sense to get assistance from another OIG. I first thought of DOJ OIG. It was not because the investigation was untimely. Rather, I was concerned for the welfare of, and demands placed upon, my Office of Counsel. Upon my direction, Counsel contacted DOJ OIG on October 24, 2016. We learned that they would not be able to assist. From the mere timing of when we contacted DOJ OIG, the bulk of the investigation was done and we had entered the writing phase. At the time, I was concerned about another onslaught of complaints, which did not materialize. Therefore, there was ultimately no need for outside assistance.

Effect and Implication:

By ignoring the full context, the Draft ROI attempts to discredit me. It conflates my exploring a path forward *during* the course of an investigation with my ultimate satisfaction with the final product almost one year after Counsel's report was finalized. These type of repeated "out of context" character attacks unfortunately leaves the impression that the Draft ROI is infused with bias, or, at best, suffers from a results-oriented and fundamentally flawed analysis.

The Draft ROI should be corrected by removing the conflating information between my statements to the Integrity Committee and both my reason for contacting DOJ OIG and my statement that I was not happy with the progress.

Page 19, Mischaracterization

Draft ROI states: (The highlighted sentence is not a correct portrayal)

During his interview, (b) (6), (b) (7)(C) indicated that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally. (b) (6), (b) (7)(C) stated, "I raised concerns. I remember there was a discussion about who could do it. And I do remember, I don 't know that it was specifically because of these statements of [unnamed person], but at one point, we talked to Department of Justice OIG about whether or not they could pick it up and take it on" (Exhibit 37, Tr. 36).

Context:

> Nowhere in (b) (6), (b) (7)(C) transcript does he make the statement as characterized in the Draft ROI that DOJ OIG was asked to conduct the investigation due to concerns about conducting the investigation internally.

The information in question should be deleted from the draft ROI.

Page 19 and 21, Inaccurate Reporting

The Draft ROI reflects:

> [Unnamed person] did not recall (b) (6), (b) (7)(C) telling him a specific reason for SEC OIG's request to DOJ OIG, but based on the information provided to him inferred that there were issues related to objectivity and impairments in SEC OIG's investigation. [Unnamed person] reasoned that typically, an OIG would ask for an external agency to conduct an investigation on its behalf if there were internal impairments.

Proper Context:

> The witness stated he did not recall the specific reason SEC OIG requested DOJ OIG assistance. He is speculating. Also, from personal experience, I know that there are more "typical" reasons an OIG would ask for investigative assistance.

This information should be stricken from the Draft ROI as it is complete speculation and does not support anything improper.

Finding 1.1.b

ED OIG substantiated that the SEC investigation was substandard because it was not conducted in accordance with the CIGIE's Quality Standards for Investigation (QSI) or the SEC OIG Policy.

Response: QSI Deficiencies:

Page 22, paragraph 2, Lack of Objectivity

The Draft ROI reflects:

> Hoecker also explained that the investigation "wasn't necessarily criminal," despite being presented to the USAO for criminal prosecution consideration. Hoecker stated, "that constitutes an abundance of caution.

Proper Context:

> In my office—and most other OIGs would agree—a common practice is to contact the USAO sooner rather than later to get a prosecutorial decision or prosecutorial sense of the investigative results. This is important, because if we can identify a matter that is purely administrative, we can better manage our resources per our mission statement. Further, if additional information about criminal activity is developed, we can go back to the USAO. For this matter, within less than 30 days we presented it to the USAO and they declined to pursue prosecution. The remaining allegations were administrative, at best. Had this been an SEC employee outside of OIG, we could have referred the remaining issue to agency management. Also in this matter, my Counsel informed me that there was no criminal matter that would be prosecuted. In an abundance of caution, I asked him to contact the USAO. Important context is that we take cases to the USAO as a matter of routine, including cases that only have technical violations that usually do not meet the prosecutorial threshold.

ED OIG did not report the contextual and chronological information above. Use of the word "despite" again reflects an ingrained bias at worst and a results-oriented analysis at best. This information should be stricken from the Draft ROI as it does not support anything improper.

Page 22, paragraph 4. Lack of Due Diligence

The Draft ROI reflects:

> ED OIG concluded that reviewing the investigation against the QSI would enable us to determine whether the investigation was substandard, as alleged. We believe this method was appropriate because (1) the QSI are designed to accommodate a variety of types of investigations (2) the investigation the SEC OIG conducted involved potential criminal conduct (time and attendance fraud) until it was declined on June 15, 2016, by the USAO, and such allegations generally are investigated in accordance with the QSI; (3) a criminal investigator trained to conduct investigations according to the QSI conducted the majority of the investigation.

Fact about the QSI:

> The QSI was unanimously approved by CIGIE on November 15, 2011 during its monthly meeting. (b) (6), (b) (7)(C), (b) (5) [redacted]

Proper Context:

> I assigned the matter to Counsel and to [redacted] to assist for 30 days. My Counsel was in control of this investigation. To conclude otherwise is to ignore the following exculpatory evidence. [redacted] departed from government service on June 26, 2016. The internal investigation began on May 18, 2016 and was reported final on January 19, 2017. There were analyses, records reviews, follow up interviews, report writing and review remaining between June 26, 2016 and January 19, 2017 for Counsel to complete, all of which were done after [redacted] departure. The internal matter took 8 months to complete. I knew [redacted] would have a maximum of 30 days to assist. [redacted]
>
> The investigation began in May 2016 and was reported final in January 2017 Counsel had not adopted the QSI. Counsel's report was marked on every page "attorney work product." Also, the Counsel's report was prepared in anticipation of litigation, which is still pending.

Effect and Implication:

> ED OIG presented this information in a one-sided fashion. [redacted]
>
> [redacted].

The ED OIG should remove all reference to the QSI in the Draft ROI as it pertains to the SEC internal investigation.

<u>Page 25, Ignoring Exculpatory Information</u>

The Draft ROI reflects:

> [redacted] was interviewed on May 18, 2016 (Exhibit 53), May 24, 2016 (Exhibit 54), and June 21, 2016 (Exhibit 49). However, only her June 21, 2016, interview

was audio recorded and transcribed. (b) (6), (b) (7)(C) June 21, 2016, interview is the only interview included as an exhibit to the ROI.

Exculpatory Information:

(b) (6), (b) (7)(C) June 21, 2016 interview was recorded and transcribed. The other two (b) (6), (b) (7)(C) interviews were contemporaneously documented in the investigator's notes and located in the file.

Effect and Implication:

Since (b) (6), (b) (7)(C) was issued a letter of caution, all information in possession of the SEC OIG, presented in the ROI or located in the file, was considered.

This information should be added to the Draft ROI.

Page 25, Insufficient Evidence to Support Conclusion:

The Draft ROI reflects:

Two of three interviews of (b) (6), (b) (7)(C) were not documented in the ROI

According to (b) (6), (b) (7)(C) he was interviewed two times, June 3, 2016 (Exhibit 55), and June 21, 2016 (Exhibit 56). However, (b) (6), (b) (7)(C) recalled interviewing (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C) around the time of the May 18, 2016, staff interviews. Only the June 3, 2016, and June 21, 2016, interviews were audio recorded and transcribed. Only the June 3, 2016, interview was included as an exhibit to the ROI. According to (b) (6), (b) (7)(C) the June 21, 2016, interview being excluded from the ROI, was "not intentional" and an "oversight" (Exhibit 37, Tr. 59 and 63). Although (b) (6), (b) (7)(C) indicated to ED OIG that (b) (6), (b) (7)(C) was interviewed around May 18, 2016, no documentation of the interview was located in SEC OIG's case file.

Proper Context:

During (b) (6), (b) (7)(C) interview with ED OIG, he recalled that (b) (6), (b) (7)(C) had been interviewed three times during the internal matter. The (b) (6), (b) (7)(C) interviews in question would have taken place approximately two years prior to the ED OIG interview of (b) (6), (b) (7)(C) No interview notes of (b) (6), (b) (7)(C) or any other person were found in the file for the (b) (6), (b) (7)(C) interview in question. (b) (6), (b) (7)(C) has taken notes or otherwise documented all interviews he conducted in this matter. (b) (6), (b) (7)(C) told ED OIG that he was interviewed twice, not three times. I see no investigative result in the draft ROI convincing me that a third interview occurred. Nor is there any discussion as to whether (b) (6), (b) (7)(C) might have simply misremembered the number of interviews especially given the lengthy passage of time.

Based on the information in the Draft ROI, I am not convinced that [redacted] was interviewed three times. ED OIG should remove this information from the Draft ROI as it is not convincing whether three interviews occurred or not.

The draft ROI should be corrected to reflect there were two interviews of [redacted]

Page 26, paragraph a

The Draft ROI reflects:

The following information from the June 21, 2016, interview was not addressed or documented in the ROI (Exhibit 56):

a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20). [redacted] during the interview of [redacted] stated he did not find [redacted] credible.

Proper Context:

[redacted] legitimately used a deception technique during the [redacted] interview. This line of questioning related to [redacted] responses to the question as to whether he was having an affair and with whom.

[redacted] exact quote is "So the – here's the deal. I'll just tell you up front, I don't find you – I don't find you credible. I don't find what you're saying credible. I ain't stupid."

Throughout the entire SEC OIG investigation, we attempted, among other things, to follow up on the credibility of [redacted] To conclude otherwise ignores the entire investigative record.

This information should be removed from the Draft ROI as it has no probative value.

<u>Page 26, Misquoting Testimony</u>

The Draft ROI reflects:

a. [redacted] was recorded during his interview of [redacted] stating that he did not find [redacted] credible in his answers (p.20).
b. [redacted] refused to provide information that would corroborate who he was staying at a hotel with during SEC OIG training travel in Charleston, SC (p.20).
c. During his June 3, 2016 interview, [redacted] stated that he did not stay at a hotel in Fredrick, MD after an SEC OIG in-service training on April 28, 2016 (Exhibit 55, p. 10).

During his interview, Hoecker stated knowledge of inconsistent statements could have been important to proposing officials (Exhibit 38, Tr. 92)

Correct Quote from transcript:

(b) (6), (b) (7)(C): After training, is this information you think would have been important for someone proposing discipline?
MR. HOECKER: I think it's something they could have used, yes.
(b) (6), (b) (7)(C): Or some, for that matter, some, something that could have been considered (b) (6), (b) (7)(C), (b) (5) ?
MR. HOECKER: Yes.

Proper Context:

It is clear from the transcript I agreed that training information could have been important for someone proposing discipline. I was not asked, nor did I agree, that a deception technique used in an interview could be important for a proposing official (b) (6), (b) (7)(C), (b) (5) .

This information should be removed from the Draft ROI or properly quoted.

Page 28, paragraph 2, Lack of Due Diligence

The Draft ROI reflects:

However, [unnamed person] did say that he had a separate follow-up conversation with (b) (6), (b) (7)(C) over the phone in which (b) (6), (b) (7)(C) asked if [unnamed person] had any recollection of hearing an alleged comment by (b) (6), (b) (7)(C) discussing, "sucking on (b) (6), (b) (7)(C) titties." [unnamed person] did not recall how he answered it because he did not remember if (b) (6), (b) (7)(C) said it or not (Exhibit 16, p. 4). The telephone conversation between [unnamed person] and (b) (6), (b) (7)(C) was not memorialized.

Accurate Fact:

The follow up conversation between (b) (6), (b) (7)(C) and [unnamed person] was in fact documented in an email and attached as Exhibit 58 in the SEC ROI.

Effect and Implication:

Exhibit 58 is clearly marked in the SEC ROI. As a respondent reader, I question the veracity and accuracy of the entire Draft ROI. With inaccurate facts in the Draft ROI, the independent reader is misled with respect to the strength of any evidence and any draft findings offered in the entire Draft ROI. My question is, what else did ED OIG omit.

This accurate fact should be acknowledged and the entire paragraph and any reference to it, be removed.

The Integrity Committee should conduct a detailed review of the Draft ROI and its exhibits giving strong weight to my comments and response to the Draft ROI.

Allegation 1.2

The report stated the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It did not address a third alternative—circumstantial evidence of a sexual relationship. The report appeared to consider individual bits of evidence in isolation, rather than the totality of circumstances, including evidence of:

a. The unusual amount of time that (b) (6), (b) (7)(C) spent together, exceeding the time they spent with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which (b) (6), (b) (7)(C) were found in the evidence room and the door was blocked, where one witness observed (b) (6), (b) (7)(C) zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f. The claim that (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) an expensive birthday present.

Finding 1.2

Without conducting its own investigation into the actual relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) ED OIG could not substantiate whether the report of investigation (ROI) understated the significance of the evidence. However, ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C).

Response: QSI Deficiencies

<u>Page 29, allegation 1.2, Lack of Due Diligence</u>

The Draft ROI reflects:

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative circumstantial evidence of a sexual relationship. "It [report] does not address a third alternative – circumstantial evidence of a sexual relationship.

Proper Context:

An accurate review of the SEC ROI shows that a sexual relationship between two SEC employees is not a violation. Therefore, to prove a sexual relationship using any type of evidence would not be proper. In fact, pursuing investigative leads to prove something that is not a violation could be considered harassment or violation of privacy.

The evidence has been labeled in the Draft ROI by ED OIG as "circumstantial" when, in fact, this information was contained and considered in Counsel's report. Rather than consider it circumstantial of a sexual relationship, which is not a violation, we used it and other evidence as direct evidence of the appearance of an improper relationship.

Allegation 1.2 should be unsubstantiated.

Page 29, allegation 1.2, letter a – f, Mischaracterizing Facts

The Draft ROI reflects:

The report states the issue as a choice between direct evidence of sexual misconduct and appearance of an inappropriate relationship. It does not address a third alternative circumstantial evidence of a sexual relationship. "It [report] does not address a third alternative – circumstantial evidence of a sexual relationship. The report appears to consider individual bits of evidence in isolation, rather than the totality of the circumstances, including evidence of:

a. The unusual amount of time that (b) (6), (b) (7)(C) spend together, exceeding the time that they spend with other colleagues;

b. The intimacy reflected in their conduct and demeanor, eating from one another's plates, standing unusually close, touching each other, leaning in and whispering, flirtatious behavior;

c. The incident in which (b) (6), (b) (7)(C) were found in the evidence room and the door was blocked, where one witness observed (b) (6), (b) (7)(C) zipping his pants and both seemed shocked and flustered;

d. Their multiple meetings during the investigation in a locked Enforcement Testimony Room;

e. Sexual banter between them;

f . The claim that (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) an expensive birthday present.

Proper Context:

As I stated in the previous comments in this document, a sexual relationship between SEC employees is not a violation. Further, not only did my office consider each single allegation a – f individually, but also collectively to arrive at the conclusion (listed below) (b) (6), (b) (7)(C), (b) (5) .

On page 3 of the SEC OIG report we state:

> The evidence did support a finding that (b) (6), (b) (7)(C) created the appearance that he had an inappropriate relationship with (b) (6), (b) (7)(C) and as a result of that appearance, employees in OI believed that (b) (6), (b) (7)(C) received preferential treatment. Although the evidence does support a finding that (b) (6), (b) (7)(C) created the appearance of an inappropriate relationship, the evidence does not show that (b) (6), (b) (7)(C) actually received preferential treatment.

SEC OIG Report addresses a – f:

Draft ROI letter a is covered throughout the SEC OIG report but specifically beginning page 7 in Allegation A, subparts A, B, G, I and in Allegation 2 beginning on page 24. Multiple meetings were suggested in a complaint.

Draft ROI letter b is covered in the SEC OIG report Allegation H beginning on page 16.

Draft ROI letter c is covered in SEC OIG report Developed Allegation 1, beginning on page 18.

Draft ROI letter is covered by SEC OIG report at Developed Allegation 6, page 45. We take exception to "multiple times" as we only could establish one time. We established evidence that one meeting occurred in the testimonial room.

Draft ROI letter e is covered by SEC OIG report at Developed Allegation 3 page 34.

Draft ROI letter f is covered by SEC OIG report at Developed Allegation 4 beginning on page 43. We take exception to this issue being in the Draft ROI. Our investigation found this to be an unsubstantiated allegation.

Professional Judgement:

> We had sufficient evidence to take action on the related conduct and decided not to pursue those leads further than we did related to a - f. (b) (6), (b) (7)(C), (b) (5) [redacted].

This information should be stricken from the Draft ROI as it was properly used by my office to arrive at our disciplinary decision.

Page 29. Lack of Objectivity

The Draft ROI reflects:

> Finding 1.2. ED OIG found the SEC OIG investigation uncovered information that was not reported in the ROI nor further developed to support or refute the existence or appearance of an improper relationship between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)
>
> > The SEC OIG did not develop information related to the April 2016 meeting between (b) (6), (b) (7)(C) in Frederick, MD and the inconsistent accounts of that meeting.
> >
> > The SEC OIG did not address (b) (6), (b) (7)(C) refusal to corroborate his account regarding a hotel guest in Charleston, SC.
> >
> > The SEC OIG did not corroborate information received about other possible hotel stays by (b) (6), (b) (7)(C) by requesting information, including possible security video recordings, from the hotels.

Proper Context:

> The information was in fact in Counsel's report and the file and both were considered (b) (6), (b) (7)(C), (b) (5) [redacted] Developing this information would have yielded, at best, circumstantial evidence of a sexual relationship, which is not a violation.

This information should be stricken for the Draft ROI as it was properly used by my office to arrive at our disciplinary decision.

TAB B
Draft ROI Does Not Adhere to QSI

Page 31, paragraph 2, Lack of Objectivity

The Draft ROI reflects:

> Additionally, rather than conduct a covert, active investigation to gather evidence of the alleged relationship between (b) (6), (b) (7)(C), SEC OIG conducted an overt investigation, relying on historical witness accounts and documents, including conducting subject interviews on the first day of investigative activities. In fact, on or around that time, Hoecker announced the existence of the investigation to OI staff and gave briefings on the status of the investigation in subsequent OI meetings. The investigation also did not incorporate active surveillance or monitoring of the subjects.

Proper Context:

> My OI is small and centrally located in Washington, DC. I used my professional judgement to notify OI staff that I had received an allegation of misconduct. During this meeting, I was not specific as to the type of allegations, yet I did say I will not tolerate wrongdoing. Notifying the staff served multiple purposes. First, to let the complainants know we began action on their complaints. Second, I wanted to instruct staff to cooperate fully with the inquiry. Finally, I thought the office should begin the process of healing. Sharing as much information without jeopardizing the investigation with those affected is common when impactful events happen in a community.
>
> In my experience, covert operations and surveillance are not successful for internal investigations of time and attendance issues. Having conducted covert investigations, I know what resources are required. In the SEC OIG a covert operation would not have been successful, given our resources and small size. I query whether it is standard practice of other IGs to conduct surveillance or monitoring of internal staff in similar circumstances.

This is a judgement call. As presented in the Draft ROI, it appears that ED OIG is substituting their judgement for mine. I am in the best position to exercise judgement for SEC OIG. I also view this as an attack on my integrity.

This information has little relevance to wrongdoing or misconduct and all about professional judgement and use of resources. It should be removed from the Draft ROI.

Allegation 1.3

The SEC OIG report's author speculated in a manner favorable to (b) (6), (b) (7)(C), who "could have been conducting official business" during their extended lunches; "it is possible they were doing case related work off SEC premises;" subjects may have been working or attending out of office meetings while off-premises [sic].

TAB B
Draft ROI Does Not Adhere to QSI

Finding 1.3

ED OIG substantiated that the SEC ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office as spent on official activities. (b) (6), (b) (7)(C), (b) (5) .

Response: QSI Deficiencies

Page 31, finding 1.3, paragraph 2, Omitting Exculpatory Information

The Draft ROI reflects:

> Finding 1.3 ED OIG substantiated that the ROI speculated about the subjects' activities during their time out of the office. SEC OIG's investigation did not corroborate (b) (6), (b) (7)(C) time out of the office was spent on official activities. (b) (6), (b) (7)(C), (b) (5) .

Proper Context and Complete Story (omitted information highlighted):

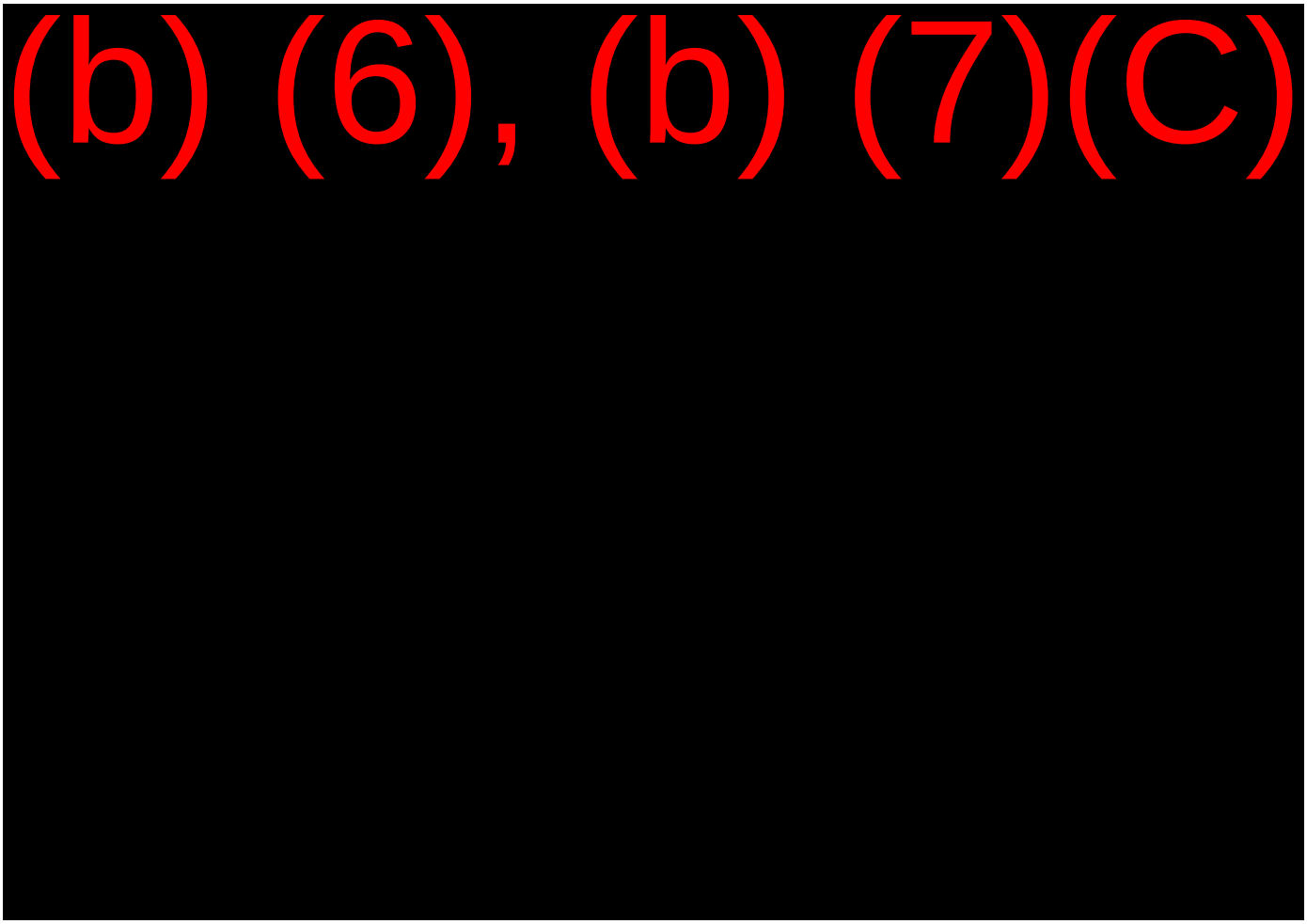
> Should read: (b) (6), (b) (7)(C), (b) (5) ."

Effect and Implication

> (b) (6), (b) (7)(C), (b) (5) . Further, we could not substantiate whether (b) (6), (b) (7)(C) were out of the office working or not working. Based on their high level of individual performance results, we determined they were working. (b) (6), (b) (7)(C), (b) (5) . This improperly gives the impression we decided not to take corrective action and instead engaged in a "coverup."

Allegation 1.3 should be unsubstantiated.

(b) (6), (b) (7)(C)



Additional Allegations of Misconduct Related to Allegation, not Addressed by SEC OIG

ED OIG also developed the following information in the course of its investigation:

1. Additional allegations of inappropriate sexual comments made by [redacted] to the [REDACTED] were not addressed as part of the SEC OIG investigation.

2. [redacted] SEC OIG Counsel advised Hoecker that [redacted] was not negotiating in good faith [redacted]. However, Hoecker made the decision to continue [redacted].

Response: QSI Deficiencies

Page 33, Lack of Objectivity

The Draft ROI states:

> Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG
>
> Additional allegations of inappropriate sexual comments made by [redacted] to the [unnamed person] were not addressed as part of the SEC OIG investigation.
>
> According to [unnamed person] in the third Quarter of 2017, she told Hoecker that she did not think that the incidents with [redacted] and her reporting of them was handled well. [Unnamed person] recalled that Hoecker acknowledged [unnamed person's] position and apologized for how he handled the matter (Exhibit 31) .

Complete quote from unnamed person's transcript:

> [Unnamed person] explained SEC OIG does quarterly meeting for evaluation/performance purposes. When [unnamed person] had her meeting with IG Hoecker for the third quarter of 2017, [unnamed person] told IG Hoecker that [unnamed person] did not think that the incidents with [redacted] and [unnamed person] reporting of them was handled well. IG Hoecker acknowledged [unnamed person's] position and apologized for how he handled the matter.

Proper Context:

> I understand the following: [redacted] made remarks that were not explicitly sexual in 2014. The unnamed person did not tell [redacted] at the time the comments were offensive to her. The unnamed person talked to my Counsel and she decided to send an email to [redacted] telling him to stop. She did not make a complaint. After the email, the comments stopped. No further complaints were made subsequent to the email to [redacted] This is not a matter that needed further investigation.
>
> In terms of my apology, the [unnamed person], told me she in July 20**16** about the comments made in 20**14**. One month later, I apologized simply because I believed I could have been more emphatic in my verbal response during our interaction in July 2016. I was not apologizing to her because I believed [redacted] had some something explicitly sexual or that my counsel had handled the situation improperly. In fact, my counsel was aware of this issue and it may have been considered during the negotiated settlement.

This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

<u>Page 33, Lack of Objectivity</u>

The Draft ROI states:

> Additional Allegations of Misconduct Related to Allegation 1, not Addressed by SEC OIG

SEC OIG Counsel advised Hoecker [redacted] was not negotiating in good faith and [redacted]. However, Hoecker made the decision to continue [redacted].

Proper Context:

I understand the following: [redacted] felt that [redacted] was untruthful to him. [redacted] prepared a memo to file, got video footage, and notified me. This matter did not require further investigation and I decided to move forward [redacted]

This information should be removed from the Draft ROI as there was nothing to investigate or address in the SEC internal matter.

Summary of Issue:

[redacted][2]

Context and Effect:

[redacted]

[2] [redacted] The SEC OIG internal investigation was conducted outside of the investigative operations, by my Counsel. My OC has not adopted the QSI and the QSI are not applicable for the OC internal investigation.

(b) (6), (b) (7)(C), (b) (5) [redacted].

This entire section of the Draft ROI should be removed or unsubstantiated.

Allegation 2

The respondents (identified as Hoecker, (b) (6), (b) (7)(C) [redacted]) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers. Hoecker, (b) (6), (b) (7)(C) [redacted] improperly excluded the investigation from the peer review conducted by the NSF OIG, which prevented the NSF OIG from completing the peer review.

Allegation 2.1
They offered shifting (and potentially pretextual) justifications for SEC OIG's position that the investigation was not subject to peer review.

Finding 2.1
ED OIG substantiated that the SEC OIG offered shifting justifications on why the investigation was not subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

Response: QSI Deficiencies

Page 36, finding 2.1, Omitting Exculpatory Information

The Draft ROI reflects:

> ED OIG substantiated that the SEC OIG offered shifting justifications on why the investigation was not subject to peer review. However, ultimately NSF OIG was granted access and conducted a review of the investigation on October 25, 2017.

Proper Context:

> There were multiple, valid reasons that Counsel's investigation should not have been peer reviewed. The Draft ROI indiscriminately adopts the NSF OIG's terminology "shifting justifications," which falsely suggests that my Counsel and I were lying, when there were multiple, legitimate reasons for this matter to be excluded from the peer review – It was conducted by my OC which is outside of the SEC OIG investigative operations, my OC had not adopted the QSI, and it was completed after the scope period of the peer review.
>
> Counsel's Draft ROI was marked on every page "attorney work product." Also, the Draft ROI was prepared in anticipation of litigation, which is still pending. At the time these reasons were provided, the peer review was ongoing and this was a

dispute between a peer review team and an office being peer reviewed. The peer reviewers refused to follow the peer review guide procedures on resolving disagreements. In fact, the Draft ROI finding 2.2 confirms it was completed outside the scope period and would not have been otherwise selected for review, just as my Counsel and I explained.

(b) (6), (b) (7)(C), (b) (5) [redacted]

Effect:

ED OIG presents this information in a one-sided fashion. (b) (6), (b) (7)(C), (b) (5) [redacted] ED OIG actually concludes that I granted NSF OIG access to review the matter. (b) (6), (b) (7)(C) [redacted]. The draft ROI uses biased, inflammatory language by endorsing ED OIG's claim that there were shifting justifications for the peer review team to not review the SEC internal matter.

There were no "shifting" justifications given. Allegation 2 should be unsubstantiated.

Page 37, Incomplete and Inaccurate Reporting

The Draft ROI at paragraph 6 reflects:

ED OIG's investigation established that (b) (6), (b) (7)(C) was the lead investigator who conducted all material interviews and major document reviews.

Correct Facts:

This matter was assigned to my Office of Counsel. (b) (6), (b) (7)(C) was not the lead investigator, nor did he have a supervisory role. He conducted most material

interviews with Counsel, as the witness interviews in this matter corroborate [redacted] was involved with the investigation for about 30 days. Major document reviews were conducted by Counsel. Counsel's Draft ROI is marked "Attorney Work Product" on every page.

[redacted].

The Draft ROI fails to provide complete and accurate information relative to the assignment of work. [redacted] assisted OC during [redacted] last 30 days of government service.

The Draft ROI should be corrected to reflect the fact that the internal matter was assigned to OC.

Page 37, Incomplete and Inaccurate Reporting

The draft ROI reflects:

> Hoecker's above representation to NSF OIG that he did not believe the internal investigation implicated investigative operations because it was performed by [redacted] and [redacted] played no role in the investigation, is contrary to SEC OIG's ROI reporting (Exhibit 4, p. 2) and Hoecker 's response to the IC on June 29, 2017 (Exhibit 40, p. 2). Both indicated that the investigation was initially started as a joint effort by [redacted] and [redacted]. As previously discussed, ED OIG's investigation established that [redacted] was the lead investigator who conducted all material interviews and major document reviews (Finding 1.1.a, p. 19).

Correct Facts (Emphasis added):

> During my discussions with NSF OIG as the peer reviewers, I did not represent [redacted] had no role in the internal matter. In describing [redacted] role, I would have said he had no **supervisory** role. I also note that my use of the term "joint" simply acknowledges that both [redacted] were involved in investigating the matter. It does not describe supervisory responsibility.

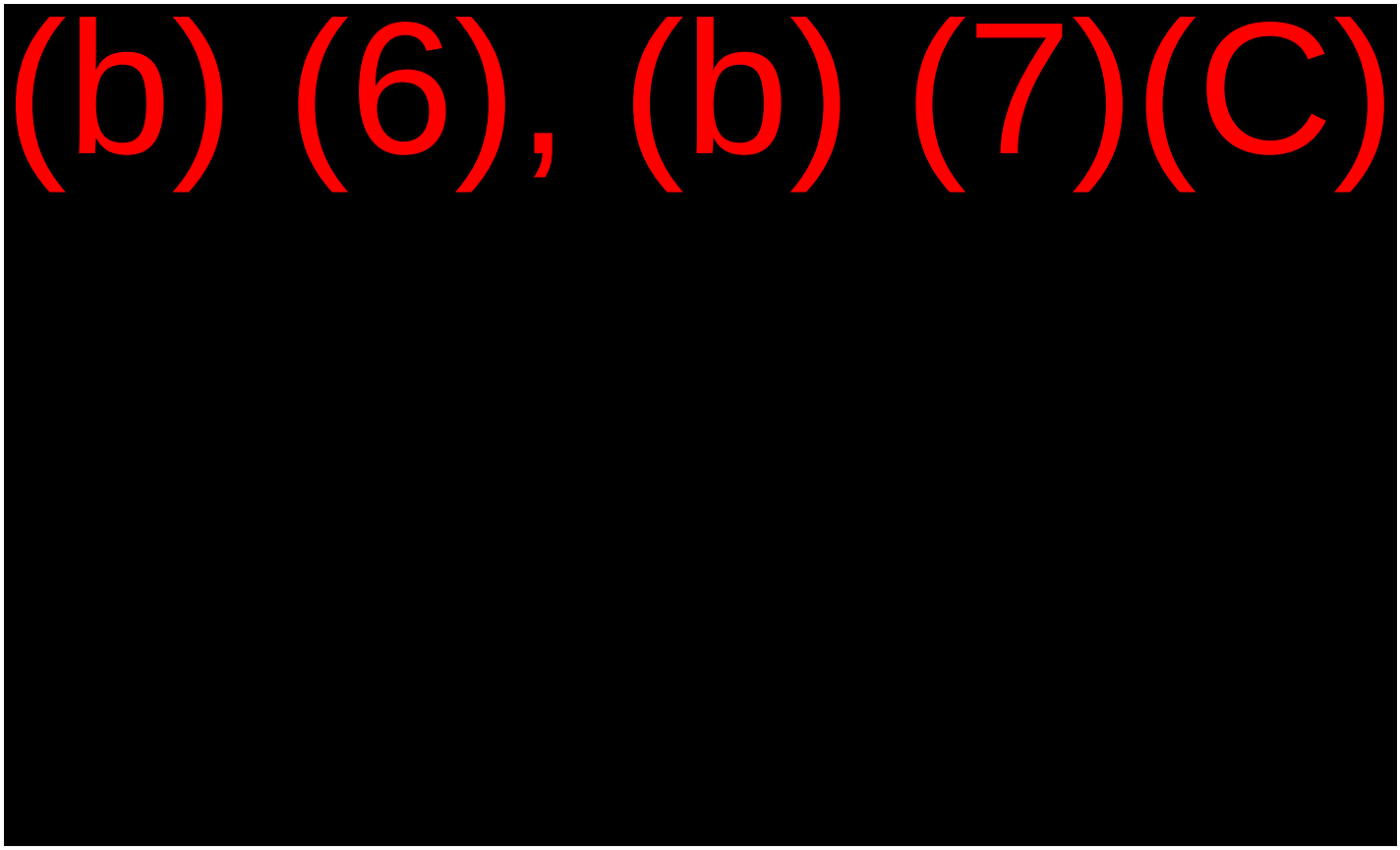
Context and Effect:

> ED OIG has two written responses from me to the Integrity Committee as well as my testimony and that of my counsel articulating [redacted] role in the internal matter. After NSF received an allegation, they sought to review the internal matter and we had at least one discussion with NSF during which I thought they were being unreasonable. Apparently, NSF OIG decided to evaluate the complaint as it pertains to the ongoing peer review and produce the letter dated September 14, 2016 (NSF OIG Side Letter). I had no knowledge that the NSF IG

had sent, much less contemplated crafting, the letter. In fact, I had not seen this correspondence until I received the exhibits in this case in February 2019, well after this investigation began in November 2017. NSF asserted that I represented [redacted] had no role. NSF must have misunderstood that part of the discussion. I was not asked about this during my interview with ED OIG. Strangely enough, ED OIG choose to assign more weight to a summary of a complaint to my official response (i.e., the NSF OIG Side Letter), than to my sworn testimony, and my counsel's sworn testimony.

This is yet another example of ED OIG using inaccurate, biased reporting to attack my credibility.

This information should be removed from the draft ROI.



Allegation 2.3

The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an "investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an "inquiry" and therefore outside the scope of peer review.

Finding 2.3

ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by SEC OIG Counsel). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Response: QSI Deficiencies

Page 38-39, Biased Reporting

The Draft ROI reflects:

> Allegation 2.3 The Respondents characterized the matter inconsistently for different audiences, reporting it in the March 2017 Semiannual Report to Congress as an " investigation" and describing it as such in correspondence with the IC, vs. characterizing it to peer reviewers as an " inquiry" and therefore outside the scope of peer review.
>
> Finding 2.3 ED OIG substantiated that the matter was labeled as both an investigation (by Hoecker) and an inquiry (by SEC OIG Counsel). However, ultimately Hoecker agreed to allow the NSF OIG to review the matter as an investigation on October 25, 2017.

Corrected and Accurate Information:

> The semantics of an investigation versus inquiry has little to do with an investigative peer review. The key for peer review purposes is whether the investigation/inquiry was conducted in the investigative operations. This matter was conducted outside of my investigative operations and therefore outside of the peer review. Further, "ED OIG found that the internal investigation was properly closed outside of the peer review period" (finding 2.2). (b) (6), (b) (7)(C), (b) (5) [redacted]
>
> The QSI was unanimously approved by CIGIE on November 15, 2011, during its monthly meeting. (b) (6), (b) (7)(C), (b) (5) [redacted]. See TAB C for further details.

> In terms of reporting to Congress, we reported the matter and I determined it was best reported in the "Investigations" section of the Semi-annual Report. The matter clearly was not an audit or evaluation. Had we created a category in the Semi-annual Report such as "Internal Investigations" or "Counsel Investigations," my counsel and I agreed that it would most likely violate the Privacy Act given the small size of our office and the ease of which it would be to determine the identity of those investigated.

Allegation 2.3 should be unsubstantiated.

Allegation 2.4

Respondents designated or allowed [redacted] to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

Finding 2.4

ED OIG substantiated the [redacted] served as the SEC OIG's liaison to the NSF OIG peer review team when placed into a new role following a realignment in the OIG, but did not substantiate his serving in his role obstructed the peer review.

Response: QSI Deficiencies

Page 38, Sub Allegation 2.4, Incomplete Reporting

The Draft ROI states:

> Respondents designated or allowed [redacted] to serve as the SEC OIG's liaison to the peer review team, although he had a personal interest in avoiding scrutiny of an investigation into his conduct.

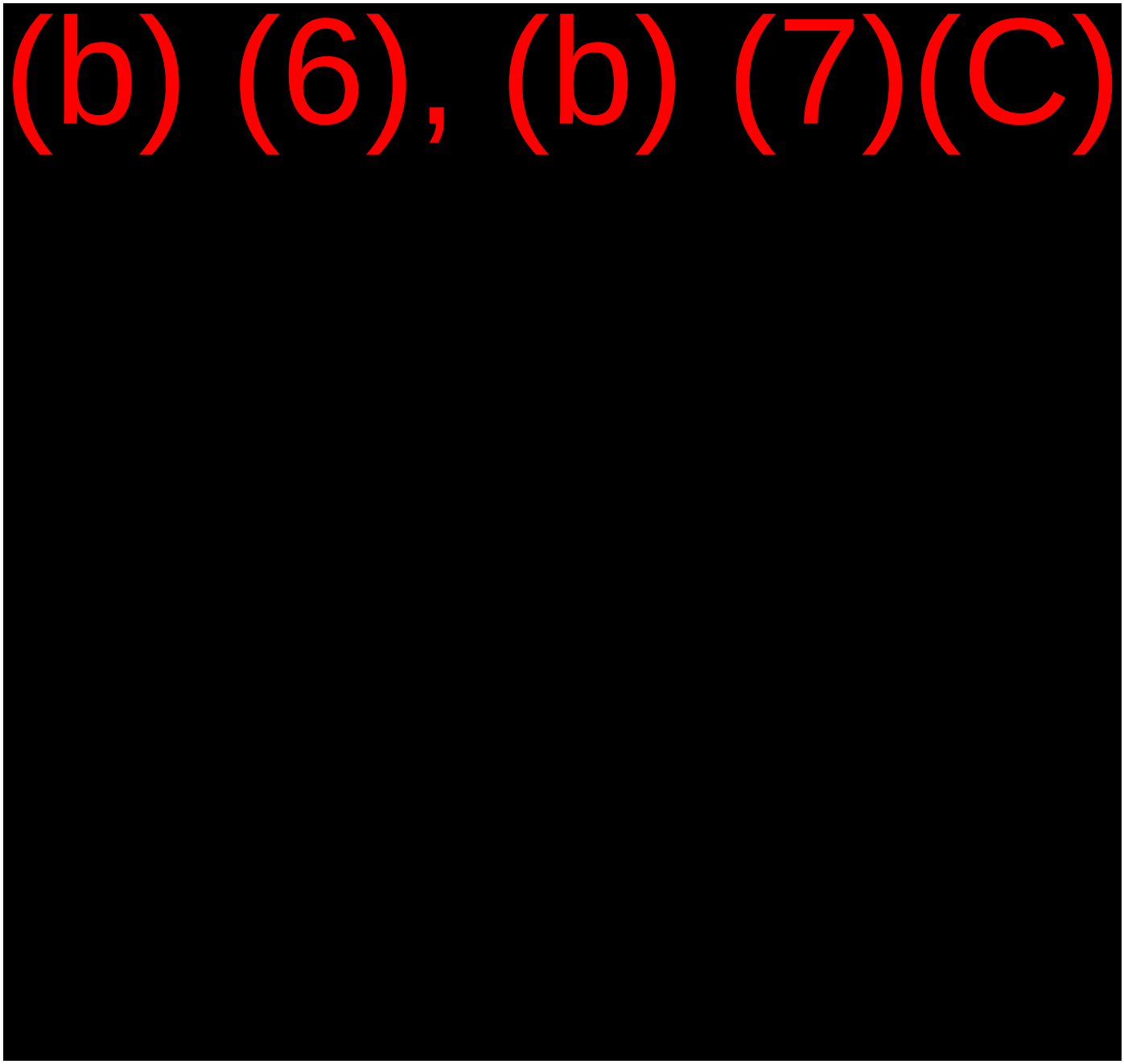
Proper Context:

> The relevant timeline is:
>
> October 16, 2016 Peer Review Point of Contact – [redacted]
> March 28, 2017 [redacted] confirms the case listing for NSF
> March 29, 2017 [redacted] informed about CD & UPS envelope. Due April 3.
> March 31, 2017 [redacted] sent CD via UPS
> April 25, 2017 [redacted] informs NSF he is now the POC.
>
> The CD contained the population of cases from which the peer review team selected the of sample cases for review. The peer review point of contact from October 16, 2016 until April 25, 2017 was [redacted] In fact, on March 31, 2017,

(b) (6), (b) (7)(C) sent the closed case listing and other documents to the peer reviewers. On April 25, 2017 (b) (6), (b) (7)(C) took over as the point of contact for the remainder of the peer review. His duties in this role were to provide building access and access to our investigative database. Further, ED OIG found that the internal investigation of (b) (6), (b) (7)(C) was properly closed outside of the peer review period (finding 2.2).

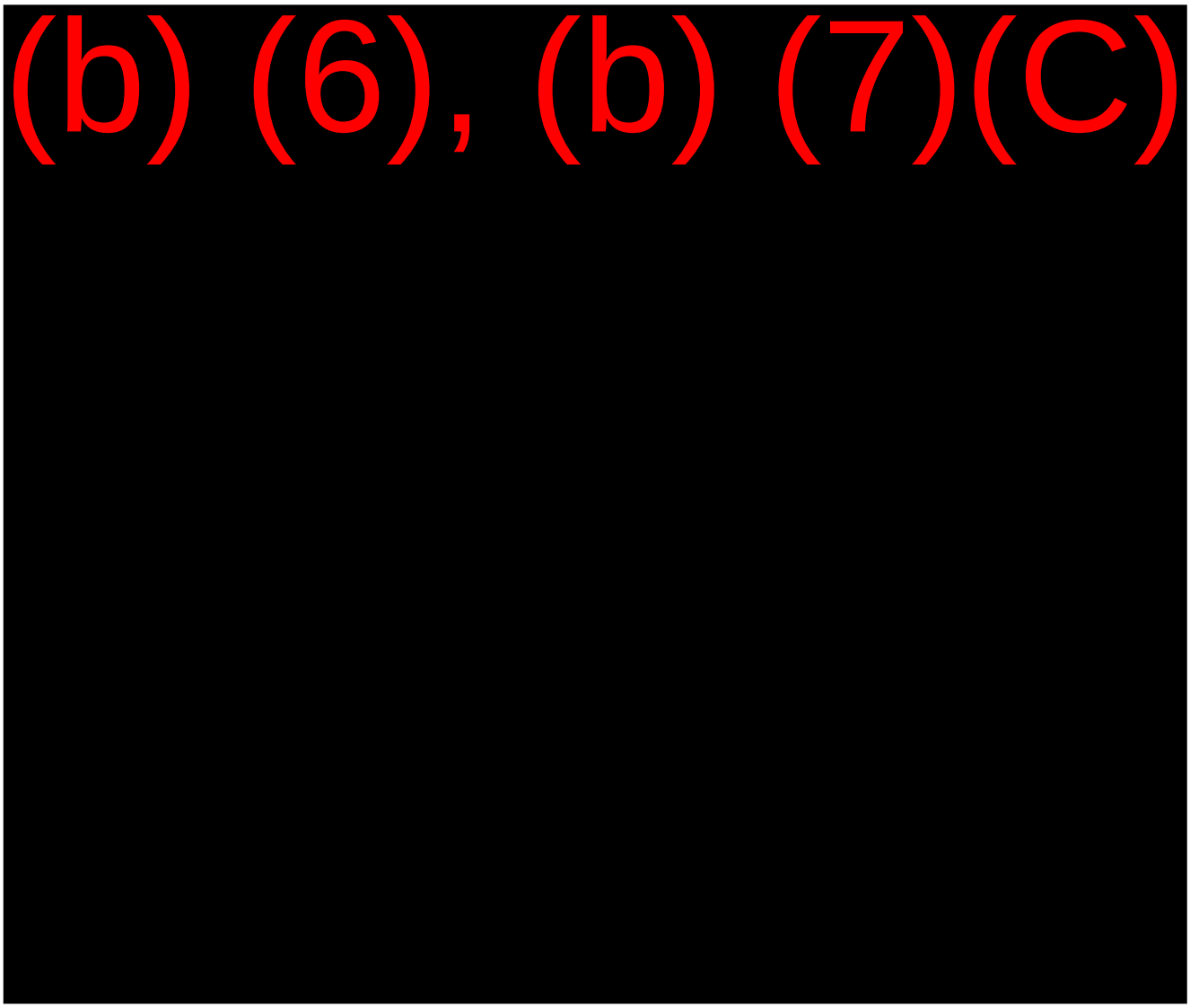
The Draft ROI fails to put a small chronology together that would bring into question the veracity of one of the allegations/complainants. This is yet another example of bias.

Allegation 2.4 should be unsubstantiated.



TAB B

Draft ROI Does Not Adhere to QSI



TAB C

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

TAB D

TAB D
Analysis of Draft ROI Pages 14-15

Analysis of Witness Interview dated 5-18-16 used in the Draft IC Report
page 14-15 numbered bullets 1-10

Page 14 of the Draft ROI concludes that an "[Unnamed person] made the following statements during his interview to [redacted] that *should have alerted* [redacted] *to perception of impairments within SEC OIG* (Exhibit 48)." Pages 14-15 of the Draft ROI then details 10 bulleted statements from this unnamed person that are taken out of context and constitute speculative hearsay from other unnamed individuals. Further, this individual's testimony changed between the first and second interviews on the issue of impartiality. Yet the Draft ROI heavily relies on this testimony to support Finding 1.1a, that [redacted] were allegedly not free from appearance of impairments to independence. None of the statements amount to explicit or implicit challenges to the independence of [redacted]. If anything, the testimony that the Witness offers reflects complete respect for [redacted] as a man of integrity and excellent leadership skills. A discussion of each of those 10 bullets follows below:

Draft ROI Bullet 1 "And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] over." [redacted] and [redacted] acknowledged the statement by saying "right" (Page 31 of Witnesstranscript)

Proper context: At page 29-30, Witness states: "Frankly, I'm embarrassed by not having come to you at that point, because you could have made it stop sooner. And I mean no disrespect to you, [redacted] –" Further: " -- but at that point, I still don't have proof. I have observation. Others don't have proof. Others are afraid to go forward. And I think the world of you and what you've built here. But others and myself, they know you brought [redacted] over."

Analysis: During an interview, if the interviewer says "right" "I know", or anything similar, it is to get the interviewee to continue speaking on that issue. To conclude anything else would assume that the interviewer is providing testimony rather than taking testimony. In reality during this interview, [redacted] was being asked why he, as a supervisor, did not report alleged misconduct that **occurred 5 months earlier**, if [redacted] thought there was misconduct. In fact, the Witness says he is embarrassed that he did not report it because [redacted] could have stopped the alleged behavior back then. What really comes out in this testimony is the justification this Witness, as a management official, offered to not report something he believed to be misconduct until 5 months later – that justification is he had no proof. The Witness does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 2 "And there's a feeling that, you know, [redacted] is your guy" (Witnesspage 30)

Proper context: At page 30, Witness states: "And there's a feeling that, you know, [redacted] your guy and [redacted] you know -- I think it's great that we promote from within and

that we trust people and we bring them over from other organizations, and I would do the same thing. I've done it myself." [redacted] "Right." Witness: "So I didn't want to come forward to you without more."

Analysis: This bullet is closely related to the bullet above and is offered by the Witness as a reason for his not reporting suspected misconduct earlier. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 3 "..you owe the world to (an unnamed person), [redacted] clarified his statement then, stating "we wouldn't be here today without [redacted] and unnamed person." ([redacted] page 33)

Proper context: At page 32-33, [redacted] asks: "So and is this post-Shepherdstown tension, did something happen there or was it just the announcement of my departure and people are thinking, hey, I could end up working for this guy and if it's in my face now, it's really going to be in my face then?" [redacted] states: "And I didn't hear it, because I was out of the room at the time. But it was related to me at some point when you're talking about and I think you're reflecting how we had come, it was reported to me that you said something like you owe the world to [redacted]. And others have shared with me that, for them, that was their tipping point. Oh, crap. And they started talking about it in whatever setting and they began to put their pieces together. And it was a realization that what was tolerable when it was just co-workers doing things that they're not comfortable with, would be intolerable when it would possibly be the next leader of the organization."

Analysis: This Witness is providing the reason he decided to make the complaint when he did, i.e., his speculation that [redacted] could be the next [redacted] (a position that he also submitted for), and is speculating on why others may not have complained earlier. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 4 "I believe only a fair and objective investigation could provide you evidence to make that determination." (Witness page 43)

Proper context: At page 37, [redacted] asks: "When you say basically, these facts potentially constitute T&A fraud, which may violate -- this is kind of the same thing. You don't know anything specific, you just think it may?" [redacted] answers: "I believe only a fair and objective investigation could provide you evidence to make that determination."

Analysis: The line of questioning is attempting to determine why [redacted] claimed in his complaint that there was criminality even though he had no evidence or personal knowledge thereof. [redacted] says he believes the allegations could possibly be criminal but only a fair an objective investigation would determine it. There was nothing said or

inferred about (b) (6), (b) (7)(C) being unfair or not objective with the interview or investigation.

Draft ROI Bullet 5 "They're afraid of (b) (6), (b) (7)(C) But they feel that (b) (6), (b) (7) is protected by you and Carl (Hoecker)." ((b) (6), (b) (7)(C) page 70)

Proper context: (b) (6), (b) (7)(C) states: "And she expressed to me concern about this statement. Which this is an example, I don't believe it was the only time that he said to her, how about I shut your door and bend you over your desk. Which she took as an unsolicited sexual advance or a joke. And so she laughed it off. She told me, frankly, that she's embarrassed for not having stood up and said, this is not okay. Stop. But she said that she's afraid of retaliation or reprisal for reporting it. Which is why she coped with it by laughing it off." (Pages 67-68). At page 69, (b) (6), (b) (7)(C) asks: "So once he said this to her, she came and reported it to you?" (b) (6), (b) (7)(C) answers: "Yeah."

Analysis: The line of questioning was to understand why (b) (6), (b) (7)(C) as a supervisor, did not report a possible EEO violation timely, as required by SEC policy. (b) (6), (b) (7)(C) also speculates on why others did not timely report matters. (b) (6), (b) (7)(C) remarks have nothing to do with the independence of the investigation. Nor does (b) (6), (b) (7)(C) state explicitly or implicitly there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation.

Draft ROI Bullet 6 "Someone told me, and I don 't know if this is accurate, that Carl was like literally his ((b) (6), (b) (7)(C)) godfather, or if that means godfather in that like I've got people that I'm the godfather of their, you know, their federal career. I brought them in, I've mentored them, I've taken care of them, you know, helped develop people. So, I don't know if that was an allegation or if that just means, you know, Carl supporting (b) (6), (b) (7)(C) professional development, because that can be okay totally. But I think to the extent that that information may be out there, people are concerned, well, he is protected which is why he's behaving in this way, and if I report it, it's not going to go so well for me" ((b) (6), (b) (7)(C) page 70-71).

Proper context and analysis: This entire passage constitutes speculation about what other people are thinking. It contains: "I don't know if it is accurate" "I don't know if that means." The line of questioning was to understand if (b) (6), (b) (7)(C) as a supervisor, encouraged those who believed there was misconduct to report it in a timely manner. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation.

Draft ROI Bullet 7 "I think you are very perceptive … how could you not have a sense of what was going on" ((b) (6), (b) (7)(C) page 71)

Proper context: At page 71 (b) (6), (b) (7)(C) asks: "Have I conveyed anything that would give people that thought? Did he insinuate it or somehow?" (b) (6), (b) (7)(C) answers: "To be completely frank with you -- which is always what you're going to get from me if you ask

me. I think, collectively, people are concerned that, I mean you're a pretty hands-on guy. I think you're very perceptive, at least that's my feeling is you're tuned in. How could you not have a sense something was going on?" (b) (6), (b) (7)(C) continues: "That's what people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on, I mean that's the general concern is since we all know it or sense that this is going on and it's not okay, how is it possible that you don't see it or that someone else doesn't see it, or even people out of OI don't see and say something. I'm not making an accusation, because this is not about me, this is about them."

Analysis: This bullet is a continuation of the bullets 5 and 6. The line of questioning was to understand if (b) (6), (b) (7)(C) knew about anything (b) (6), (b) (7)(C) may have conveyed that would lead (b) (6), (b) (7)(C) to believe (b) (6), (b) (7)(C) as "untouchable." (b) (6), (b) (7)(C) does not answer based on his own knowledge, but rather speculates based on nothing more than inferences (b) (6), (b) (7)(C) draws based on unspecified conversations (b) (6), (b) (7)(C) might have had with other unnamed individuals. The "what's going on" refers to the alleged misconduct on the part of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Also, it is unrealistic for (b) (6), (b) (7)(C) to know all social interactions of his unit. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation. In fact, and curiously absent from the Draft ROI, is (b) (6), (b) (7)(C) statement that he is not making an accusation. I also note that if (b) (6), (b) (7)(C) believed there was an impartiality issue, one would expect him to push this line of inquiry as he did.

Draft ROI Bullet 8 "That's what [sic] people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on ... how is it possible that you don't see it..." (p. 72).

Proper context: At Page 72, (b) (6), (b) (7)(C) states: "That's what people are concerned, that either (b) (6), (b) (7)(C) doesn't see it, so are they hiding it from you, or has it gone on, I mean that's the general concern is since we all know it or sense that this is going on and it's not okay, how is it possible that you don't see it or that someone else doesn't see it, or even people out of OI don't see and say something. I'm not making an accusation, because this is not about me, this is about them."

Analysis: This bullet is a continuation of the bullets 5, 6, and specifically, 7. The line of questioning was to understand if (b) (6), (b) (7)(C) knew about anything (b) (6), (b) (7)(C) may have conveyed that would lead him to believe (b) (6), (b) (7)(C) as "untouchable." (b) (6), (b) (7)(C) does not answer based on his own knowledge, but rather speculates on others' concerns based on pure hearsay and/or conjecture. Also, it is unrealistic for (b) (6), (b) (7)(C) to know all social interactions of his unit. (b) (6), (b) (7)(C) does not state, explicitly or implicitly, that there is an independence issue with (b) (6), (b) (7)(C) conducting the interview and investigation. In fact, he states he is not making an accusation.

Draft ROI Bullet 9 "I think people have a sense that he ((b) (6), (b) (7)(C)) operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and (b) (6), (b) (7)(C) hugging it out in the

locker room or something ... But I think people are looking to see how you're going to resolve this "(p. 110)

Proper context: At page 109, [redacted] asks: “What do you think I could have done differently to get people to have told me?” On page 110, [redacted] answers: “I don't think it's what you could have done differently, I think it's what [redacted] could have done differently. I think people have a sense that he operates with impunity, or that he feels that way. So, I think people connect the dots to, I mean not my words, someone else's, hey, he must have some pictures of Carl and [redacted] hugging it out in the locker room or something because -- Right, you know, because he walks around like he owns the place, and maybe that means that if I say something nothing is going to happen. I don't think anybody, I'm speaking for myself, but I don't think anybody thinks you failed as a leader. I don't feel you fail as a leader. But I think people are looking to see how you're going to resolve this.”

Analysis: [redacted] testimony tells [redacted] that he not a failure as a leader and that he believes people are looking to see how [redacted] resolves this issue. This is the opposite of impairment to independence. This is an actual endorsement of [redacted] as independent interviews and fact gatherers. Lastly, [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

Draft ROI Bullet 10 Regarding one on one interviews of OI staff by [redacted] [Unnamed person] stated "I think that no one wants to challenge what you've built here ... l think everyone wants to just come in and say everything is okay from the one-on-ones and move on" (p. 109).

Proper context: At page 109, [redacted] asks: “Give me a little more on that. What do you mean intimidated by me? How is that, help me with that, because I don't want that to come across. How is that?” [redacted] answers: “No, and I don't mean it in a bad way but I think that no one wants to challenge what you've built here by saying, hey, your baby is ugly. No one wants to tell you your baby is ugly, because we all love you and respect you and care about you. No one wants to say, hey, this place is jacked up.”

Analysis: In this line of questioning [redacted] is attempting to understand or evaluate what [redacted] means by intimidation. Curiously absent from the Draft ROI is [redacted] statement “I don’t mean that in a bad way.” Nothing suggesting an independence issue with the investigation. [redacted] does not state, explicitly or implicitly, that there is an independence issue with [redacted] conducting the interview and investigation.

TAB D
Analysis of Draft ROI Pages 14-15

IG Hoecker's overall remarks on bullets 1-10:

From his 5-18-16 interview transcript, (b) (6), (b) (7)(C) appears to be open and honest. He did not mention that he was concerned with (b) (6), (b) (7)(C) conducting the interview or investigation. (b) (6), (b) (7)(C) did not state he was concerned with independence, did not request anyone else be present during the interview, and did not request to be interviewed by someone else – all options he could have exercised if he thought there was an issue.

From the quotes contained in bullets 1-10 of the draft ROI and with the benefit of proper context and missing sentences, there is nothing, either singularly or together, that would cause an objective fact gatherer or reader to think that (b) (6), (b) (7)(C) thought there was an independence issue with the internal investigation. In fact, (b) (6), (b) (7)(C) did not raise an independence issue, nor did they inform me they should be recused from this matter. Additionally, the quotes on page 14-15, were first provided to me as independence issues during my interview conducted by the Integrity Committee in July 2018, about two years after (b) (6), (b) (7)(C) interview and about a year after the internal matter on (b) (6), (b) (7)(C) was closed.

In sum, when viewed in the proper context and with the addition of missing information from the (b) (6), (b) (7)(C) interview, as I did above, an objective reader/reasonable third party cannot infer that (b) (6), (b) (7)(C) should have known there was an independence impairment worthy of recusal or reporting. At most, (b) (6), (b) (7)(C) testimony at the time is full of speculative hearsay about what other OIG staff were thinking and, in fact, actually endorses the independence and integrity of (b) (6), (b) (7)(C) as a person and as a leader.

TAB E

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT LIST

EXHIBIT LIST

1. Email String – IG Hoecker and Integrity Committee, September 28, 2018

2. Council of the Inspectors General on Integrity and Efficiency, "The Inspectors General," July 14, 2014

3. a. IC Letter to IG Hoecker, dated December 23, 2016
   b. IG Hoecker Letter to IC, dated February 2, 2017
   c. IC Letter to IG Hoecker, dated February 21, 2017
   d. IC Letter to IG Hoecker, dated May 30, 2017
   e. IG Hoecker Letter to IC, dated June 29, 2017

4. Email String – Counsel Wright and Integrity Committee, September 2018

5. Multiple Email Strings – Counsel Wright and Integrity Committee, February 2019

(b) (6), (b) (7)(C), (b) (5) [redacted]

EXHIBIT 1

Chun Wright

From: Hoecker, Carl W. (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 8:58 AM
To: Chun Wright
Cc: Integrity-WG
Subject: Re: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Sensitivity: Confidential

(b) (6), (b) (7)(C),

My counsel for this matter is Ms Chun Wright.

Regards,

Carl Hoecker

On Sep 28, 2018, at 8:35 AM, Chun Wright (b) (6), (b) (7)(C) > wrote:

> Dear (b) (6), (b) (7)(C),
>
> Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.
>
> Regards,
>
> Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
http://www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: Chun Wright (b) (6), (b) (7)(C) >
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Mr. Wright,

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)
)
CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006
http://www.IGnet.gov

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and

3) “a summary memorandum of any unrecorded interview” of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
http://www.ctwrightlaw.com

EXHIBIT 2

Council of the
INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY

THE INSPECTORS GENERAL

July 14, 2014

INTRODUCTION

The concept of a statutory Inspector General (IG) was broadly introduced to the civilian side of the Federal government by the Inspector General Act of 1978 (IG Act).[1] The original Inspectors General (IGs) were established in 12 Federal agencies. The concept has proved so successful that today, there are 72 statutory IGs across the Federal government.

Statutory IGs are structurally unique within the Federal government. The stated purpose of the IG Act is to create independent and objective units within each agency whose duty it is to combat waste, fraud, and abuse in the programs and operations of that agency.[2] To this end, each IG is responsible for conducting audits and investigations relating to the programs and operations of its agency, and providing leadership and coordination and recommending policies for, and to conduct, supervise, or coordinate other activities[3] for the purpose of promoting economy, efficiency, and effectiveness and preventing and detecting fraud and abuse in those programs and operations. Importantly, each IG is also to keep the agency head and the Congress "fully and currently informed" about problems and deficiencies relating to the administration of agency programs and operations. The IG Act contains a variety of statutory guarantees of Office of Inspector General (OIG) independence, designed to ensure the objectivity of OIG work and to safeguard against efforts to compromise that objectivity or hinder OIG operations. It is these guarantees of independence that make statutory IGs unique.

This paper, prepared by the Council of the Inspectors General on Integrity and Efficiency (CIGIE),[4] explores the authorities, responsibilities, and independence of statutory IGs. It is

[1] Pub. L. No. 95-452 (Oct. 12, 1978), 5 U.S.C. app. 3.
[2] Additionally, the IG Act, at section 7, sets out that the IG may receive and investigate complaints alleging mismanagement.
[3] For example, many IGs conduct inspections and evaluations.
[4] Established by the Inspector General Reform Act of 2008, CIGIE is a council made up of 72 IGs and others in the Federal law enforcement and program integrity community, including the Office of Management and Budget (OMB). The mission of the Council is to address integrity, economy, and effectiveness issues that transcend individual Government agencies and to increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the IGs. The Council has annual and other reporting requirements to the President and to Congress [IG Act, § 11].

presented for purposes of providing a better understanding of these attributes, and to foster a productive, informed working relationship between agency executives and their IGs.[5]

SELECTION, APPOINTMENT, AND REMOVAL OF IGs

At the outset, it is important to note that there are two distinct types of IGs under the IG Act: those in "establishment" agencies (establishment IGs) and those in "designated Federal entities" (DFE) (DFE IGs).[6] Establishment IGs are appointed by the President with Senate confirmation, whereas DFE IGs are appointed by the agency head, which may be an individual, a board, or a commission. With a few exceptions, both types of IGs share the same authorities and responsibilities. For consistency, the term "agencies" is used throughout this paper to apply equally to establishment agencies and DFEs.[7] Where there are significant differences, the two are distinguished.

A. SELECTION AND APPOINTMENT

Under the IG Act, all IGs must be selected without regard to political affiliation and based solely on "integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations"[8] [IG Act, §§ 3(a); 8G(c)].

> *Establishment IGs [IG Act, § 3(a)]:* Establishment IGs are appointed by the President and confirmed by the Senate. Pay for establishment IGs is fixed by statute at Executive Schedule level III plus three percent.[9]
>
> *DFE IGs [IG Act, § 8G(c)]:* DFE IGs are appointed by the head of the entity. In DFE agencies with a board or commission, that board or commission is considered the entity head.[10] For pay and all other purposes, the grade, level, or rank of a DFE IG must be at or above the majority of the senior level executives within that entity (such as the General Counsel, Chief Information Officer, or Chief Acquisition Officer); DFE IG pay must not be less than the average total annual compensation (with bonuses included) of the DFE's senior level executives.[11]

---

[5] Please note that this paper summarizes authorities granted by statute to Federal IGs. This is not intended to change the existing authority of each IG to exercise legal discretion and professional judgment to interpret and execute those authorities for his or her Office in particular circumstances.

[6] Appendix 1 contains a list of all departments and agencies with statutory IGs, and identifies each as an "establishment" agency (with a Presidentially-appointed IG), or "Designated Federal Entity" (with an IG appointed by the head of the entity or a governing board).

[7] We note that some IGs were established by statutes other than the IG Act. Some of these IGs are listed in Appendix 1. In some cases, these statutes incorporate some of the authorities and responsibilities of the IG Act; where this is true, this paper will also be applicable to IGs in those agencies.

[8] Particular IGs may also be subject to additional requirements [*see, e.g.,* IG Act, § 8D(i)].

[9] If an IG is appointed from a Senior Executive Service (SES) position, the IG Act provides that the IG may elect to retain his or her SES pay level, which could be higher. [IG Act, § 3, note].

[10] As of 2011, the Government Accountability Office (GAO) reported that 26 of 33 DFEs have boards or commissions. GAO-11-770, *Inspectors General, Reporting on Independence, Effectiveness, and Expertise* (Sept. 2011).

[11] For additional information on fixing the pay of an IG of a DFE, see the IG Reform Act, § 4(b)-(d), Pub. L. No. 110-409 (codified at IG Act, § 3, note).

CIGIE submits recommendations of individuals for IG appointments to the appropriate appointing authorities for both DFE and establishment IG positions [IG Act, § 11(c)(1)(F)]. So as not to compromise the independence of his or her work, no IG may receive a cash award or cash bonus [IG Act, § 3(f)].

B. REMOVAL OR TRANSFER

Although IGs generally serve at the pleasure of the President or DFE head, the IG Act contains procedural safeguards to help ensure the independence of IGs and to ensure that Congress is informed of the reasons for their removal or transfer before such action takes place. These safeguards are meant to prevent IGs from being removed for political reasons or simply because they are doing an effective job of identifying fraud, waste, and abuse.

Specifically:

> *Establishment IGs [IG Act, § 3(b)]:* An establishment IG may be removed from office or transferred to another position within the agency by the President; however, the President must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer.
>
> *DFE IGs [IG Act, § 8G(e)]:* Likewise, a DFE IG may be removed from office or transferred to another position within the agency by the entity head; however, the entity head must communicate the reasons for the action in writing to both Houses of Congress at least 30 days before the removal or transfer. In a DFE agency with a board or commission, removal or transfer of a DFE IG requires the written concurrence of two-thirds of the members of the board or commission.

In both cases, Congressional notification letters must be sent by the President (for establishment IGs) or the entity head (for DFE IGs) to "both Houses of Congress." Entity heads are also requested to provide copies of the Congressional notifications to the CIGIE Chair.

OIG INDEPENDENCE AND THE RELATIONSHIP WITH AGENCY MANAGEMENT

In creating the OIGs, Congress sought to "strike a workable balance" for IGs and agency heads. The Senate Committee on Governmental Affairs explained:

> If the agency head is committed to running and managing the agency effectively and to rooting out fraud, abuse and waste at all levels, the Inspector and Auditor General[12] can be his strong right arm in doing so, while maintaining the independence needed to honor his reporting obligations to Congress.[13]

This balance is accomplished through a number of provisions of the Act.

[12] This was the name given to IGs in the original bill; it was later shortened to "Inspector General."
[13] S. REP. NO. 95-1071, at 9 (1978).

A. GENERAL SUPERVISION

The IG Act specifically prohibits agency management officials from supervising the IG. This important organizational independence helps to limit the potential for conflicts of interest that exist when an audit or investigative function is placed under the authority of the official whose particular programs are being scrutinized. This insulates IGs against reprisal and promotes independent and objective reporting.

> *Establishment IGs [IG Act, § 3(a)]:* The Act specifies that each IG "shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment." Except under narrow circumstances discussed below, even the head of the establishment may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.
>
> *DFE IGs [IG Act, § 8G(d)]:* Similarly, each DFE IG "shall report to and be under the general supervision of the head of the [DFE], but shall not report to, or be subject to supervision by, any other officer or employee of such [DFE]." Again, except in narrow circumstances discussed below, even the head of the DFE may not prevent or prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

There is no statutory definition of "general supervision." However, the IG Act is clear that this supervision is limited and may not be exercised in a way that would inhibit an IG's full discretion to undertake an audit or investigation, issue subpoenas, and see these matters through to conclusion. Additionally, although only a few court decisions have analyzed the "general supervision" language of the IG Act, one case in particular, *United States Nuclear Regulatory Commission v. Federal Labor Relations Authority*, 25 F.3d 229, 235 (4th Cir. 1994), reviewed the legislative history of the "general supervision" language and described the agency head's supervisory authority over the IG as "nominal."

As mentioned above, there is one exception to the prohibition on agency interference with IG audits, investigations, and subpoenas. Under the IG Act, the heads of seven agencies (the Departments of Defense, Homeland Security, Justice, Treasury, plus the Federal Reserve Board and Consumer Financial Protection Bureau, and the Postal Service) may prevent their respective IGs from initiating or completing an investigation or audit, or issuing a subpoena, but only for reasons specified in the IG Act [*see, e.g.,* IG Act, § 8].[14] These reasons include, among others, preserving national security interests, protecting ongoing criminal prosecutions, or limiting the disclosure of information that could significantly influence the economy or market behavior [*see,*

[14] Other statutes may provide heads of agencies with similar powers over IG audits, investigations, and subpoenas. For example, the Secretary of Defense, in consultation with the Director of National Intelligence, has those powers with respect to the Defense Intelligence Component (DIC) IGs.

e.g., IG Act, § 8D]. If an agency head invokes this power, he or she must send an explanatory statement to certain Congressional Committees within 30 days.[15]

B. IG ACCESS TO AGENCY HEAD

The IG is required to have direct and prompt access to the agency head when necessary to perform the IG's functions and responsibilities [IG Act, § 6(a)(6)]. This provision helps make sure that the agency head hears, first hand and promptly, needed information on serious problems and abuses within the agency. It also helps ensure timely access by the IG to all records and information in the agency's possession.

C. IG REPORTING TO THE CONGRESS

The IG Act creates a rare dual reporting obligation for IGs to keep both the head of the agency and the Congress "fully and currently informed" about deficiencies in agency programs and operations, and progress in correcting those deficiencies [IG Act § 4(a)(5)]. In part, this responsibility is fulfilled through the two reports discussed below. Many OIGs also have agency- or program-specific reports that they are obligated to submit to the Congress. In addition, IGs brief their agency heads on important audits, investigations, and other issues, as appropriate, testify frequently before Congressional committees, and respond to Questions for the Record (QFRs). They also field requests, provide briefings to, and participate in meetings with Congressional members and their staff on a regular basis.

Semiannual Reports [IG Act, § 5]: IGs must issue semiannual reports detailing, among other items, significant problems and deficiencies identified by the OIG during the preceding six-month period (ending March 31 and September 30), listing current and pending recommendations and summarizing prosecutorial referrals made during the period. The report also describes any significant disagreements with agency management concerning OIG recommendations. By law, the IG submits the report first to the agency head (no later than April 30 and October 31 of each year). The agency head must prepare a companion report, detailing management's actions in response to OIG findings and recommendations. Upon receipt of the IG's semiannual report, the agency head has 30 days to append comments and his/her companion report and transmit both to the appropriate committees of the Congress.[16]

The IG Act does not require IGs to seek clearance of the semiannual report by the agency head, although the IG may choose to circulate the report in draft format to the appropriate agency officials for technical comments. The agency head may not change the OIG's semiannual report, but he or she may separately provide comments.

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[15] There are separate authorities applicable to the Central Intelligence Agency, Intelligence Community IG, and the DIC IGs, including Defense Intelligence Agency, National Security Agency, National Reconnaissance Office, and National Geospatial-Intelligence Agency, which require reports to respective Congressional oversight committees within 7 days.

[16] Additionally, for those agencies subject to its provisions, the Reports Consolidation Act of 2000 (31 U.S.C. § 3516(a)(2)(C)) authorizes an agency head to respond to IG reports on an annual basis. Agencies must first consult with OMB and appropriate Congressional committees.

As set out in the IG Act, the semiannual reports of the OIG and the agency head are prepared independently. However, because both reports must contain specified statistical data relating to the same universe of audit, inspection, and evaluation reports, management and the IG should routinely reconcile their follow-up data and account for any discrepancies between them.[17]

"Seven-Day Letter" [IG Act, § 5(d)]: Section 5(d) of the IG Act authorizes an IG to report "immediately" to the agency head when the IG becomes aware of "particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations." In turn, the agency head must transmit the report—and any comments—to the appropriate committees or subcommittees of Congress within seven calendar days. In practice, the "Seven-Day Letter" is a powerful tool available to the IG in compelling circumstances requiring immediate Congressional attention.

D. OVERSEEING THE OIG

The statutory independence of IGs raises the fair question of, "Who oversees the IG?" The IG Act does have several mechanisms for IG accountability. First, all OIG reports (excluding those containing classified or other information that may not be released) are published on the particular OIG's website and are open to public scrutiny [IG Act, § 8M(b)(1)]. The OIG semiannual reports are also, by law, publicly available. These reports, together with the companion agency report, reveal important information on the acceptance and implementation of OIG recommendations. Moreover, OIG Audit Offices are subject to external peer review for compliance with Government Auditing Standards, established by GAO, at least once every three years.[18] OIGs that exercise statutory law enforcement authorities (discussed below) under the IG Act are also subject to mandatory peer review of their Office of Investigations every three years.[19] OIG evaluations and inspections professionals are currently pilot testing peer reviews for that function as well. Information regarding all peer reviews is made public in the OIGs' semiannual reports [IG Act, § 5].

Another form of OIG oversight is CIGIE's role in ensuring OIG professionalism. For example, CIGIE sets government-wide quality standards that form the basis for the professional peer reviews described above [IG Act, § 11(c)(2)]. OIG staff must adhere to these professional standards, so long as they are not inconsistent with Government Auditing Standards. CIGIE also coordinates cross-agency work and provides professional training opportunities for IGs across government.

Under applicable standards, another aspect of professionalism is the need for OIGs to have qualified personnel. For many OIG positions, OIG personnel must also meet continuing education requirements to maintain professional competency for their positions. The importance

[17] Defense Intelligence Component IGs have a separate statutory obligation to submit an additional annual report directly to the Intelligence Committees [*see* IG Act § 8H(g)].
[18] Frequency of audit peer review is set by GAO in its Government Auditing Standards, which IGs are obligated to follow [IG Act, § 4(b)(1)(A)].
[19] There are four OIGs (Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration) that derive their law enforcement authority from legislation other than the IG Act of 1978, as amended, and may voluntarily submit to such peer review processes.

of training for OIG personnel is reflected in the IG Act, which requires all IGs to include training information in their annual budget requests [IG Act, § 6(f)(1)].

When an allegation of wrongdoing is lodged against an IG or a member of his/her senior staff, the Integrity Committee of CIGIE serves as an independent reviewer and investigative mechanism for those allegations [IG Act, §§ 11(d)(1) and (4)]. An official of the Federal Bureau of Investigation serves as Chairperson of the Integrity Committee. [IG Act, § 11(d)(2)(A)].

STRUCTURE & ADMINISTRATION OF OFFICES OF INSPECTOR GENERAL

A. OFFICE STRUCTURE

OIGs are given considerable latitude in organizing their offices as they see fit to best carry out the duties assigned to them by statute. This autonomy is described in more detail below. Nonetheless, the IG Act does contain certain requirements with respect to OIG staffing:

Assistant Inspectors General [IG Act, § 3(d)]: Establishment IGs are required to appoint two officials—an Assistant Inspector General for Auditing, who is responsible for supervising the performance of audits relating to programs and operations of that agency, and an Assistant Inspector General for Investigations, who is similarly responsible for supervising investigations of those programs and operations. There is no corresponding requirement that IGs in DFE agencies appoint these officials; in practice, however, this is the model followed by many DFE IGs.

Legal Counsel [IG Act, §§ 3(g); 8G(g)(4)]: IGs are required by law to obtain legal counsel independent of the agency counsel. Specifically, the IG Act requires an IG to obtain legal advice from a counsel who reports directly to the IG or to another IG. Alternatively, DFE IGs may obtain services of appropriate staff of CIGIE on a reimbursable basis.

Evaluations and Inspections. Many IGs have offices that perform inspections or evaluations of their agency's programs and operations. Where an IG does perform inspections or evaluations, it must conduct them in accordance with CIGIE Quality Standards for Inspection and Evaluation [IG Act, § 11(c)(2)(A)]. In addition, the IG must include a list of any inspection or evaluation reports and their results in its semiannual report [IG Act, § 5].

Whistleblower Ombudsman. Each establishment IG (except certain IGs in the intelligence community) is required to designate a Whistleblower Ombudsman. This is described in more detail later in this paper [IG Act, § 3(d)(1)(C)].

B. PERSONNEL, PROCUREMENT, AND LOGISTICAL SUPPORT

To ensure that each IG would be able to secure the resources necessary to carry out his or her duties, Congress provided the IG with broad administrative authorities:

- to select, appoint, and employ such officers as may be necessary for carrying out the functions, powers, and duties of the OIG [IG Act, §§ 6(a)(7); 8G(g)(2)], and to be

considered head of the agency with respect to authorities related to separation, retirement, and reemployment of OIG employees [IG Act, § 6(d)];
- to obtain consultant services [IG Act, §§ 6(a)(8); 8G(g)(2)];
- to contract for audits, studies, analyses, and other services [IG Act, § 6(a)(9)]; and
- to appoint individuals to Senior Executive Service (SES) positions within the OIG [IG Act, § 6(d)] and to be considered head of the agency for all SES positions within the OIG.

The IG Act also directs each agency head to provide the IG with "appropriate and adequate office space . . . together with such equipment, office supplies and communications facilities and services as may be necessary for the operation of such offices . . ." [IG Act, § 6(c)].

Congressional intent in including these broad authorities was clear. In the legislative history to the IG Act, the Senate Committee on Governmental Affairs acknowledged that administrative personnel and contracting authorities usually rest with the agency head and are delegated by him or her to subordinate officials. However, because of the IG's "unique function . . . and the possibility that such authority might be denied to him in order to hamper his operations, the committee has given him explicit authority to carry out these functions."[20]

Although OIGs are authorized to exercise personnel and procurement authorities independent of the parent agency, often it is more cost effective to obtain these services from the agency. Thus, in many agencies, the OIG continues to rely on the parent agency for personnel and/or procurement functions. Again, though, the IG must employ or retain (by reimbursable agreement) independent counsel.

C. OIG BUDGET

Another way that the IG Act promotes IG independence is through individual reporting of OIG budgets. Section 6(f) of the IG Act specifically requires that each IG's requested budget amounts be separately identified within their agency budgets when submitted to OMB and by OMB to the Congress. Also, section 6(f)(3) of the IG Act authorizes IGs to comment to Congress on the sufficiency of their budgets if the amount proposed in the President's budget would "substantially inhibit the [IG] from performing the duties of the office." Additional details with respect to this reporting requirement are set forth in Appendix 2.

Under Federal law, agency budget requests must be submitted by the individual agency head to OMB. This includes the budgets of the respective OIGs. However, it is important to note that while each agency head is responsible for budget formulation and execution decisions affecting the entire agency (including the OIG), in practice, the OIG may also have an ongoing dialogue with the OMB budget examiner about the OIG's operational plans, activities, and accomplishments.[21]

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[20] S. REP. NO. 95-1071, at 35 (1978).

[21] Out of concern that intelligence agencies may consider reducing the budgets and workforce of their IGs, separate legislation was enacted in 2013 designating the OIG of an intelligence agency as a congressional special interest item [Intelligence Authorization Act for Fiscal Year 2013, Classified Annex]. In addition, some IGs for nonappropriated agencies do not submit budget requests to OMB.

A. AUDITS, INVESTIGATIONS, AND EVALUATIONS

Each OIG has a broad statutory mandate to "conduct . . . audits and investigations relating to the programs and operations" of the agency and to "conduct . . . other activities . . . for the purpose of promoting economy and efficiency in the administration of . . ." the agency [IG Act, §§ 4(a)(1), (a)(3)].[22] Within this broad mandate, the IG is given full discretion to undertake those investigations that are, in the judgment of the IG, "necessary or desirable" [IG Act, § 6(a)(2)].[23] Although the IG reports to the agency head, even that official may not compromise the initiation or conduct of an OIG audit or investigation [IG Act, §§ 3; 8G(d)].[24]

As discussed above, OIG audits are conducted in accordance with Government Auditing Standards established by the Comptroller General [IG Act, § 4(b)(1)(A)]. In addition, OIGs coordinate with the Comptroller General to avoid duplication in Federal audits [IG Act, § 4(c)]. OIGs also establish criteria for using non-Federal auditors (typically, Certified Public Accountant firms) and ensure that such auditors comply with Government Auditing Standards.

OIGs are charged with not only investigating or auditing fraud, waste, and abuse after they have occurred, but also identifying vulnerabilities and recommending programmatic changes that would, when enacted or implemented, strengthen controls or mitigate risk. Additionally, OIGs may investigate allegations of mismanagement. To this end, some OIGs, but not all, have separate offices devoted to conducting program inspections and evaluations. Others fulfill this responsibility through their audit and investigative offices. Where an OIG does conduct program evaluations and inspections, the IG is charged with tracking and reporting these recommendations in its semiannual report to the Congress, just as it reports its audit findings and recommendations.

The objectivity of these fact-finding efforts is enhanced by the considerable independence given the IGs, which is discussed throughout this paper. This independence enables IGs to fulfill a fundamental responsibility to keep the agency head and the Congress informed about problems and deficiencies in agency programs and operations. However, the statutory requirement for operational independence with respect to IG audits and investigations does not foreclose coordination and cooperation between the IG and agency management. For example, OIGs generally invite agency management to comment on the IG's annual work plan; in this way, managers can offer suggestions on risk areas they perceive in their day-to-day operations of

[22] The IG Act, at section 8, sets out unique authorities or responsibilities for certain OIGs. Other statutes may also enlarge or change an IG's authorities within a particular agency. For information on these OIG-specific authorities, it may be helpful to consult the website for the particular OIG. These may be accessed via the CIGIE website at http://www.ignet.gov/igs/homepage1 html.

[23] While each IG has broad discretion as to the work his or her office undertakes, certain audits or reviews are mandated by statute. For example, most IGs are required by the Federal Information Security Management Act to perform an annual evaluation to determine the effectiveness of their agency's information security program and practices (44 U.S.C. §§ 3541-3549). For many agencies, their financial statements must be audited annually by the IG or by an independent auditor as determined by the OIG (31 U.S.C. § 3521). For other such mandated work, you may consult the particular IG's semiannual report; these reports may be accessed via the CIGIE website at http://www.ignet.gov/igs/homepage1 html.

[24] See page 4 and footnote 14 for exceptions.

agency programs. Consultation with subject matter experts in the agency's program offices also can enhance OIG work products.

OIG investigations are conducted in accordance with the CIGIE Quality Standards for Investigations and Federal law. In conducting investigations, whenever the IG has "reasonable grounds to believe there has been a violation of Federal criminal law," the IG must promptly report the matter to the Department of Justice [IG Act, § 4(d)]. These reports are to be made directly to the Department of Justice, without prior clearance by agency officials outside OIG.

Law Enforcement Authorities [IG Act § 6(e)]: The IG Act authorizes criminal investigators in the offices of 24 Presidentially-appointed IGs to exercise law enforcement powers while conducting official duties. More specifically, these law enforcement powers include the authority to (1) carry a firearm while engaged in official duties; (2) make an arrest without a warrant for any Federal offense committed in the presence of the agent, or when the agent has reasonable grounds to believe that the person to be arrested has committed or is committing a Federal felony; and (3) seek and execute Federal warrants for arrest, search of premises, or seizure of evidence under the authority of the United States. The Act also provides a mechanism whereby the Attorney General may, after an initial determination of need,[25] confer law enforcement powers on investigative personnel of other OIGs, including those in DFE OIGs. Those OIGs with law enforcement authority conferred directly by statute or designated by the Attorney General must exercise those powers in accordance with guidelines promulgated by the Attorney General. Each OIG also undergoes periodic peer review of its exercise of law enforcement powers. A listing of OIGs with statutory law enforcement powers, including several OIGs that exercise law enforcement authority pursuant to statutes other than the IG Act, is attached in Appendix 3.

B. WEBSITE REQUIREMENTS

To facilitate reporting of fraud, waste, and abuse to IGs, each agency homepage must contain a direct link to the website of the agency's OIG [IG Act, § 8M]. In turn, each OIG homepage must have a direct link for individuals to report fraud, waste, and abuse. Such reports may be anonymous. The OIG is prohibited from disclosing the identity of anyone making a complaint through its website without their consent, except where disclosure is "unavoidable during the course of the investigation" [IG Act, § 8M(b)(2)]. Agency officials are encouraged to periodically confirm that their website's links to the OIG are in place and operational.

It is also important to note that the IG Act requires OIGs to post public reports (or portions) and final audit reports on the OIG website.[26] Under this requirement, reports must be posted not later than three days after being made publicly available [IG Act, § 8M(b)(1)].

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[25] OIGs that seek Attorney General authorization to exercise law enforcement powers must demonstrate that: the OIGs have been significantly hampered by the lack of these authorities; there is insufficient assistance available from other law enforcement agencies; and the OIGs have procedures for the proper exercise of the authorities.

[26] CIGIE is also required to maintain a website [IG Act, § 11(c)(1)(D)], https://www.ignet.gov/.

C. PROGRAM OPERATING RESPONSIBILITIES

In the initial establishment of OIGs, the IG Act provided for the transfer of authority and resources from the respective agencies' existing audit and investigative units to the OIG [IG Act, § 9]. However, the IG Act specifically prohibits an agency from transferring "program operating responsibilities" to an OIG [IG Act, §§ 9(a); 8G(b)]. With this provision, Congress intended to insulate IGs from responsibility for running the very programs that they might review. Thus, by not performing the program responsibilities of their agencies, IGs have no vested interest in agency policies or particular programs and can remain unbiased in their review of those programs.

The statutory prohibition on the IGs having program operating responsibilities does not preclude the IG from assisting the agency and its committees and project teams, when the IG determines that such assistance will help the entity reduce fraud, waste, and abuse and such assistance by the OIG would not compromise its independence in subsequent reviews of the subject matter. For example, an IG may decline to serve as a voting member on a policy-making board or committee within the agency; however, the IG could opt to attend those meetings and provide technical assistance with respect to fraud, waste, and abuse issues or matters of economy, efficiency, or effectiveness. In this way, the IG is able to remain objective if he or she later reviews those issues and matters.

D. LEGISLATION AND REGULATORY REVIEW

IGs are required to review existing and proposed legislation and regulations for their impact on the economy and efficiency of their agency's programs and operations and the prevention of fraud and abuse in those programs and operations [IG Act, § 4(a)(2)]. Agency heads should make sure there are procedures in place giving the OIG the opportunity to conduct these reviews. Under the IG Act, IGs communicate the results of these reviews via their semiannual report. In addition, OIGs often are asked by Congress or CIGIE to respond to direct requests for technical assistance on draft or proposed legislation.

E. IG ACCESS TO AGENCY RECORDS; SUBPOENAS; AND RECEIPT OF ALLEGATIONS AND OATHS OR AFFIRMATIONS

In enacting the IG Act, Congress recognized that access to records would be critical to effective OIG investigations, audits, and other inquiries. In response, Congress fashioned broad authorities for OIG access to records:

Agency Records: Each IG is given a broad statutory right of access to all records available to their agency [IG Act, § 6(a)(1)]. The legislative history of the IG Act provides that access to "all records" is expansive and is intended to include even "confidential interagency memoranda."[27] If an agency employee refuses to provide records to the IG, the IG is to report the circumstances to the agency head immediately, and to include the incident in his/her semiannual report [IG Act, §§ 6(b), 5(a)(5)].

[27] S. REP. NO. 95-1071, at 33-34 (1978).

Other Federal Agencies: Each IG may request information or assistance from other Federal agencies; agency heads are directed to provide such assistance or information "insofar as is practicable" and legal to do so [IG Act, §§ 6(b)]. Again, in the event of refusal, the IG is to report the circumstances to the agency head involved immediately, and to include the incident in its semiannual report [IG Act, §§ 6(b), 5(a)(5)].

Subpoenas: The IG Act provides IGs with broad authority to subpoena all information "necessary in the performance of the functions assigned by [the IG] Act" [IG Act, § 6(a)(4)]. Under this authority, IGs may subpoena relevant documents and information. However, IGs may not subpoena records from other Federal agencies. The subpoenas are enforceable in Federal district court.

Allegations, Complaints, and Oaths or Affirmations: IGs may receive allegations and complaints directly from agency employees [IG Act, § 7]. Also, IGs may take from any person an "oath, affirmation, or affidavit" when necessary in performing their duties under the IG Act. [IG Act, § 6(a)(5)].

Optimally, agency operating guidelines should clearly advise employees of their obligations to provide records to the IG and cooperate fully in investigations or audits conducted by the IG.

F. WHISTLEBLOWERS

Each IG is authorized to receive complaints from agency employees relating to potential impropriety in connection with agency programs and operations. The IG may not disclose the identity of these whistleblowers, except when disclosure is "unavoidable during the course of the investigation." Importantly, agency managers may not take action against an employee for making a complaint or disclosing information to the IG unless the disclosure was knowingly false or made with willful disregard to its truth [IG Act, § 7].

Establishment IGs. Establishment IGs are required to designate a Whistleblower Ombudsman to educate employees throughout the agency about prohibitions on retaliation for whistleblowing, and educate employees who have made or contemplate making a protected disclosure about their rights and remedies against retaliation [IG Act, § 3(d)(1)(C)].

CONCLUSION

As summarized above, OIGs are, in many ways, unique. They are part of their particular agencies or entities, but are operationally independent. Supervision of IGs is strictly limited and there are safeguards against their removal. OIGs have a unique reporting relationship with the Congress and specific protections in the Federal budget process. These and other novel attributes of IGs can present challenges for establishing and maintaining effective working relationships within a Federal agency or entity. By providing the information set forth above concerning the functions and operations of the OIGs, this paper is intended to assist in the promotion of effective relationships between IGs and the agencies they oversee.

Appendix 1

OIGs Created by the IG Act, as Amended[28]

OIGs in Establishment Agencies	OIGs in Designated Federal Entities
Agency for International Development	Amtrak
Corporation for National and Community Service	Appalachian Regional Commission
Department of Agriculture	Board of Governors of the Federal Reserve System and Consumer Financial Protection Bureau
Department of Commerce	Commodity Futures Trading Commission
Department of Defense	Consumer Product Safety Commission
Department of Education	Corporation for Public Broadcasting
Department of Energy	Defense Intelligence Agency
Department of Health and Human Services	Denali Commission
Department of Homeland Security	Election Assistance Commission
Department of Housing & Urban Development	Equal Employment Opportunity Commission
Department of the Interior	Farm Credit Administration
Department of Justice	Federal Communications Commission
Department of Labor	Federal Election Commission
Department of State and the Broadcasting Board of Governors	Federal Labor Relations Authority
Department of Transportation	Federal Maritime Commission
Department of the Treasury	Federal Trade Commission
Department of Veterans Affairs	Legal Services Corporation
Environmental Protection Agency and the Chemical Safety and Hazard Investigation Board	National Archives & Records Administration
	National Credit Union Administration
	National Endowment for the Arts
Export-Import Bank of the United States	National Endowment for the Humanities
Federal Deposit Insurance Corporation	National Geospatial-Intelligence Agency
Federal Housing Finance Agency	National Labor Relations Board
General Services Administration	National Reconnaissance Office
National Aeronautics & Space Administration	National Science Foundation
Office of Personnel Management	National Security Agency
Small Business Administration	Peace Corps
Social Security Administration	Pension Benefit Guaranty Corporation
Tennessee Valley Authority	Postal Regulatory Commission
Treasury IG for Tax Administration	Smithsonian Institution
U.S. Nuclear Regulatory Commission	U.S. International Trade Commission
U.S. Railroad Retirement Board	U.S. Postal Service
	U.S. Securities and Exchange Commission

[28] Note that this listing was developed in January 2014 and reflects IGs in operation at that time.

Other Offices of Inspector General

There are also a number of Inspectors General established pursuant to statutes other than the IG Act. These statutes may incorporate some, but not necessarily all, of the provisions of the IG Act. For additional information concerning the specific authorities of these IGs, it is advisable to consult their web pages directly. For reference, a listing of these OIGs is set out below:[29]

OIGs	Authorizing Legislation
Architect of the Capitol	2 U.S.C. § 1808
Central Intelligence Agency	50 U.S.C. § 3517
Government Printing Office	44 U.S.C. § 3901
Library of Congress	2 U.S.C. § 185
Office of the Intelligence Community IG	50 U.S.C. § 3033
Special IG for Afghanistan Reconstruction	National Defense Authorization Act for FY 2008, Pub. L. No. 110-181, § 1229(b) (Jan. 28, 2008)
Special IG for Troubled Asset Relief Program	Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, § 121 (Oct. 3, 2008)
U.S. Capitol Police	2 U.S.C. § 1909
U.S. Government Accountability Office	31 U.S.C. § 705

[29] Note that this listing was developed in January 2014. Also, it may not be an exhaustive listing of all OIGs that have been created by authorities other than the IG Act.

Appendix 2

Office of Inspector General's Fiscal Year Budget Request

The Inspector General Reform Act of 2008 (Pub. L. No. 110-409) was signed by the President on October 14, 2008. Section 6(f)(1) of the Inspector General Act of 1978, 5 U.S.C. app. 3, was amended to require certain specifications concerning Office of Inspector General (OIG) budget submissions each fiscal year.

Each Inspector General (IG) is required to transmit a budget request to the head of the establishment or designated Federal entity to which the IG reports specifying:

- the aggregate amount of funds requested for the operations of the OIG,
- the portion of this amount requested for OIG training, including a certification from the IG that the amount requested satisfies all OIG training requirements for that fiscal year, and
- the portion of this amount necessary to support the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

The head of each establishment or designated Federal entity, in transmitting a proposed budget, via OMB, to the President for approval, shall include:

- an aggregate request for the OIG,
- the portion of this aggregate request for OIG training,
- the portion of this aggregate request for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal.

The President shall include in each budget of the U.S. Government submitted to Congress:

- a separate statement of the budget estimate submitted by each IG,
- the amount requested by the President for each OIG,
- the amount requested by the President for training of OIGs,
- the amount requested by the President for support of the CIGIE, and
- any comments of the affected IG with respect to the proposal if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the OIG.

Appendix 3

OIGs WITH LAW ENFORCEMENT AUTHORITIES

Agency for International Development
Amtrak
Board of Governors of the Federal Reserve and Consumer Financial Protection Bureau
Corporation for National and Community Service
Department of Commerce
Department of Education
Department of Energy
Department of Health and Human Services
Department of Homeland Security
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State and the Broadcasting Board of Governors
Department of Transportation
Department of the Treasury
Department of Veterans Affairs
Environmental Protection Agency and the Chemical Safety and Hazard Investigation Board
Export-Import Bank of the United States
Federal Deposit Insurance Corporation
Federal Housing Finance Agency
General Services Administration
National Archives and Records Administration
National Aeronautics and Space Administration
National Science Foundation
Office of Personnel Management
Peace Corps
Securities and Exchange Commission
Small Business Administration
Social Security Administration
Special IG for Afghanistan Reconstruction
Special IG for Troubled Asset Relief Program
Tennessee Valley Authority
U.S. Nuclear Regulatory Commission
U.S. Railroad Retirement Board

In addition to the above there are four additional OIGs with law enforcement authority—Department of Agriculture, Department of Defense, U.S. Postal Service, and Treasury IG for Tax Administration. These four OIGs derive their law enforcement authority from legislation other than the IG Act of 1978, as amended. Further, some OIGs have personnel that have received special deputation from the U.S. Marshall Service.

EXHIBIT 3

EXHIBIT 3.a

Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

935 Pennsylvania Ave, NW, Room 7452, Washington, DC 20535 • IC_Complaints@ic.fbi.gov

December 23, 2016

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

(b) (6), (b) (7)(C)

Dear Mr. Hoecker:

As you know, the Integrity Committee (IC) recently requested that you respond to [redacted] allegations raised in a complaint made against you. The complaint alleged that:

(b) (6), (b) (7)(C) sealed

in violation

ury

of

(b) (6), (b) (7)(C) [redacted] on [redacted] hostile [redacted].

(b) (6), (b) (7)(C) [redacted], the IC received additional complaints from other individuals related to these matters. [redacted], the IC decided to request further responses from you on the three allegations described below:

1) In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing personal relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to produce witness statements, but the statements were never collected. The manager conducting the investigation then retired.

(b) (6), (b) (7)(C) [redacted]

[redacted]

The IC requests your response to these allegations within 30 days of receipt of this letter. Please note that this is your opportunity to fully address the issues and provide any supporting documents prior to the IC reviewing the allegation. You may address your response in writing to: Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535, or by email to IC_Complaints@ic.fbi.gov. You may contact [redacted] IC Program Manager, at (b) (6), (b) (7)(C) with any questions regarding this request.

Sincerely,

(b) (6) [redacted]

Patrick W. Kelley
Chairman
Integrity Committee

U.S. Department of Justice
Federal Bureau of Investigation

935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Official Business
Penalty for Private Use $300

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Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

SEC OIG RCVD '1

20549-2977

EXHIBIT 3.b

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
INSPECTOR GENERAL

February 2, 2017

VIA EMAIL
Scott Dahl
Chairman
Integrity Committee
Council of the Inspectors General on Integrity and Efficiency

Re: (b) (6), (b) (7)(C)

Dear Mr. Dahl:

This letter responds to the Integrity Committee letter dated December 23, 2016, and received by me on January 4, 2017, (b) (6), (b) (7)(C) . I want to reiterate that I take very seriously any allegation of wrongdoing and appreciate the opportunity to respond.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) The allegations and my response to these allegations are detailed below.

1) *Allegation 1* (b) (6), (b) (7)(C): In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to provide witness statements, but the statements were never collected. The manager conducting the investigation then retired.

Response:

On May 16, 2016, I received a five-page letter containing numerous allegations of misconduct on the part of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in the SEC OIG Office of Investigations (OI). The overarching allegation was that the two individuals maintain a sexual relationship. On May 17, 2016, pending the outcome of the investigation, (b) (6), (b) (7)(C) was moved out of his supervisory position in OI to a different component of the OIG, the SEC OIG (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) . Once the allegations were received an investigation was commenced. The investigation was initially started as a joint effort by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) relationship with (b) (6), (b) (7)(C) was not close and personal and it was determined that it did not present a conflict. He had a professional relationship with (b) (6), (b) (7)(C) accused of misconduct that did not impair his objectivity. As the investigation proceeded and additional allegations were developed, and in light of (b) (6), (b) (7)(C) impending retirement,[1] I assigned the investigation to the OIG Office of Counsel. The OIG Office of Counsel was in the best position to impartially and objectively conduct and complete the internal investigation into the alleged misconduct. It should be noted that neither of the subjects of the internal investigation was an individual who is a direct report to the IG or a designated staff member of the IG requiring referral to the Integrity Committee pursuant § 11(d)(4) of the Inspector General Act of 1978 (as amended). As an added step to ensure impartiality, an outside party, an Acting Inspector General of another agency was asked by (b) (6), (b) (7)(C) to review a draft of the investigatory report and provide input into the thoroughness and impartiality of the report. During the initial interviews, (b) (6), (b) (7)(C) documented the interviews using notes and he requested that select witnesses provide draft statements. All individuals requested to provide draft statements complied but one. Rather than finalize those draft statements into sworn statements, Counsel decided to document the interview results in Memoranda of Activity. Throughout the investigation, additional allegations were developed and on November 18, 2016, I received an email that included supplementary allegations.

On January 19, 2017, my Counsel provided me with an investigatory report concluding the internal investigation. The report addressed approximately 34 allegations, was 52 pages in length, and included 58 exhibits (consisting of 1,279 pages). Throughout the investigation every individual assigned to OI when the investigation commenced was interviewed (15), thousands of emails, blackberry call logs, building entry and exit swipe reports, internet logs, travel and training documents, time and attendance documents and other relevant records were reviewed and analyzed. Given the number and complexity of the allegations, and the developed additional allegations, I believe the investigation was both timely and thorough. Although the report of investigation has been issued, it is still open at this time, pending any potential action taken as a result of the findings. During the pendency of an investigation, individual employees not conducting the internal investigation are necessarily unaware of the scope and investigatory progress and may have incorrectly assumed that work was not being completed.

(b) (6), (b) (7)(C)

[1] The retirement had been planned in March 2016 and was announced in April 2016.

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

[redacted]

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

In conclusion, I would note that the issues raised in (b) (6), (b) (7)(C) have been raised around the same time that my managers have taken steps to address issues with a couple of employees' performance and productivity.(b) (6), (b) (7)(C)

I believe this response adequately addresses all of the allegations. However, if you have any additional questions, please do not hesitate to contact me.

Sincerely,

(b) (6)

Carl W. Hoecker

EXHIBIT 3.c

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

EXHIBIT 3.d

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
935 Pennsylvania Ave, NW, Room 7452, Washington, DC 20535 • IC_Complaints@ic.fbi.gov

Scott Dahl
Chair
Inspector General
Department of Labor

May 30, 2017

Carl W. Hoecker
Inspector General
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-2977

IC #890 Request for Information

Dear Mr. Hoecker:

(b) (6), (b) (7)(C) [redacted]. However, the IC continues to receive complaints related to the following allegation:

> Allegation 1 ([redacted]): In May 2016, you were made aware of complaints that senior managers in your office were engaged in serious misconduct (an extra-marital affair and related misconduct), but you failed to ensure that an appropriate and objective investigation into the complaints took place in a timely fashion. Rather, you assigned an individual to investigate the complaints who had a close and long standing personal relationship with the subjects. Moreover, the investigation was not handled in a timely way, and the witnesses were interviewed and instructed to produce witness statements, but the statements were never collected. The manager conducting the investigation then retired.

The additional complaints allege you have or are conducting a phony investigation, and are engaging in a cover-up to protect your senior managers.

As such, the IC respectfully requests a status update on the outcome of the investigation, to include any potential action taken as a result of the findings, and a copy of the report of investigation itself.

You may address your response in writing to: Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535, or by email to IC_Complaints@ic.fbi.gov.

Sincerely,

(b) (6) [redacted]

Scott Dahl
Chairman
Integrity Committee

EXHIBIT 3.e

Duplicate

Duplicate

Duplicate

Duplicate

EXHIBIT 4

Chun Wright

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 9:33 AM
To: Chun Wright; Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Importance: High
Sensitivity: Confidential

Dear Ms. Wright,

Thank you for contacting the Integrity Committee.

We received confirmation of your legal representation of Mr. Hoecker.

In accordance with the IC Policies and Procedures 2018, the exhibits to the report of investigation for IC 890/909 will need to be redacted prior to review. We sincerely appreciate your patience as the staff perform these redactions. We understand this will impact the 10-day response period, therefore we will delay the start of the response period until we provide you with notification that the documents are ready for review.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 8:32 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.

Regards,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)

www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: Chun Wright (b) (6), (b) (7)(C) >
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Mr. Wright,

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)
)
CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006
www.IGnet.gov

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and
3) "a summary memorandum of any unrecorded interview" of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

EXHIBIT 5

Chun Wright

From: Chun Wright
Sent: Friday, February 01, 2019 6:44 PM
To: Integrity-WG
Cc: (b) (6), (b) (7)(C)
Subject: Re: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Sensitivity: Confidential

Dear CIGIE Working Group:

Thank you for your email today, February 1, 2019, advising that the redacted exhibits to the draft ROI are available for our review.

We request copies of the redacted exhibits except for Exhibits 1-8, 39-42, 52, 58, 62, 63, 66. Reviewing the exhibits in your office will not give us sufficient access or review of the documents in order to prepare our response.

Regards,

Chun

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, February 1, 2019 10:19 AM
To: Chun Wright; Integrity-WG

Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary

Dear Ms. Wright,

The Integrity Committee Working Group finalized the necessary redactions of the exhibits to the report of investigation. We are able to provide access to the exhibits at our CIGIE Office starting Wednesday, February 6, 2019. If you or your designee would like to review these documents, please contact us as soon as practical to schedule a date and time. Please let us know if you would prefer the documents in hard copy for review, however you will not be able to make copies or remove the documents from the CIGIE Office. We also have laptops available if you prefer to review the documents electronically.

The documents will be available to you here for ten business days; from February 6, 2019 at 0800 until February 19, 2019 at 1700. We are located at 1717 H St. N.W., Suite 825, Washington, D.C. 20006.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 11:30 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Integrity Committee Working Group:

Thank you for your reply. We understand that it will take some time for the staff to perform the redactions.

Please be advised that I will be out of the country from October 5, 2018 through October 20, 2018, on a pre-scheduled personal and work trip with limited availability and Internet access. I respectfully request that my travel schedule, as well as the time it will take to review the 66 exhibits once we receive them, be factored into the response period. Doing so will allow us to provide a meaningful, complete response to the Integrity Committee. If you require that we submit an extension request after we receive notice that the documents are ready for review, we would be happy to do so.

If you have any questions, please let me know.

Regards,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150

Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 9:33 AM
To: Chun Wright (b) (6), (b) (7)(C) ; Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Ms. Wright,

Thank you for contacting the Integrity Committee.

We received confirmation of your legal representation of Mr. Hoecker.

In accordance with the IC Policies and Procedures 2018, the exhibits to the report of investigation for IC 890/909 will need to be redacted prior to review. We sincerely appreciate your patience as the staff perform these redactions. We understand this will impact the 10-day response period, therefore we will delay the start of the response period until we provide you with notification that the documents are ready for review.

Please let us know if you have any questions or concerns.

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Friday, September 28, 2018 8:32 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Sensitivity: Confidential

Dear (b) (6), (b) (7)(C),

Thank you for your email. I believed my representation was a matter of record. IG Hoecker and I informed the investigatory agents of my representation and I was present for his interview. That said, I will advise IG Hoecker to reply by email, confirming my representation. If you require some other form of documentation, please let me know.

Regards,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Friday, September 28, 2018 7:53 AM
To: Chun Wright (b) (6), (b) (7)(C) >
Subject: RE: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Dear Mr. Wright,

Thank you for contacting the Integrity Committee.

Can you please provide us with documentation showing your representation of Mr. Carl Hoecker?

Upon receipt we will be able to respond to your request.

Sincerely,

(b) (6), (b) (7)(C)
CIGIE
Suite 825
1717 H St., N.W.
Washington, D.C. 20006

From: Chun Wright (b) (6), (b) (7)(C)
Sent: Wednesday, September 26, 2018 12:02 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: Integrity Committee draft Report of Investigation: Request for Exhibits, Transcript and Summary
Importance: High
Sensitivity: Confidential

Confidential

Dear Integrity Committee:

I represent Inspector General Carl Hoecker with respect to the following matter: Council of Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909.

Yesterday, on Tuesday, September 25, 2018, while I was out of the office on medical leave, I received the Integrity Committee draft report of Investigation in the aforementioned matter. The draft report of Investigation refers to and lists 66 separate Exhibits. See draft report of Investigation at pages 43-45. However, these Exhibits were not included with the draft report that Inspector General Hoecker received from Integrity Committee. I am writing to request

1) a copy of the 66 Exhibits listed in the draft report,
2) "a transcript of any recorded interview" of Inspector General Hoecker– if not one of the 66 Exhibits, and
3) "a summary memorandum of any unrecorded interview" of Inspector General Hoecker, if not one of the 66 Exhibits

This request is made pursuant to Integrity Committee Policies & Procedures 2018 Section 10.A.i.

If you have any questions, please do not hesitate to contact me using the contact information below.

Thank you.

Best,

Chun Wright

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

ATTACHMENTS IS STRICTLY PROHIBITED. PLEASE IMMEDIATELY NOTIFY THE SENDER OF THE ERROR BY RETURN E-MAIL AND DELETE THIS MESSAGE FROM YOUR SYSTEM.

Chun Wright

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Monday, February 25, 2019 8:23 AM
To: Chun Wright
Subject: RE: Deadline Extension

Importance: Low

Thank you for letting us know!

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Monday, February 25, 2019 8:04 AM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C)
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

I am writing to let you know that IG Hoecker and I do not need to come in to review Exhibits today.

Thank you.

Best,

Chun

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Chun Wright
Sent: Thursday, February 21, 2019 5:47 PM
To: Integrity-WG <Integrity-WG@cigie.gov>

Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

I'm writing to let you know that IG Hoecker and I do **not** plan to review Exhibits tomorrow, Friday, February 22.

Thank you.

Best,

Chun

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Chun Wright
Sent: Thursday, February 21, 2019 1:21 PM
To: 'Integrity-WG' <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group:

Thank you for the approving our extension request.

We will let you know before COB today whether we will need to come in tomorrow. We likely won't know whether we will need to come in in Monday until tomorrow. We will keep you apprised of our plans for your own planning purposes.

Best,

Chun

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)

www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Thursday, February 21, 2019 1:12 PM
To: Chun Wright (b) (6), (b) (7)(C) >
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension
Importance: Low

Dear Ms. Wright,

Thank you for your request and kind remarks.

Your request for an extension is approved. For planning purposes on our end, please let us know as soon as practical the dates and times you need for additional document review here at CIGIE.

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C)
Sent: Thursday, February 21, 2019 12:53 PM
To: Integrity-WG <Integrity-WG@cigie.gov>
Cc: (b) (6), (b) (7)(C) >
Subject: RE: Deadline Extension

Dear Integrity Committee Working Group,

I am writing to follow up on your February 8 email which advised that in the event of a weather closure/delay impacting my and IG Hoecker's ability to review the Exhibits, the IC will provide additional time for our review and extend the deadline for a response. Given the weather closure/delay on Monday, February 11, and Wednesday, February 20, and intervening holiday and limited staff hours last week, we would like to request the following: 1) a two-business day extension of time to file IG Hoecker's response to the Draft ROI and Addendum **from** March 1, 2019 **to** Tuesday, March 5, and 2) the option to review portions of the Exhibits again, if necessary, up through COB on Monday, February 25. I finished reviewing the Exhibits on Tuesday, February 19, but would like the option to check my notes against the Exhibits if necessary. I don't expect that we'll need to come in again but we would like to know our options in that regard.

Finally, we'd like to thank your staff for their work in facilitating our review of the documents, including adjusting their schedules and allowing us to use their offices and conference space.

Thank you for your attention to this matter.

Best,

Chun

Law Office of Chun T. Wright, PLLC

1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: Integrity-WG <Integrity-WG@cigie.gov>
Sent: Monday, February 11, 2019 10:52 AM
To: Chun Wright (b) (6), (b) (7)(C) >
Cc: Integrity-WG <Integrity-WG@cigie.gov>; (b) (6), (b) (7)(C)
Subject: RE: Deadline Extension
Importance: Low

Dear Ms. Wright,

Thank you for reaching out with your questions.

Yes, the deadlines for both the original draft ROI and the draft ROI addendum were extended to March 1, 2019. You are also correct that CIGIE staff are unavailable to assist today, we apologize for any inconvenience.

Sincerely,
Integrity Committee Working Group

From: Chun Wright (b) (6), (b) (7)(C) >
Sent: Monday, February 11, 2019 9:30 AM
To: (b) (6), (b) (7)(C) >
Cc: Integrity-WG <Integrity-WG@cigie.gov>; (b) (6), (b) (7)(C)
Subject: RE: Deadline Extension

Dear (b) (6), (b) (7)(C):

Thank you for your email on Friday, February 8, 2019, advising that the IC has extended the deadline for IG Hoecker's response from February 21, 2019, to March 1, 2019. Given that the Exhibits to the Addendum to the ROI were made available for review on the same date as the Exhibits to the ROI, we believe that the responses to both the Draft ROI and the Addendum are due on the same date. Can you confirm our understanding?

Also, given the weather, the federal government operating status today in DC today is "Open - 2 hours delayed arrival – with option for unscheduled leave or unscheduled telework," see https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/. As such, per your February 8 email, we understand that your staff will not be able to facilitate my and IG Hoecker's review of the Exhibits at your office today.

Thank you.

Best,

Chun

Law Office of Chun T. Wright, PLLC
1775 Eye Street, NW, Suite 1150
Washington, DC 20006
(b) (6), (b) (7)(C)
www.ctwrightlaw.com

From: (b) (6), (b) (7)(C)
Sent: Friday, February 08, 2019 2:03 PM
To: Chun Wright (b) (6), (b) (7)(C) >
Cc: Integrity-WG <Integrity-WG@cigie.gov>; (b) (6), (b) (7)(C)
Subject: Deadline Extension

Good afternoon, Ms. Wright,

In light of our office being short-staffed next week, the IC has extended the deadline for Mr. Hoecker's response from February 21, 2019, to March 1, 2019. Additionally, given the weather forecast for Monday and Tuesday, please note that if there is a weather closure, delay, or open with option for unscheduled leave or telework, then we will be unavailable to facilitate review of the exhibits at our office. If that should happen, the IC will provide additional time for your review and extend the deadline for a response. Please let me know if you have any questions.

(b) (6), (b) (7)(C)

Sincerely,
(b) (6), (b) (7)(C)
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825
Washington DC 20006-3900

(b) (6), (b) (7)(C)

EXHIBIT 6

EXHIBIT 6.a

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 6.b

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 6.c

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 7

EXHIBIT 7.a

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 7.b

(b) (6), (b) (7)(C), (b) (5)

EXHIBIT 8

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

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(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C)

From: Lerner, Allison C. (b) (6), (b) (7)(C)
Sent: Wednesday, November 15, 2017 12:08 PM
To: (b) (6), (b) (7)(C)
Cc: Hoecker, (b) (6), (b) (7)(C)
Subject: Re: Response Memo to NSF OIG - QAR of the Investigative Operations for SEC OIG

Thanks so much

On Nov 15, 2017, at 11:05 AM, (b) (6), (b) (7)(C) > wrote:

> Greetings Ms. Lerner
>
> I am transmitting the attached response memo on behalf of IG Carl Hoecker.
>
> Regards,
>
> (b) (6), (b) (7)(C)
> Office of Inspector General
> U.S. Securities and Exchange Commission
> 100 F St. NE |Washington DC 20549| (b) (6), (b) (7)(C)
>
> FOR OFFICIAL USE ONLY: The information contained in this communication is intended for the sole use of the named addresses/recipients to whom it is addressed, in their conduct of official business of the United States Government. This communication may contain information that is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552 and the Privacy Act, 5 U.S.C. 552a. Addressees/recipients are not to disseminate this communication to individuals other than those who have an official need to know the information in the course of their official government duties. If you received this communication in error, please do not examine, review, print, copy, forward, disseminate, or otherwise use the information. Please immediately notify the sender at (b) (6), (b) (7)(C) and delete the copy received.

<Response to NSF OIG Ref (QAR of the Investigative Operations for SEC OIG) 11-15-17.pdf>

March 1, 2019 *Sent via Email Only*

Integrity Committee Working Group
Council of the Inspectors General on Integrity and Efficiency
1717 H St. N.W., Suite 825
Washington, D.C. 20006
Integrity-WG@cigie.gov

Re: Response to Draft Report of Investigation for CIGIE IC890 and IC909 (b) (6), (b) (7)(C)

Dear Integrity Committee:

Please accept this letter as my response to the draft Report of Investigation for Integrity Committee requests IC890 and IC909 (ROI).[1] I disagree that our office violated any law, policy, or procedure and ask that the Integrity Committee correct the underlying premise of the ROI. The record demonstrates that our office conducted a thorough and objective management inquiry[2] that was anything but a "whitewashing" of allegations of misconduct. Rather than objectively assessing whether our office engaged in a "whitewash," the ROI subjects our inquiry to a standard of investigation it admits is nonexistent. I ask the Integrity Committee to consider whether CIGIE should develop and disseminate guidance and processes for addressing such situations rather than cite our office for violating a standard that does not exist, which raises more questions than answers for the IG community.

The ROI relies on the premise that our office should have investigated allegations of misconduct of its own employees in the same manner that the Office of Investigations (OI) conducts its operational investigations. In particular, the ROI finds that the OIG did not "comply" with SEC OIG investigative policy, Quality Standards for Federal Offices of Inspector General (Silver Book) and CIGIE Quality Standards for Investigation (QSI). However, the ROI does not identify any policy that required the OIG to investigate allegations of internal misconduct in accordance with QSI standards. To the contrary, it admits that it only assessed this inquiry pursuant to QSI standards in the "absence" of a "standard governing the investigation." I hope you will agree that the OIG did not and could not violate a nonexistent standard.[3] I am unaware of any requirement to conduct such an inquiry pursuant to QSI standards, did not conduct the inquiry according to QSI standards, and did not state or imply that I or anyone else involved in the matter intended or were supposed to do so. At all times, I considered this "investigation" to be equivalent to a "management inquiry."

---

[1] (b) (6), (b) (7)(C)

[2] I believe the Inspector General referred to this inquiry as "counsel inquiry" (b) (6), (b) (7)(C). Regardless of the terminology, I understood that we shared the same perspective: the matter fell within management's discretion as to how to "investigate" it and resolve it through administrative action as necessary.

[3] None of the three reasons the ROI provides for using QSI standards to evaluate our management inquiry demonstrate that QSI standards did or should apply to such an inquiry and that our office "violated" some obligation to apply QSI standards. If anything, these "reasons" appear to be a mere starting point for a discussion as to what standards and/or process should apply to such inquiries, one that requires far more care, input from the IG Community, and consideration of several additional factors.

The fact that those involved in this inquiry used the term "investigation" to describe it or took similar investigative steps to those taken in an investigation under QSI standards does not indicate that QSI standards governed the inquiry. To my knowledge, any reference to this inquiry as an "investigation" conveyed the common understanding of the term, as opposed to a technical term meaning an operational investigation conducted pursuant to QSI standards. Every time Congress requests that an IG conduct an investigation and that IG conducts an audit or evaluation, the use of the term "investigate" does not mean it should be conducted as an operational investigation conducted by OI. Likewise, any overlap of investigative steps between a QSI investigation and our inquiry are to be expected and do not mean that our office intended or were supposed to conduct all steps in accordance to QSI standards.

Similarly, no conflict of interest or "independence" issue existed. I am unaware of any conflict of interest with (b) (6), (b) (7)(C) serving as the lead on this inquiry. I did not recommend that our office obtain another OIG's assistance in this matter because I believed any policy prohibited the Inspector General from assigning (b) (6), (b) (7)(C) to this inquiry, that any conflict existed, or that any allegation that an "appearance" of a conflict existed would be reasonable. (b) (6), (b) (7)(C) maintained a professional relationship with the subjects of the inquiry, and the ROI does not present any evidence to alter my belief that no conflict of interest existed or that anyone could have held an informed and reasonable view that one existed. I hope CIGIE will agree that uninformed, unsupported speculation from other employees do not evidence a prohibited "appearance" of a conflict of interest.[4]

Publishing this report without clarification that no clear guidance exists on either the QSI or independence issue may cause substantial confusion throughout the IG community. Many allegations of misconduct arise in a workplace, and the OIG community has not developed a standardized process for addressing them. For example, one could read the ROI as indicating that a manager is "conflicted" out of inquiring into or addressing allegations of misconduct of her subordinates simply by being the employee's supervisor, having worked with her subordinates for some undefined length of time, or being subject to possible allegations from other employees that she is "close" to the employee. Several OIGs "investigate" (or "inquire") into allegations of misconduct of its own employees internally. Moreover, many OIGs do not have the staffing or resources to create an entire office devoted solely to internal inquiries/investigations and rely on managers to address allegations of administrative misconduct of their own staff. Applying the analysis of this ROI would apparently prohibit such managers from addressing such allegations of misconduct.

The ROI's unsupported application of QSI standards to this situation will cause similar confusion. Most agencies to my knowledge conduct internal inquiries to which they typically refer as "management inquiries," many of which include allegations that involve "time and attendance." OIG management similarly address a wide variety of allegations of administrative misconduct. Adopting the draft ROI's conclusions would appear to eliminate a "management inquiry" option for OIGs.

---

[4] Under 5 C.F.R. § 2635.101(b)(14), only the perspective of a "a reasonable person with knowledge of the relevant facts" implicate concerns regarding an appearance of a conflict of interest. No reasonable person would have any concern that any of the prohibition identified § 2635.101(b) applied to this situation.

I am hopeful that addressing this inaccurate premise places the remaining concerns in perspective. If held to the standard of a typical "management inquiry," I am confident our review would meet such standard. I addressed several decisions as to specific issues in my interview,[5] but I am concerned that any discussion regarding these specific issues distract from what I hope is an undisputed fact: the detail, attention, and zealousness in which we addressed this entire matter evidences anything but a "whitewashing" effort. I believe my report speaks for itself in this regard, and I continue to stand by it. Likewise, the fact that I recommended to take a different approach at different junctures does not alter my opinion that the IG and all other officials involved in the inquiry and subsequent administrative actions were acting with the best of intentions at all times.

Rather than find unsupported "violations," I ask that CIGIE partner with our office and other OIGs to develop and disseminate guidance for addressing such situations. We can work together to develop clear, helpful assistance for OIG management, rather than disputing whether violations of a nonexistent standard occurred in a situation in which management was attempting to manage its office in an efficient, effective, fair, and appropriate manner. Otherwise, adopting this ROI's assessment will unfairly and inaccurately portray our office's actions in this matter as well as create confusion rather than clarity for the IG community.

Thank you in advance for your consideration.

Sincerely,

(b) (6), (b) (7)(C)

[redacted]

[5] The ROI misrepresents other aspects of the management inquiry, such as stating that our inquiry report did not include a second statement of (b) (6), (b) (7)(C) when it was included as Exhibit 58, but focus on these issue misses the primary point. I have consistently explained that I was not conducting an investigation under QSI standards and holding our investigation to such standards is inappropriate in the first place. The relevant issue is whether our office was "whitewashing" these allegations, and the record demonstrates that this allegation is false.

October 4, 2018

VIA EMAIL

Integrity Committee Working Group
Council of the Inspectors General on Integrity and Efficiency (CIGIE)
935 Pennsylvania Avenue, NW, Room 7452
Washington, DC 20535

Re: IC #890 & 909 (Integrity Committee Administrative Investigation)

Dear Integrity Committee Working Group:

Thank you for the opportunity to respond to the draft report of investigation entitled, "Council of the Inspectors General on Integrity and Efficiency: Integrity Committee Request IC890 and IC909," that was prepared by the U.S. Department of Education's Office of Inspector General ("ED OIG") and dated August 21, 2018. The report addresses allegations of misconduct against senior officials of the U.S. Securities and Exchange Commission's ("SEC") Office of Inspector General ("OIG").

(b) (6), (b) (7)(C) [redacted].

In order to enhance the completeness of the ED OIG report of investigation, I request that the report be updated to explicitly and directly state that:

1. I began my employment at the SEC OIG's (b) (6), (b) (7)(C) [redacted], several months after the allegations were made against (b) (6), (b) (7)(C) [redacted]. As a result, I was not involved in the intake and processing of the allegations, the decision to initiate an internal investigation (as those terms are used in the ED OIG report), or the decision to involve (b) (6), (b) (7)(C) [redacted] or (b) (6), (b) (7)(C) [redacted]. These activities and decisions occurred prior to my arrival.

2. I was not involved in the planning, conduct, direction, or pace of the internal investigation.[1]

3. I had no role in the drafting, preparation, content, or approval of the internal SEC OIG report of investigation or the findings/conclusions of the report investigation.

[1] The "Background" section (page 6) notes that the investigation was conducted by (b) (6), (b) (7)(C) [redacted]. However, the report is silent on my role, thus creating possible uncertainty for readers.

(b) (6), (b) (7)(C)

[redacted]

[2] (b) (6), (b) (7)(C) [redacted]

[3] (b) (6), (b) (7)(C) [redacted].

5. Relative to Finding 2.1:[4]

   a. The fact that the Inspector General granted access to the internal investigation, and it was incorporated into the peer review process, should be noted at the beginning of this finding section (rather than later on page 37).

   b. SEC OIG officials may have used different terminology to describe the efforts of the Counsel to the Inspector General, but I never provided "shifting justifications" for not including it in the peer review by the National Science Foundation ("NSF") OIG.

      During the peer review process, I remained consistent in my position that the Inspector General Counsel's review should not have been part of the peer review because: (1) it was closed outside the period covered by the peer review (March 2016 through February 2017), and (2) it was not conducted under the auspices of the Office of Investigations in accordance with CIGIE's *Quality Standards of Investigations*. This position was based, in large part, on the peer review guide in effect at the time (December 2011), which stated, "This document articulates standards and guidance for conducting the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Quality Assessment Reviews (QAR) of the *investigative operations* of Offices of Inspector General (OIGs)." (emphasis added)

      (b) (6), (b) (7)(C) , the matter was being handled by t (b) (6), (b) (7)(C) had retired by that time) and it remained there until its completion. As a result, I did not view it as a matter under the "investigative operations" of the SEC OIG.

      The December 2011 peer review guide (less appendices) should be included as an exhibit in the ED OIG report of investigation. It is located at https://www.ignet.gov/sites/default/files/files/invprg1211guideappendix.zip

   c. Any "justifications" offered by SEC OIG officials were, in the end, irrelevant because the ED OIG concluded that the internal investigation had been "appropriately closed outside the period covered by the peer review" (page 38) and "would not have been selected for review since it did not fall within the scope of the peer review" (page 39). Use of the word "substantiated" in this finding incorrectly implies wrongdoing.

6. (b) (6), (b) (7)(C)

[4] According to Allegation 2 (pages 4 and 36), "The respondents (identified as Hoecker, (b) (6), (b) (7)(C)) obstructed the external Quality Assurance Review (peer review) of the SEC OIG's investigative function by withholding the investigation from the reviewers." More specifically, under Allegation 2.1 (pages 4 and 36), it was alleged that "They offered shifting (and possibly pre-textual) justifications for SEC OIG's position that the investigation was not subject to peer review."

(b) (6), (b) (7)(C)

In the event the ED OIG report is not updated to reflect my comments, I ask that this letter be included as a permanent part of the report. Thank you for your consideration.

Sincerely,

(b) (6), (b) (7)(C)

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

Scott Dahl
Chair
Inspector General
Department of Labor

March 21, 2018

The Honorable Caroline C. Hunter
Chairperson
Federal Election Commission
1050 First Street, N.E.
Washington, DC 20463

The Honorable Ellen L. Weintraub
Vice Chairperson
Federal Election Commission

Dear Federal Election Commission:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of serious administrative misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the findings, conclusions, and our recommendation regarding, James Thurber, Deputy Inspector General for the Federal Election Commission (FEC).

After reviewing the allegations against Mr. Thurber, the supporting materials, Mr. Thurber's two responses, along with his supporting materials, the IC determined pursuant to IC Policies and Procedures, Section 7C(iii) that "the record is sufficient to make findings, conclusions, or recommendations as to some or all of the allegations without investigation." Therefore, the IC concluded based on this record Mr. Thurber engaged in substantial misconduct that undermines the integrity and independence reasonably expected of a senior OIG official and recommends the imposition of appropriate discipline.

(b) (6), (b) (7)(C), (b) (5) [redacted].

Also pursuant to section 11(d)(8)(A), the IC provided the attached findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the congressional committees of jurisdiction.

(b) (6), (b) (7)(C), (b) (5) [redacted].

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Findings, Conclusions, and Recommendations

Cc: The Honorable Matthew S. Petersen
Commissioner, Federal Election Commission

The Honorable Steven T. Walther
Commissioner, Federal Election Commission

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

Scott Dahl
Chair
Inspector General
Department of Labor

March 21, 2018

The Honorable Michael Horowitz
Chairman
Council of the Inspectors General on Integrity and Efficiency
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Chairman Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of serious administrative misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the findings, conclusions, and our recommendation regarding, James Thurber, Deputy Inspector General for the Federal Election Commission (FEC).

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Also pursuant to section 11(d)(8)(A), the IC provided the attached findings, conclusions, and recommendations to the congressional committees of jurisdiction, CIGIE Executive Chairperson, and the Commissioners of the FEC.

(b) (6), (b) (7)(C), (b) (5) [redacted]

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Findings, Conclusions, and Recommendations

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

Scott Dahl
Chair
Inspector General
Department of Labor

March 21, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
328 Hart Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Government Affairs

The Honorable Trey Gowdy
Chairman
Committee on Oversight and Government Reform
2418 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight and Government Reform

The Honorable Richard Shelby
Chairman
Committee on Rules and Administration
304 Russel Senate Office Building
Washington, DC 20510

The Honorable Amy Klobuchar
Ranking Member
Committee on Rules and Administration

The Honorable Gregg Harper
Chairman
Committee on House Administration
2227 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert Brady
Ranking Member
Committee on House Administration

Dear Chairmen and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of serious administrative misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the findings, conclusions, and our recommendation regarding, James Thurber, Deputy Inspector General for the Federal Election Commission (FEC).

After reviewing the allegations against Mr. Thurber, the supporting materials, Mr. Thurber's two responses, along with his supporting materials, the IC determined pursuant to IC Policies and Procedures, Section 7C(iii) that "the record is sufficient to make findings, conclusions, or recommendations as to some or all of the allegations without investigation."

Therefore, the IC concluded based on this record Mr. Thurber engaged in substantial misconduct that undermines the integrity and independence reasonably expected of a senior OIG official and (b) (6), (b) (7)(C), (b) (5) .

Also pursuant to section 11(d)(8)(A), the IC provided the attached findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Commissioners of the FEC.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Findings, Conclusions, and Recommendations

Scott Dahl
Chair
Inspector General
Department of Labor

Integrity Committee

Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

March 21, 2018

The Honorable Margaret Weichert
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
Eisenhower Executive Office Building
17th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20503

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of serious administrative misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the findings, conclusions, and our recommendation regarding, James Thurber, Deputy Inspector General for the Federal Election Commission (FEC).

After reviewing the allegations against Mr. Thurber, the supporting materials, Mr. Thurber's two responses, along with his supporting materials, the IC determined pursuant to IC Policies and Procedures, Section 7C(iii) that "the record is sufficient to make findings, conclusions, or recommendations as to some or all of the allegations without investigation." Therefore, the IC concluded based on this record Mr. Thurber engaged in substantial misconduct that undermines the integrity and independence reasonably expected of a senior OIG official (b) (6), (b) (7)(C), (b) (5) .

Also pursuant to section 11(d)(8)(A), the IC provided the attached findings, conclusions, and recommendations to the congressional committees of jurisdiction, the CIGIE Chairperson, and the Commissioners of the FEC. Under this same section, you will report to the IC what the final disposition of the matter is, including what action was taken by the FEC.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure: Findings, Conclusions, and Recommendations

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

Scott Dahl
Chairperson
Inspector General
Department of Labor

March 19, 2018

Via Email
James Thurber
Deputy Inspector General
Federal Election Commission
999 E Street N.W., Suite 940
Washington, D.C. 20463
(b) (6), (b) (7)(C)
[redacted]

IC #911: Findings and Conclusions

Dear Deputy Inspector General Thurber:

After considering your response, dated February 7, 2018, to the proposed findings and conclusions, dated January 10, 2018, the Integrity Committee (IC) issues final findings, conclusions, and recommendations set forth below. The IC will distribute them in accordance with the IC's Policies and Procedures (2018), Section 11.

The IC received and you responded to the following allegation:

> You wrongfully accepted a performance-based cash award from Federal Election Commission (FEC) management for the performance-appraisal year ending 6/30/17 during which you were the Deputy Inspector General (IG) and senior official in the FEC Office of the Inspector General (OIG). Your actions in working with FEC management to devise a way to rate your own performance and accept the award were inconsistent with the statutory intent behind the *Inspector General Act* prohibition on such awards and, consequently, undermined the independence of the FEC OIG.

The IC determined pursuant to IC Policies and Procedures, Section 7C(iii) that "the record is sufficient to make findings, conclusions, or recommendations as to some or all of the allegations without investigation." The record included the original complaint and supporting materials; your responses dated December 1, 2017, and February 7, 2018, with supporting materials; and other materials the IC received.

The IC makes the following findings:

1. You acknowledged in your email to the Council of the Inspectors General on Integrity and Efficiency (CIGIE), dated August 30, 2017, that although the FEC

had not appointed an acting IG, under your position description, you "have been acting in the capacity of the IG since her retirement and essentially running the office."

2. In an email to the FEC Commissioners, dated August 17, 2017, you stated the following relating to performance rating and bonus consideration for you:
    a. "there is no IG to give me a summary rating."
    b. "a rating is required for a performance-based bonus."
    c. "I filled out the self-narrative sections [of the performance evaluation] form in case it was needed."
    d. "[the Staff Director to the Commissioners] mentioned that the Commission will soon address SL performance reviews and bonuses, and he suggested that I forward to you my partially completed performance review form for your consideration in the event you wanted to handle these issues at the same time."

3. In another email to the Commissioners, dated August 30, 2017 (4:17 pm), you reiterated that a rating is needed and is "used for determining performance-based awards," but that there are independence considerations to take into account in determining if and how you should receive a rating. You also stated that "whatever decision is made by the Commission in resolving this matter, it will not affect my independence and objectivity."

4. In your December 1, 2017, letter to the IC, you contend that the focus of your communications with the Commission "was on the Chapter 43 rating requirement, not a performance award or bonus." You reiterated that same contention in your February 7, 2018, letter to the IC. However, in both of the email messages to the Commissioners referenced above, you connected the need for some kind of rating with consideration of a performance-based bonus, and you suggested that they consider your self-narrative as they decide on bonuses.

5. In an email to the Commissioners, dated August 30, 2017 (5:13 pm), you stated that pursuant to a discussion with the Vice-Chair of the Commission, that you would contact CIGIE for advice.

6. In an email to Mark Jones of CIGIE, dated August 30, 2017, you stated the following:
    a. "I don't know if there would be any consequence for me not receiving a rating (other than me not being eligible for a bonus this year)."
    b. "I have no problem in forgoing a bonus to protect the independence of my position and the OIG."
    c. "Other possible approaches could be either submitting a self-narrative of my accomplishments without a rating [but] that approach has obvious issues, as well."

7. In an email exchange between you and Mark Jones of CIGIE, dated September 1, 2017, the following was stated:
    a. Mr. Jones advised that the acting IG not be evaluated, which meant "unfortunately for yourself," this has an impact on salary adjustments and bonuses.
    b. You responded back that you "agree with this approach."

8. Despite characterizing in your September 1 email to Mr. Jones that submitting a self-narrative was a "possible" approach but concluding that it has "obvious issues," you had in fact already provided to the Commission your self-narrative on August 15, 2017, for them to consider in awarding you a bonus.

9. Even after receiving and agreeing with advice from CIGIE not to accept a bonus, you never took any steps to withdraw that self-narrative or affirmatively tell the Commissioners that they should not consider this self-narrative in making a bonus determination; instead, you let stand your suggestion in your August 30 email that the Commissioners could consider the self-narrative when they made performance-based (bonus) decisions.

10. In an email to the Commissioners, dated September 5, 2017, you stated:
    a. You had been in contact with CIGIE.
    b. CIGIE recommended and you concurred that you should not receive a performance evaluation from the Commission.

11. You never told the Commissioners that you should not receive a performance bonus, even though you acknowledged to CIGIE in your September 1 email that you should not receive one.

12. You said you first discovered on September 18, 2017, that you had received a performance bonus, but acknowledged you did not take any steps to rectify this matter consistent with statements that you made to CIGE about forgoing a bonus.

13. You stated on page 4 of your December 1, 2017 letter to the IC that the reason you took no further action on the performance award is that you "assumed the Commission had solicited CIGIE's further input in making a decision regarding the performance award and come to some agreed upon solution which resulted in the award in question." In your February 7, letter to the IC you stated, "I assumed the Commission would have simply disregarded the self-narrative based upon CIGIE's response that I should not receive a performance evaluation. I believed there was direct communication between CIGIE and the Commission, as this was a multifaceted discussion and such direct communication had occurred in the recent past. With this in mind, I assumed the award was a result of a Commission vote after consultion [sic] with the CIGIE."

14. These assumptions – that the Commission had disregarded your self-narrative and that the award was in some fashion condoned or approved by CIGIE – are not credible based on the fact that (1) the Commission Vice Chair specifically requested that you communicate with CIGIE on the rating issue, which you did; (2) CIGIE's unequivocal guidance to you that you should not be rated, despite the effect this would have on your eligibility for a bonus, which advice you agreed to; and (3) you reported back to the Commissioners on September 5 that based on CIGIE's advice you should not be rated, but you failed to tell them that you were also not eligible for a bonus.

15. In your February 7, 2018, letter to the IC, you stated in a footnote that the bonus was never approved by the Commission and therefore was given to you in error. However, as is clear from your communications with the Commissioners on August 17 and 30, 2017, you intended for them to consider you for a bonus award and even forwarded to them your performance review form to be considered for that express purpose.

16. Moreover, you stated in your February 7 letter that you would "begin the process of returning the award," but as of March 7, 2018, you have not returned the award to the FEC, even though you have acknowledged it was paid to you in error and despite advising CIGIE on August 30, 2017, that you should not receive a performance award, which you acknowledge you knew on September 18, 2017, that you had received.

Based on these findings, we conclude that your actions in communicating with FEC Commissioners to consider you for a performance award and accepting that award, despite acknowledging to CIGIE that you should not receive one, undermined the independence and integrity reasonably expected of you as a senior OIG official.

(b) (6), (b) (7)(C), (b) (5) [redacted]

Sincerely,

(b) (6) [redacted]

Scott Dahl
Chairperson
Integrity Committee

JAMES CAMERON THURBER
(b) (6), (b) (7)(C) [redacted]
[redacted]

February 7, 2017

The Honorable Scott Dahl
Chairman, Integrity Committee
Council of Inspectors General on Integrity and Efficiency
935 Pennsylvania Avenue, Northwest
Room 7452
Washington, DC 20535

RE: Response to Findings and Conclusions in IC #911

Dear Mr. Dahl,

I am writing in response to the Committee's findings and conclusions dated January 10, 2018. I would like to reiterate that I did not intentionally engage in any action that would compromise the independence or integrity of the Federal Election Commission (FEC) Office of the Inspector General (OIG). Moreover, I did not intentionally "work with management to rate my own performance by submitting a self-narrative" so that I would receive a bonus. As I stated in my original response, I acknowledge that I may have used poor judgment in making a presumption based on the circumstances mentioned that the award I received was a result of a decision by the Commission with input from the Council of Inspectors General on Integrity and Efficiency (CIGIE).

Contrary to the findings report, I did not work with management to rate myself by submitting a self-narrative in order to obtain a bonus. Instead, I was attempting to discuss with management to determine how to comply with legal requirements while also attempting to preserve OIG independence. The detailed emails I have provided demonstrate such evidentiary support when I reached out to various individuals within agency management and the Commission.

As a point of clarification, the head of the agency is the Commission, not "management," and the IG reports directly to the Commission. I did communicate with "management" in the early stages, namely the Director of Human Resources, Staff Director, and Assistant to the Staff Director, to try and figure out what was required administratively in terms of fulfilling legal requirements and trying to find a solution that would not affect OIG independence, but agency management has no any authority over the OIG or Commission. The Staff Director, Chief Financial Officer, and General Counsel also report directly to the Commission, and any decision

on a performance rating or bonus concerning anyone reporting to the Commission can only be made by the Commission, not agency management.

I would like to reiterate that I submitted a self-narrative to the Commission as a standard part of a performance evaluation form. I did not submit the self-narrative as a performance self-evaluation or self-rating. The form clearly is divided in two sections - one for the employee to list their accomplishments and one for the rating official to complete based on the employee's performance. I filled out the self-narrative section to demonstrate what I have done because it was my responsibility to do so. I did not fill out the rating official's section or numerical score. The self-narrative was not meant to be used for the Commission to make a bonus determination. It was submitted as a possible solution to ensuring legal requirements were upheld. It is important to note that the only reason I submitted something to the Commission is because the Staff Director suggested it after his assistant told me I needed to have a performance evaluation for the record; the Human Resources Director confirmed the legal requirement.

I apologize that I did not take additional action to ensure that the award was given to me correctly. Further, as is evident in my emails, I was attempting to be transparent with the Commission about how to approach the legal statutes while maintaining OIG independence. In discussion with CIGIE and the Commission, I did not think to withdraw the self-narrative. Evidently, upon reflection, I should have. At the time, I assumed the Commission would have simply disregarded the self-narrative based upon CIGIE's response that I should not receive a performance evaluation. I believed there was direct communication between CIGIE and the Commission, as this was a multifaceted discussion and such direct communication had occured in the recent past. With this in mind, I assumed the award was a result of a Commission vote after consultion with the CIGIE.[1]

This has been a significant learning experience for me. I apologize for my inaction when I thought the bonus was legitimately given, rather than through a now-apparent error. However, I emphatically and categorically deny that I in any way intentionally worked with management to rate my own performance in order to receive a bonus. I wish to remedy this situation and will begin the process of returning the award. I am a dedicated employee of the Federal government

[1] It is pertinent to note that I believe the initial issuance of this award was made by mistake. I was informed by the Vice Chair that the Commission had not considered my situation when the SF-50 for the award was signed, but I did not notice this discrepancy until after I received this complaint. I am not sure how the bonus could have been awarded without the Commission's approval, but at the time, I was informed by the Staff Director's assistant that she put a place holder amount equal to the maximum bonus I would have been eligible for in the bonus chart until my situation was resolved. With this in mind, I believe a mistake was made in that someone in Finance or HR used this chart when processing bonuses and included me by accident. According to the voting sheet distributed to the Commission concerning senior level bonuses for 2017, it does not appear the Commission voted on a bonus for me, and only the Commission is capable of doing so. Therefore, it appears it was some form of administrative error.

and hold my duties and responsibilities in high regard. I thank you for your attention and consideration in this matter.

Sincerely,

(b) (6)

J. Cameron Thurber

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

The President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate, when appropriate, allegations of misconduct made against an Inspector General or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended, (IG Act), the IC hereby forwards its findings, conclusions, and recommendation regarding Mr. Wayne Stone, former Acting Inspector General for the Intelligence Community (ICIG).

On May 2, 2018, the IC Chairperson initiated an investigation into allegations against Mr. Stone and engaged the U.S. Department of Homeland Security OIG to conduct the investigation. After thoroughly reviewing the report of investigation (ROI) and accompanying exhibits, the IC adopted the findings in the ROI and concluded there was sufficient evidence to substantiate the allegations that Mr. Stone grossly mismanaged the ICIG and abused his authority while acting under the color of his office. In 2018, Mr. Stone left the ICIG and currently works for the Office of the Director of National Intelligence. (b) (6), (b) (7)(C), (b) (5) [redacted]

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson, the CIGIE Chairperson, the Director of National Intelligence, the ICIG, and the congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6) [redacted]

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6250

The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Government Affairs

The Honorable Elijah Cummings
Chairman
Committee on Oversight and Government Reform
2471 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Government Reform

The Honorable Richard Burr
Chairman
Senate Select Committee on Intelligence
217 Russell Senate Office Building
Washington, DC 20510

The Honorable Mark Warner
Ranking Member
Senate Select Committee on Intelligence

The Honorable Adam Schiff
Chairman
House Permanent Select Committee on Intelligence
2269 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Devin Nunes
Ranking Member
House Permanent Select Committee on Intelligence

Dear Chairmen and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the findings, conclusions, and our recommendation regarding Mr. Wayne Stone, former Acting Inspector General for the Intelligence Community (IC IG).

After a thorough review of the report of investigation and accompanying exhibits, the IC found Mr. Stone grossly mismanaged the IC IG and abused his authority while acting under the color of his office. In 2018, Mr. Stone left the IC IG and now works for the Office of the

Director of National Intelligence. (b) (6), (b) (7)(C), (b) (5)

The IC provided the attached report to the President of the United States, the CIGIE Executive Chairperson, the CIGIE Chairperson, the Director of National Intelligence, and the IC IG, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

The Honorable Margaret Weichert
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, D.C. 20006

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended, the IC hereby forwards the report of our findings and our recommendation regarding Mr. Wayne Stone, former Acting Inspector General for the Intelligence Community (IC IG).

Pursuant to section 11(d)(8)(B) of the IG Act, please report to the IC the final disposition of this matter, including what action, if any, was taken by the Director of National Intelligence. The IC has also provided the report and recommendation to the President of the United States, the CIGIE Chairperson, the Direction of National Intelligence, the IC IG, and the congressional committees of jurisdiction.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

The Honorable Michael Horowitz
Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, N.W., Suite 825
Washington, D.C. 20006

Dear Chairperson Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the report of our findings and our recommendation regarding Mr. Wayne Stone, former Acting Inspector General for the Intelligence Community (IC IG).

The IC also provided the attached report and recommendation to the President of the United States, the congressional committees of jurisdiction, the CIGIE Executive Chairperson, the Director of National Intelligence, the IC IG, and Mr. Stone.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

The Honorable Daniel Coats
Office of the Director of National Intelligence
Washington, DC 20511

Dear Director Coats:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the IG Act of 1978, as amended, the IC hereby forwards the report of our findings and our recommendation regarding Mr. Wayne Stone, former Acting Inspector General for the Intelligence Community (IC IG).

After thoroughly reviewing the report of investigation and accompanying exhibits, the IC finds Mr. Stone grossly mismanaged the IC IG and abused his authority while acting under the color of his office. (b) (6), (b) (7)(C), (b) (5)

The IC provided the attached report and their recommendation to the President of the United States, the CIGIE Executive Chairperson, the CIGIE Chairperson, and the congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

Via Email
The Honorable Michael Atkinson
Inspector General for the Intelligence Community
(b) (6), (b) (7)(C)

Re: Complaint to the Integrity Committee

Dear Inspector General Atkinson:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency reviewed allegations submitted by your office on December 20, 2017, involving Wayne Stone, former Acting Inspector General for the Intelligence Community (IC IG). The IC is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On May 2, 2018, the IC Chairperson initiated an investigation into allegations against Mr. Stone and engaged the U.S. Department of Homeland Security OIG to conduct the investigation. After thoroughly reviewing the report of investigation (ROI) and accompanying exhibits, the IC adopted the findings in the ROI and concluded there was sufficient evidence to substantiate the allegations that Mr. Stone grossly mismanaged the IC IG and abused his authority while acting under the color of his office. (b) (6), (b) (7)(C), (b) (5) . However, because the ROI details Mr. Stone's actions while at the IC IG, including information concerning IC IG program performance and personnel actions, the IC is providing you with the attached ROI for review and any action you deem appropriate.

The IC also provided the attached report with our recommendation to the President of the United States, the CIGIE Executive Chairperson, the CIGIE Chairperson, the Director of National Intelligence, the congressional committees of jurisdiction, and Mr. Stone. Thank you for submitting this matter to the IC.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

July 30, 2019

Via Email
Wayne Stone
(b) (6), (b) (7)(C)

IC 918/919/972 Report of Investigation

Dear Mr. Stone:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On May 2, 2018, the IC Chairperson initiated an investigation into allegations of misconduct against you. The U.S. Department of Homeland Security OIG conducted the investigation and prepared the attached report of investigation (ROI), which has been redacted to protect complainant and witness identity. Pursuant to IC Policies and Procedures (2018), section 10.A.i., the IC provided you with a copy of the ROI for comment and you chose not to comment on the report. After thoroughly reviewing the ROI and accompanying exhibits, the IC finds you grossly mismanaged the IC IG and abused your authority while acting under the color of your office. (b) (6), (b) (7)(C), (b) (5) .

The IC provided the attached report with our recommendation to the President of the United States, the appropriate congressional oversight committees, the CIGIE Executive Chairperson, the CIGIE Chairperson, the IC IG, and the Director of National Intelligence.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

Enclosure

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

February 5, 2019

MEMORANDUM FOR: Council of Inspectors General on Integrity and Efficiency (CIGIE), Integrity Committee

FROM: John V. Kelly (b) (6)
Senior Official Performing the Duties of the Inspector General

SUBJECT: Investigation Related to CIGIE Complaints 918, 919, & 972 Involving Former Acting Inspector General Wayne Stone

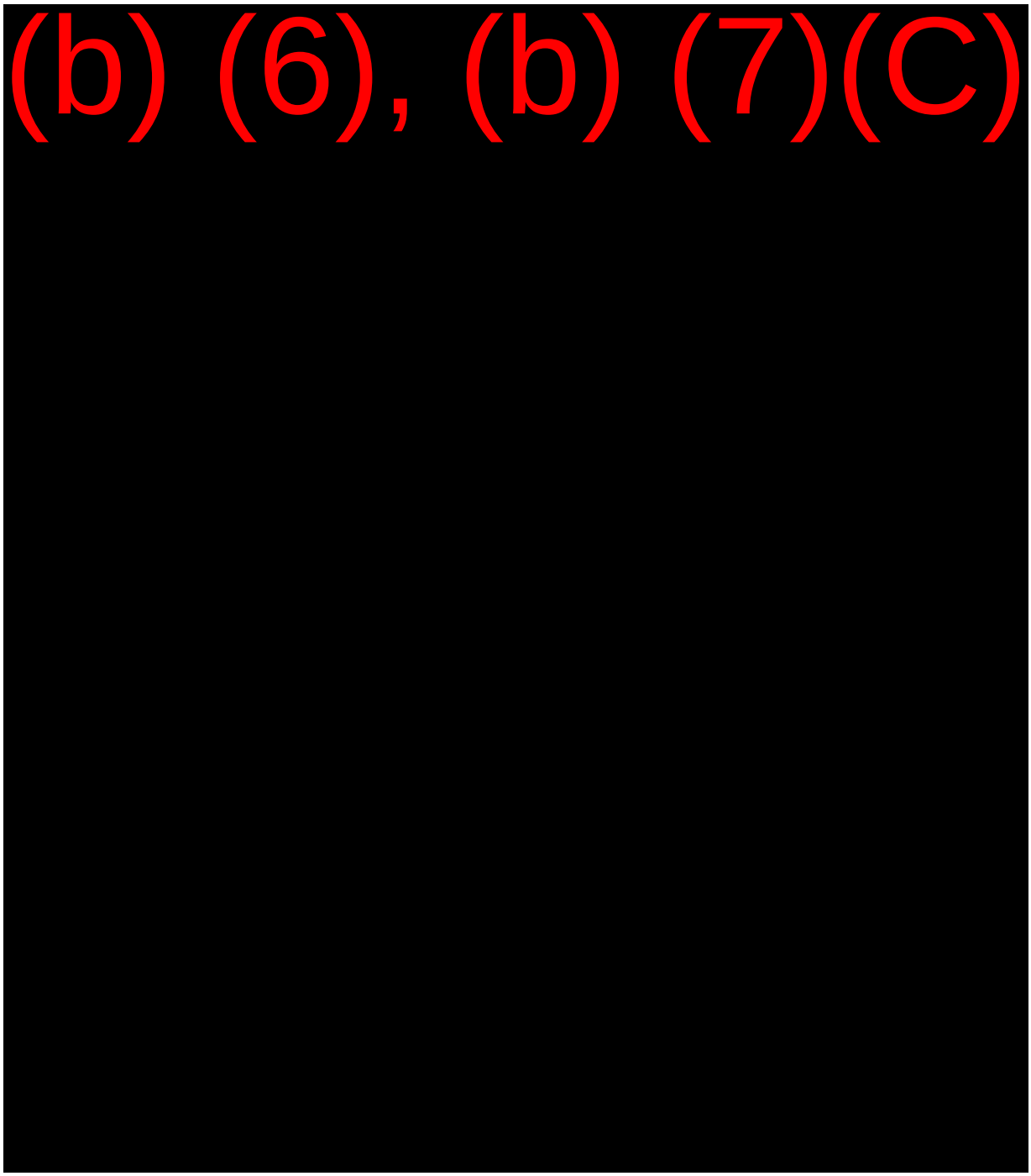
On May 2, 2018, the CIGIE Integrity Committee referred to DHS OIG for investigation two complaints against the former Acting Inspector General (IG) of the Intelligence Community, Office of Inspector General (IC IG), Wayne Stone. The complaints centered on Stone's oversight of the IC IG whistleblower program and his participation in a Harvard educational program. Later, additional issues were added to the investigation, including (b) (6), (b) (7)(C) whether Stone abused his authority by pressuring or coercing employees he did not like to leave the IC IG.

Attached is the Report of Investigation (ROI) outlining DHS OIG's factual findings and conclusions relating to the allegations. To facilitate your review of this matter, we are also providing the following executive summary. Should you have any questions, please contact me, or your staff may contact (b) (6), (b) (7)(C) .

Attachment

EXECUTIVE SUMMARY

(b) (6), (b) (7)(C)


(b) (6), (b) (7)(C)

Issue 2(a): Whether Stone was derelict in the performance of his official duties, resulting in gross mismanagement, when he attended a Harvard educational program while serving as Acting IG.

Substantiated. DHS OIG determined that Stone's participation in a ten-month-long Harvard educational program ("Harvard Program"), which caused him to be out of the office with limited access to classified information for all but a few days each month, resulted in gross mismanagement of the IC IG because it significantly impacted the IC IG's ability to accomplish its mission.[1]

The record showed that Stone only returned to IC IG headquarters every two-to-three weeks while he was enrolled in the Harvard Program. While in Boston, he did not have everyday access to classified information. He could access government email on his phone, but not his laptop, and often used his personal email to conduct government business. The record showed that reviewing classified information is of primary importance to the mission and day-to-day work of IC IG leadership.

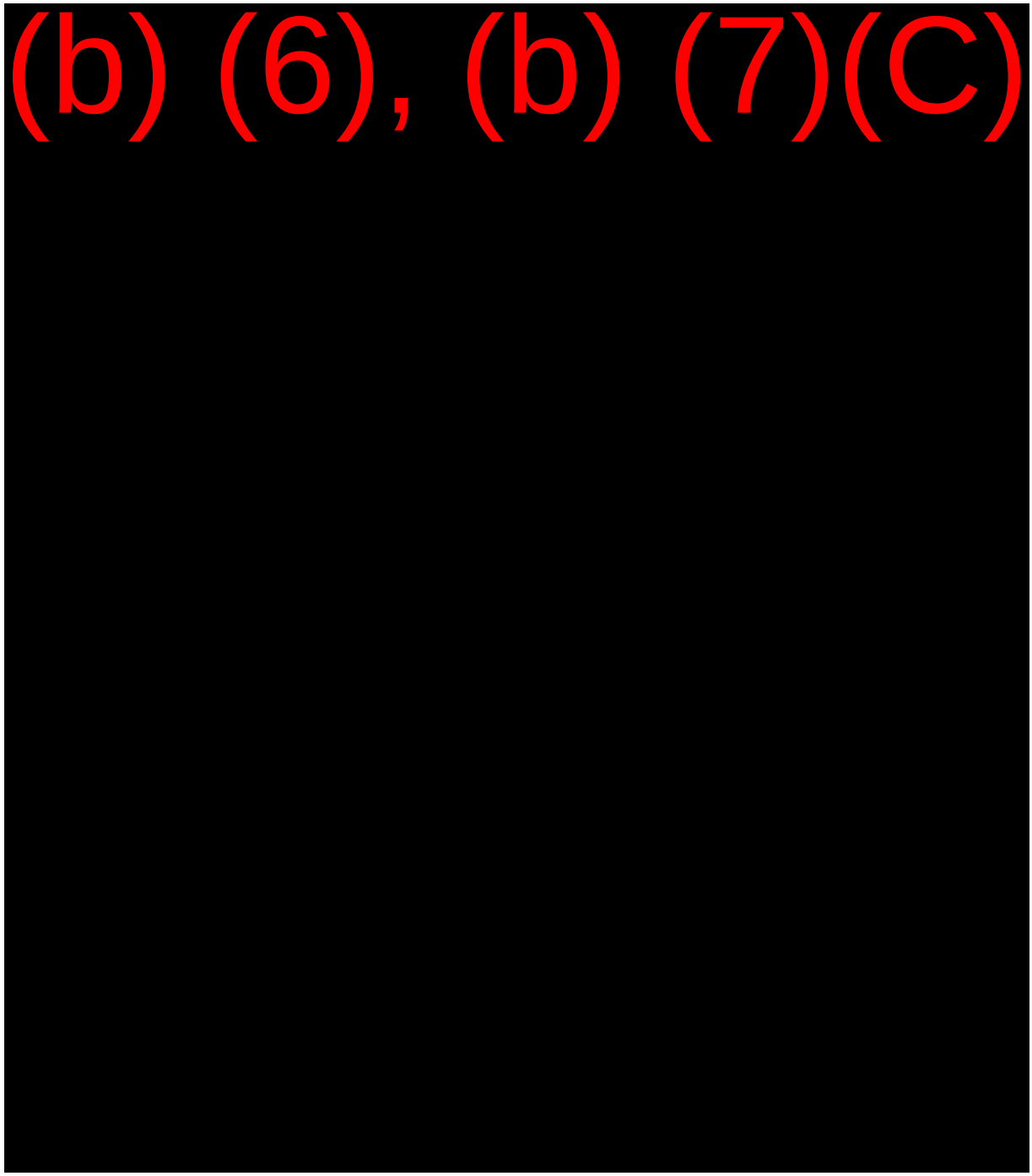
Moreover, when he was away, Stone left behind a short-staffed IC IG management chain, with multiple individuals handling more than one leadership position, and acting replacements in other positions. For example, (b) (6), (b) (7)(C), who served as Acting IG in Stone's absence, was serving in three leadership roles simultaneously: Acting IG, (b) (6), (b) (7)(C) [redacted].

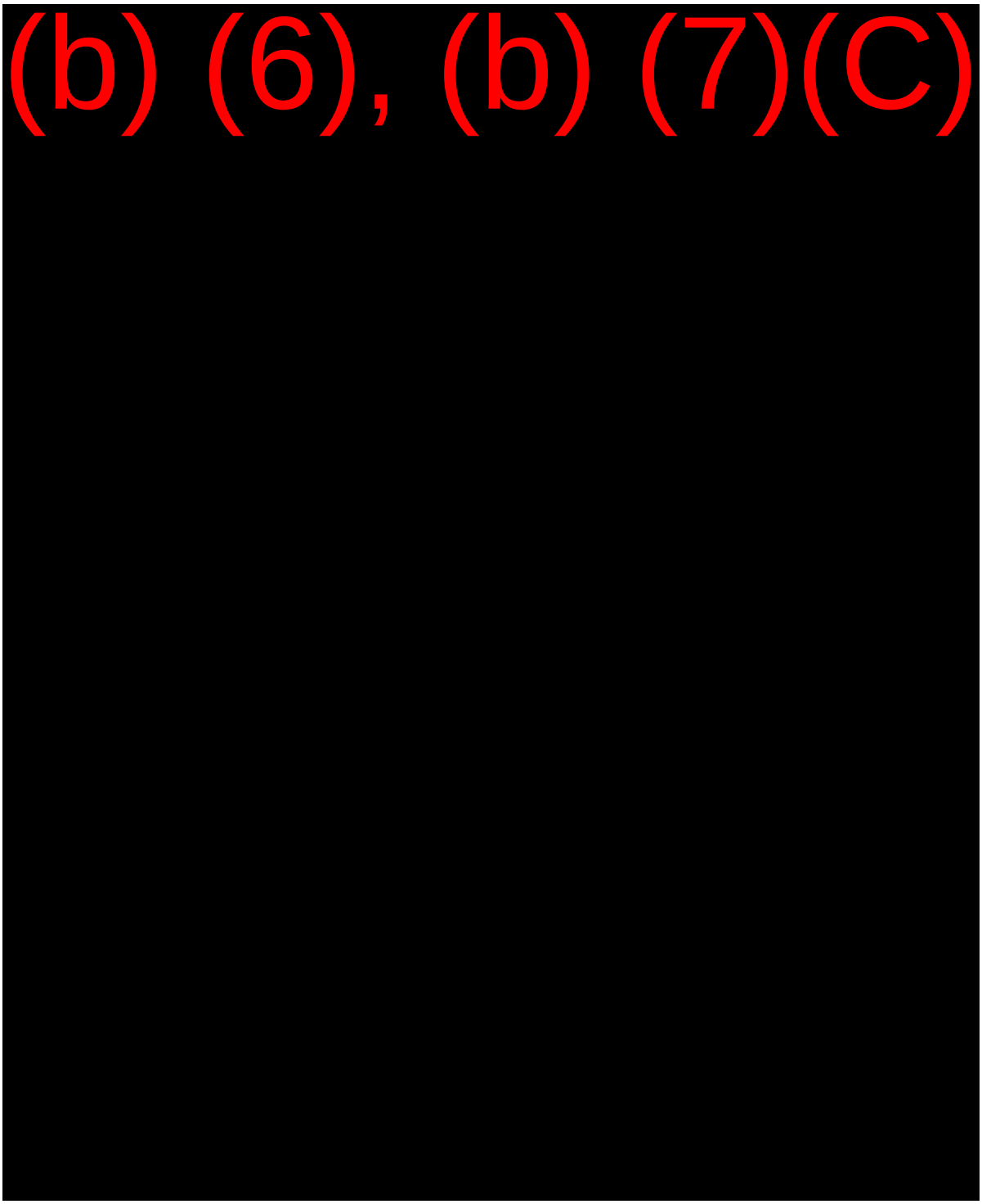
Evidence also showed that IC IG operations suffered as a result of Stone's extended absences. For instance, there were significant backlogs in responding to Hotline complaints and FOIA requests. Although a backlog already existed when Stone became Acting IG, the backlogs and delinquencies worsened during Stone's participation in the Harvard Program. His absences also appear to have contributed to delinquencies

[1] "Gross mismanagement" is defined as a "management action or inaction that creates a substantial risk of significant impact on an agency's ability to accomplish its mission." *Schaeffer v. Department of the Navy,* 86 M.S.P.R. 606, ¶ 8 (2000). Gross mismanagement must also be "more than de minimis wrongdoing or negligence." *White v. Dep't of the Air Force*, 391 F.3d 1377, 1382 (Fed. Cir. 2004).

in the operation of the whistleblower program, including delinquent ERP requests and unanswered whistleblower complaint status updates.

Based on this evidence, DHS OIG concluded that Stone's attendance at Harvard had a significant negative impact on the IC IG's ability to accomplish its mission, thus constituting gross mismanagement.




(b) (6), (b) (7)(C)

Issue 4: Whether Stone abused his authority by cancelling training, misusing IC IG resources, and/or pressuring or coercing employees to take details or other positions to remove them from the IC IG.

Substantiated. DHS OIG's investigation focused on the circumstances of two former IC IG employees who Stone allegedly pressured to accept details or outside employment in order to remove them from the IC IG. DHS OIG substantiated the allegation that Stone abused his authority with respect to his treatment of one of the former employees (Employee 1).[2] The investigation was inconclusive, however, with respect to the second employee (Employee 2).

Employee 1 alleged that Stone initiated a retaliatory investigation against her after she openly questioned Stone's participation in the Harvard Program. She further alleged that Stone used the investigation to precipitate her departure from the IC IG.

The evidence established that Stone was upset that Employee 1 had questioned his participation in the Harvard Program at a training event attended by members of the IG community at Stone's *alma mater*. The evidence further established that Stone took retaliatory actions against Employee 1 immediately following her comments, including cancelling Employee 1's current and future training events. Finally, the evidence showed that Stone used the results of an investigation involving Employee 1 as a pretext to remove her from the IC IG. Accordingly, DHS OIG substantiated that Stone abused his authority when he engaged in retaliatory actions against Employee 1.

However, as to Employee 2, who alleged that Stone utilized threats and coercion to force him into taking a detail outside of the IC IG, DHS OIG's investigation did not produce enough evidence to substantiate that Stone used threats and intimidation to force the employee out.

[2] An "abuse of authority" is defined as an "arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *Pulcini v. Social Security Administration*, 83 M.S.P.R. 685, ¶ 9 (1999).

OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

DHS OIG REPORT OF INVESTIGATION – CIGIE Complaints 918, 919, and 972

I. INTRODUCTION

The Department of Homeland Security (DHS) Office of Inspector General (OIG) conducted this investigation in response to a request from the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Integrity Committee to investigate allegations of wrongdoing by former Acting Inspector General (Acting IG) of the Intelligence Community (IC IG) Wayne Stone. DHS OIG received this request on May 2, 2018 via a letter from CIGIE Integrity Committee Chairperson Scott Dahl. DHS OIG was tasked with investigating the following allegations and issues:

Issue 1: The circumstances surrounding Acting IG Stone's oversight of the whistleblower program, to wit:

a. (b) (6), (b) (7)(C) [redacted]

b. (b) (6), (b) (7)(C) [redacted]

Issue 2: Whether Acting IG Stone was derelict in the performance of his official duties resulting in gross mismanagement of the IC IG, specifically in the circumstances surrounding:

a. Stone's participation in a Harvard educational program;

b. (b) (6), (b) (7)(C) [redacted]

c. (b) (6), (b) (7)(C) [redacted]

(b) (6), (b) (7)(C) [redacted]

Although not referenced in the CIGIE letter, DHS OIG received several allegations that Stone coerced employees into leaving the IC IG through intimidation, harassment, and/or threats. DHS OIG therefore followed this evidence, in consultation with CIGIE, to investigate the following additional allegation:

Issue 4: Whether Stone abused his authority by cancelling training, misusing IC IG resources, and/or pressuring and coercing employees into taking details, or other positions, to remove them from the IC IG.

(b) (6), (b) (7)(C) [redacted] With respect to allegation 2(a), DHS OIG determined that Stone's attendance in the Harvard program resulted in gross mismanagement of the IC IG. A preponderance of the evidence showed that Stone's extended absences to attend the Harvard program resulted in reduced productivity, backlogged tasks, inadequate communications (including classified communications), poor planning, a conflicted and overwhelmed chain of command, and a void of leadership at the IC IG. Regarding allegation 4, DHS OIG determined that Stone abused his authority by taking retaliatory actions against an employee who publicly questioned his participation in the Harvard program. Specifically, a preponderance of the evidence showed that, following the employee's public comments, Stone cancelled the employee's future training courses and subjected the employee to an investigation when a management inquiry would have been adequate. The evidence also showed that Stone misused the results of the investigation as a pretext to remove the employee from the IC IG.

DHS OIG's investigation also uncovered additional evidence of poor decision-making and mismanagement in several areas involving the IC IG's duties and performance.

II. SCOPE

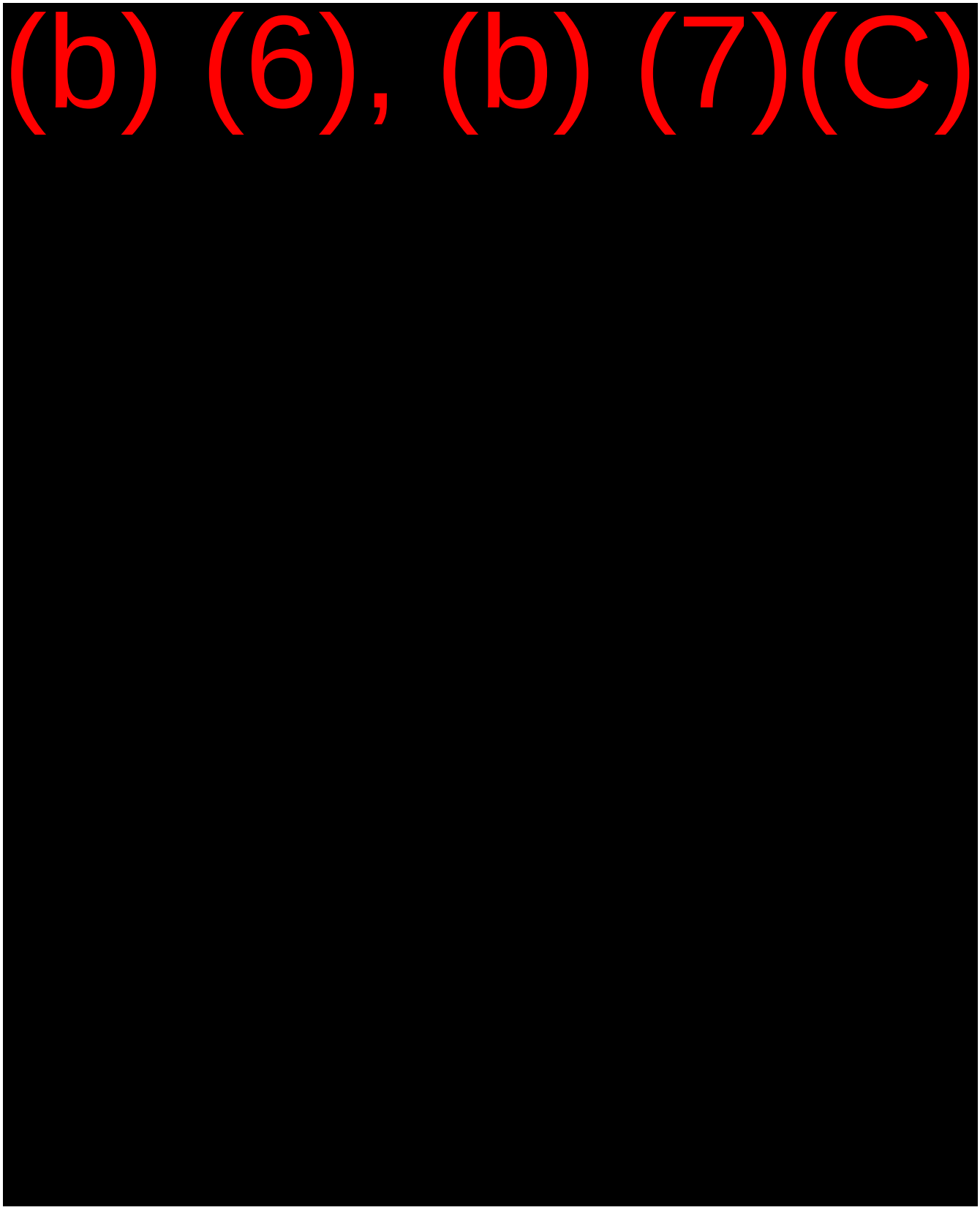
This investigation covered the period from October 2016 until May 2018. This period included Stone's initial employment by the IC IG as Principal Deputy IG, through his tenure as Acting IG until the appointment of his successor in May 2018. DHS OIG interviewed 18 witnesses with knowledge of IC IG operations and management, requested and reviewed documents and information from the IC IG, the Office of the Director of National Intelligence (ODNI), and the Senate Legal Counsel, including email correspondence, personnel records, and IC IG program records.

III. AUTHORITY

DHS OIG conducted this investigation pursuant to its authority under the *Inspector General Act of 1978*, and the *Inspector General Empowerment Act of 2016.*

IV. FINDINGS AND CONCLUSIONS

(b) (6), (b) (7)(C)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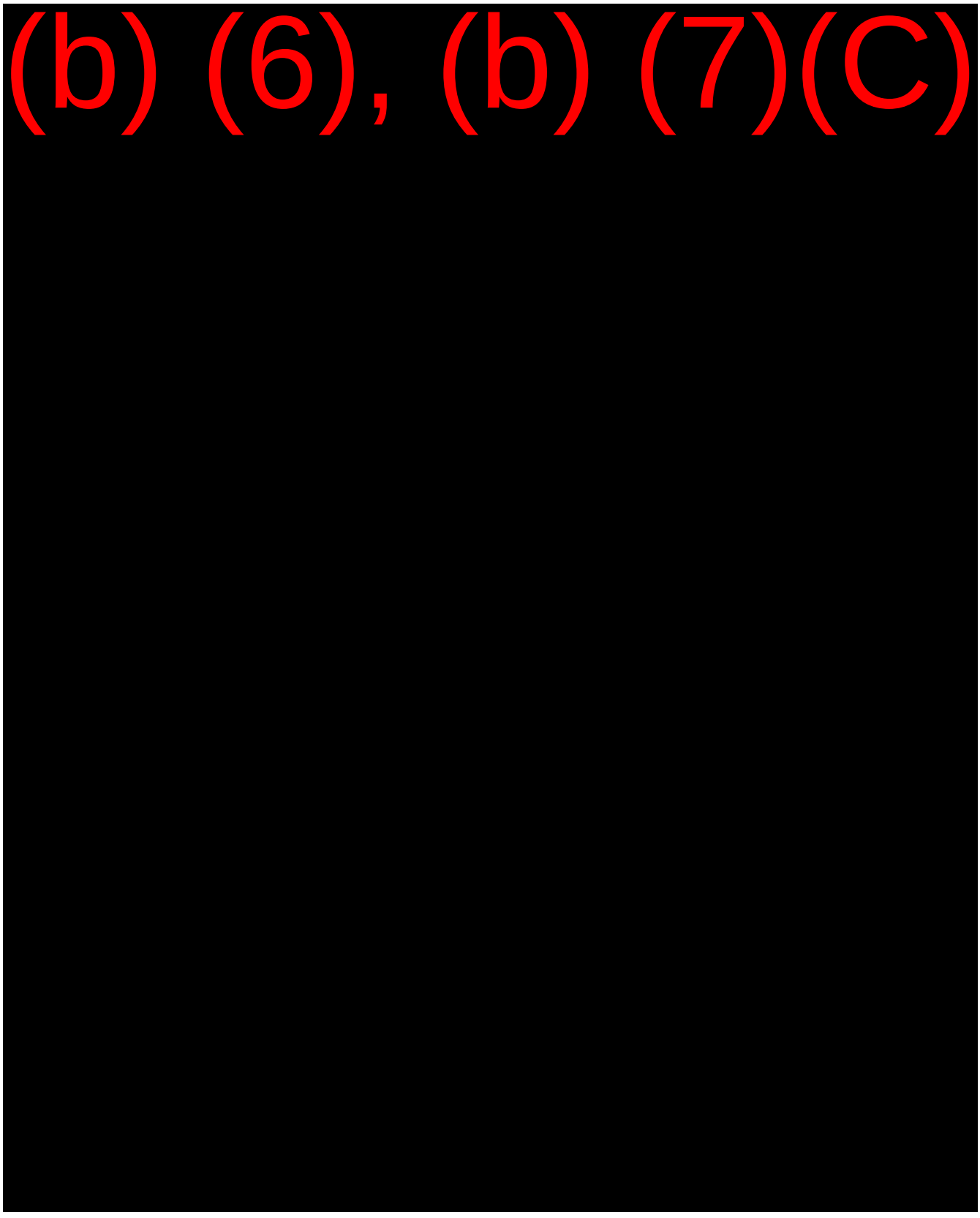
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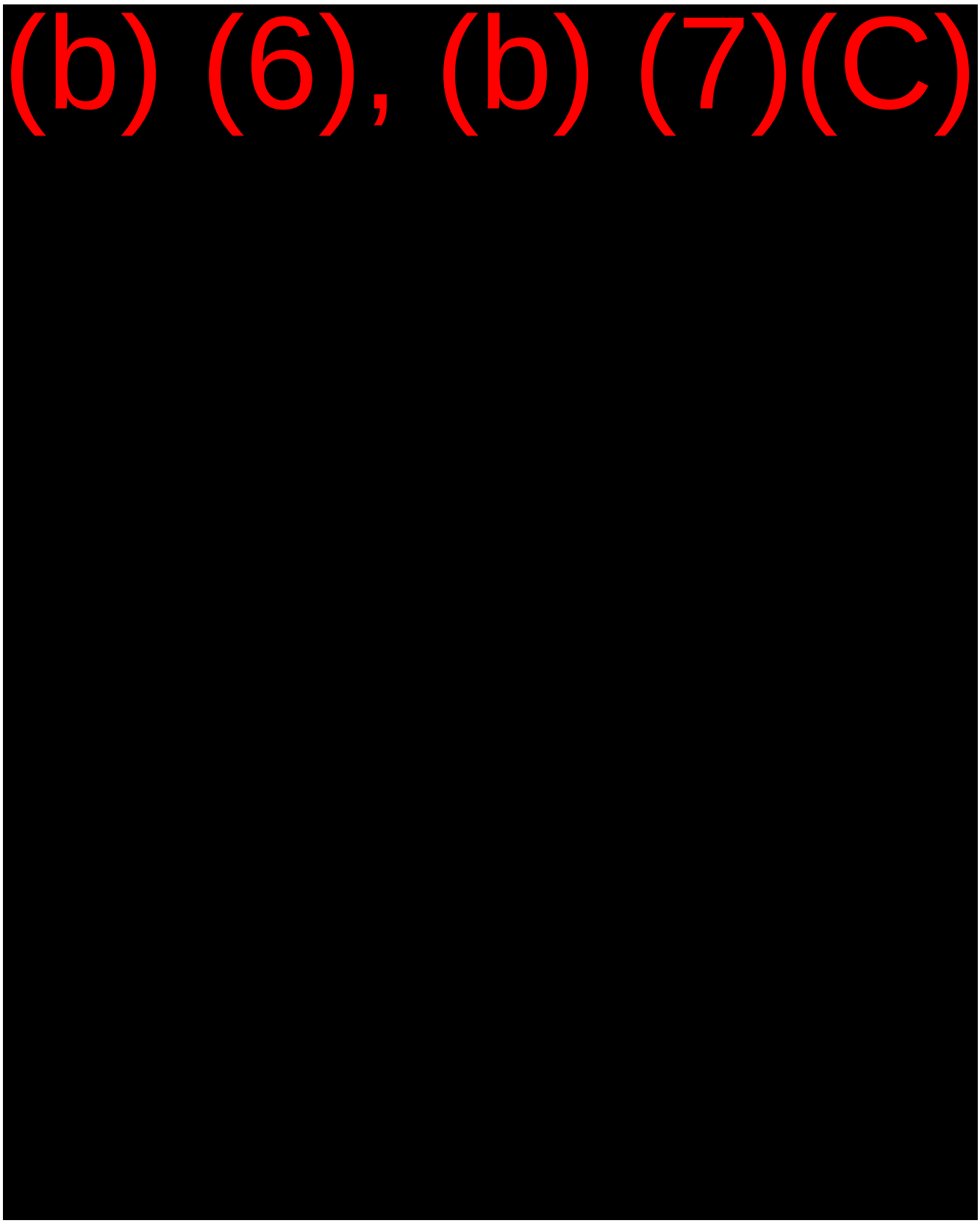
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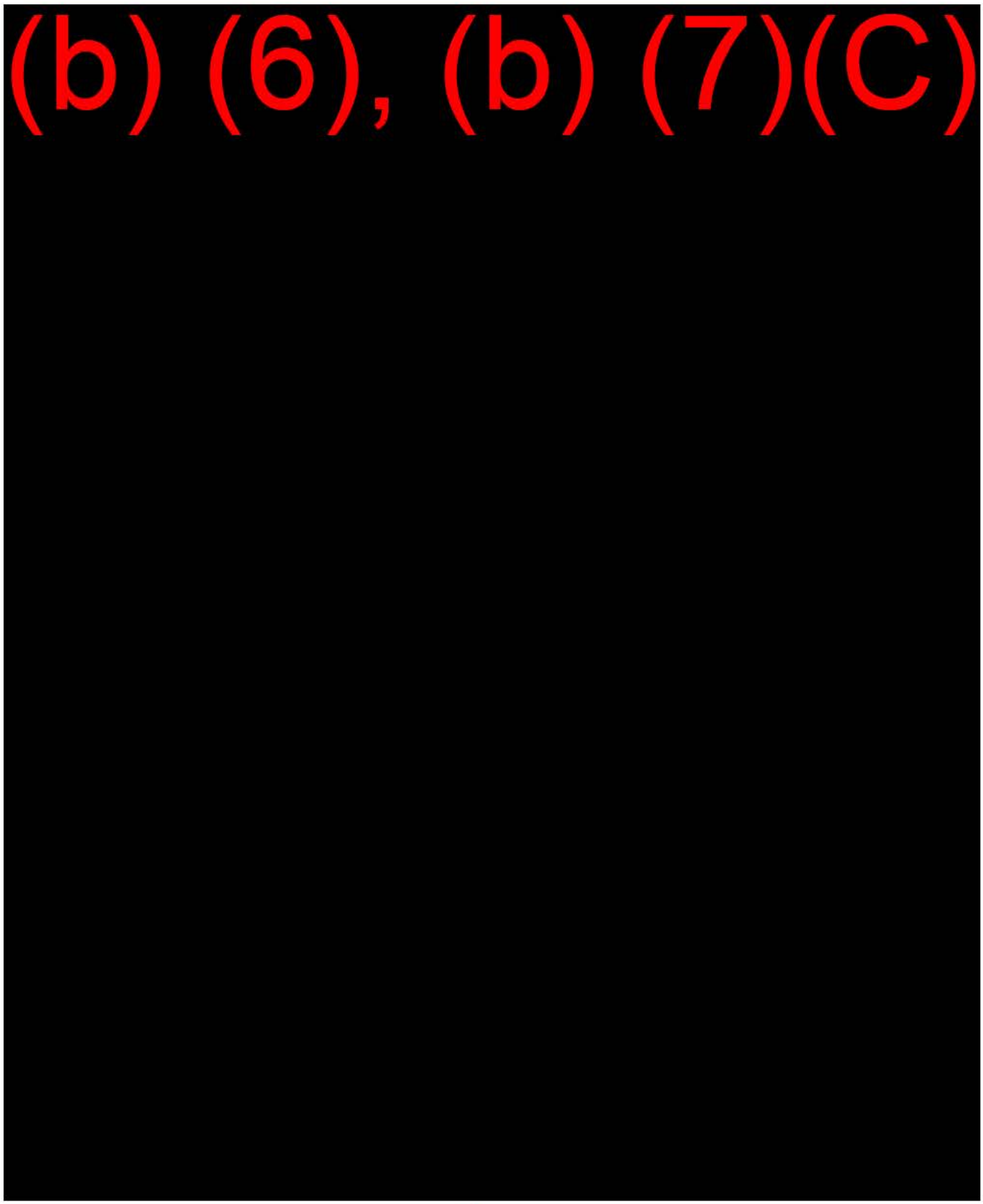
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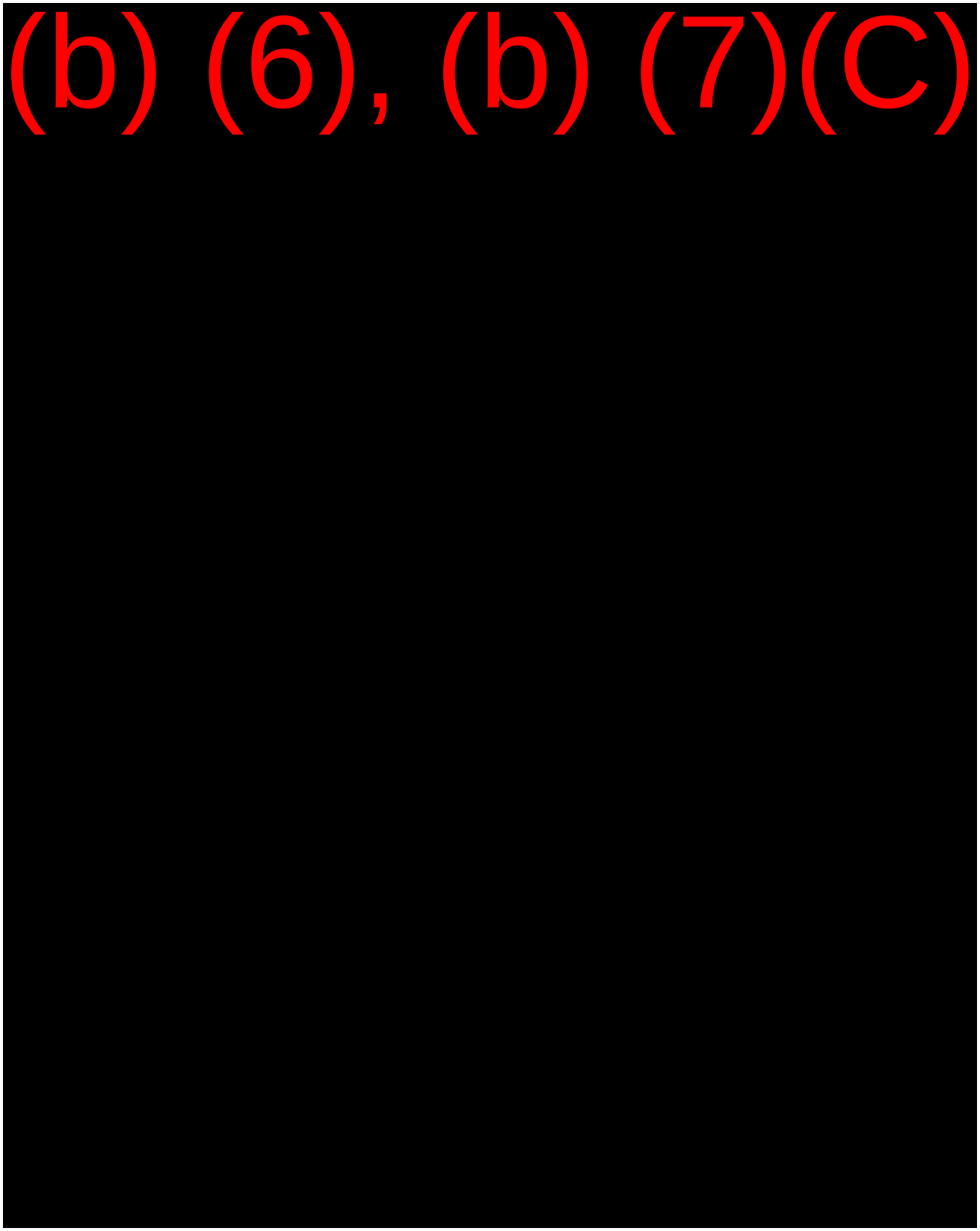
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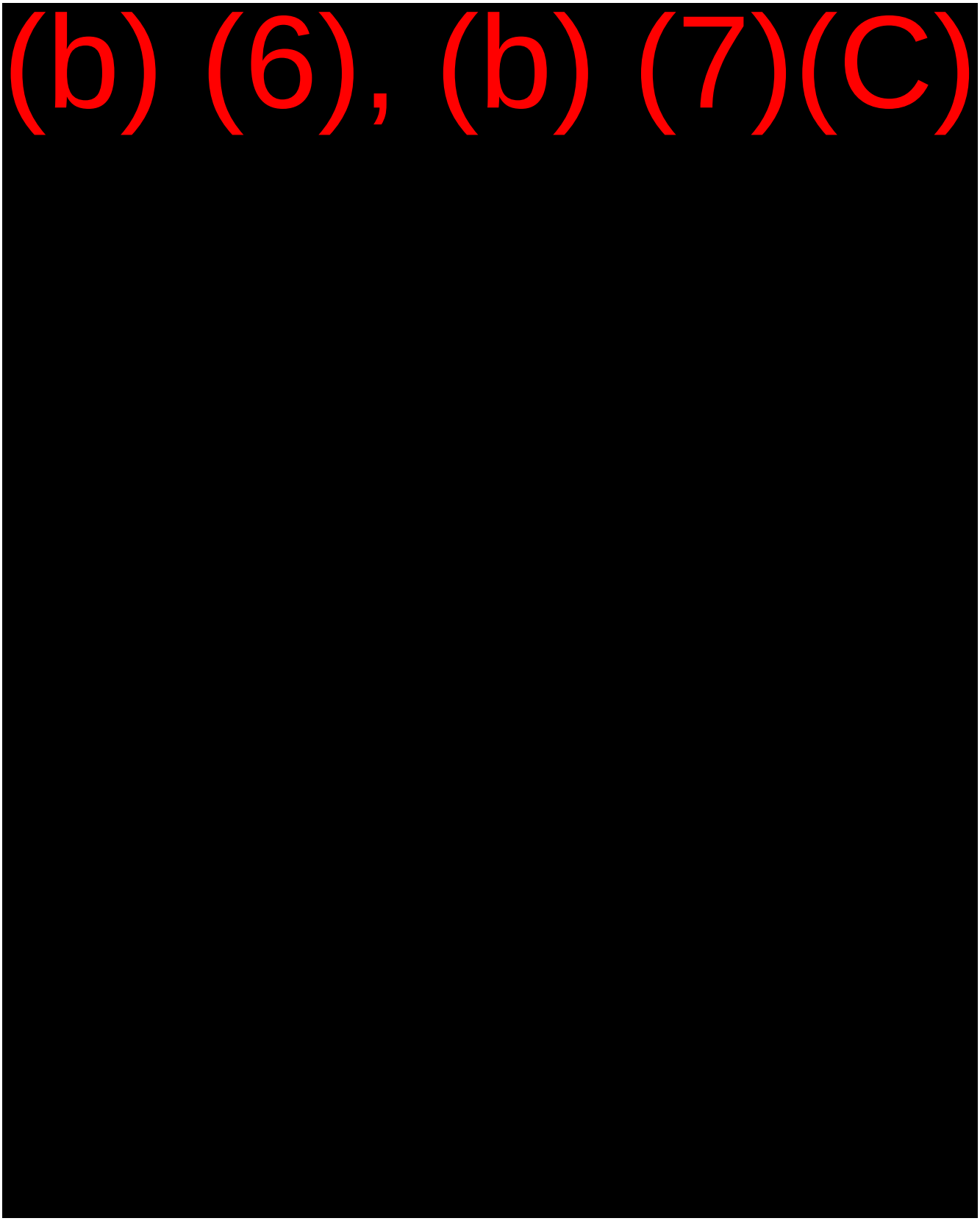
(b) (6), (b) (7)(C)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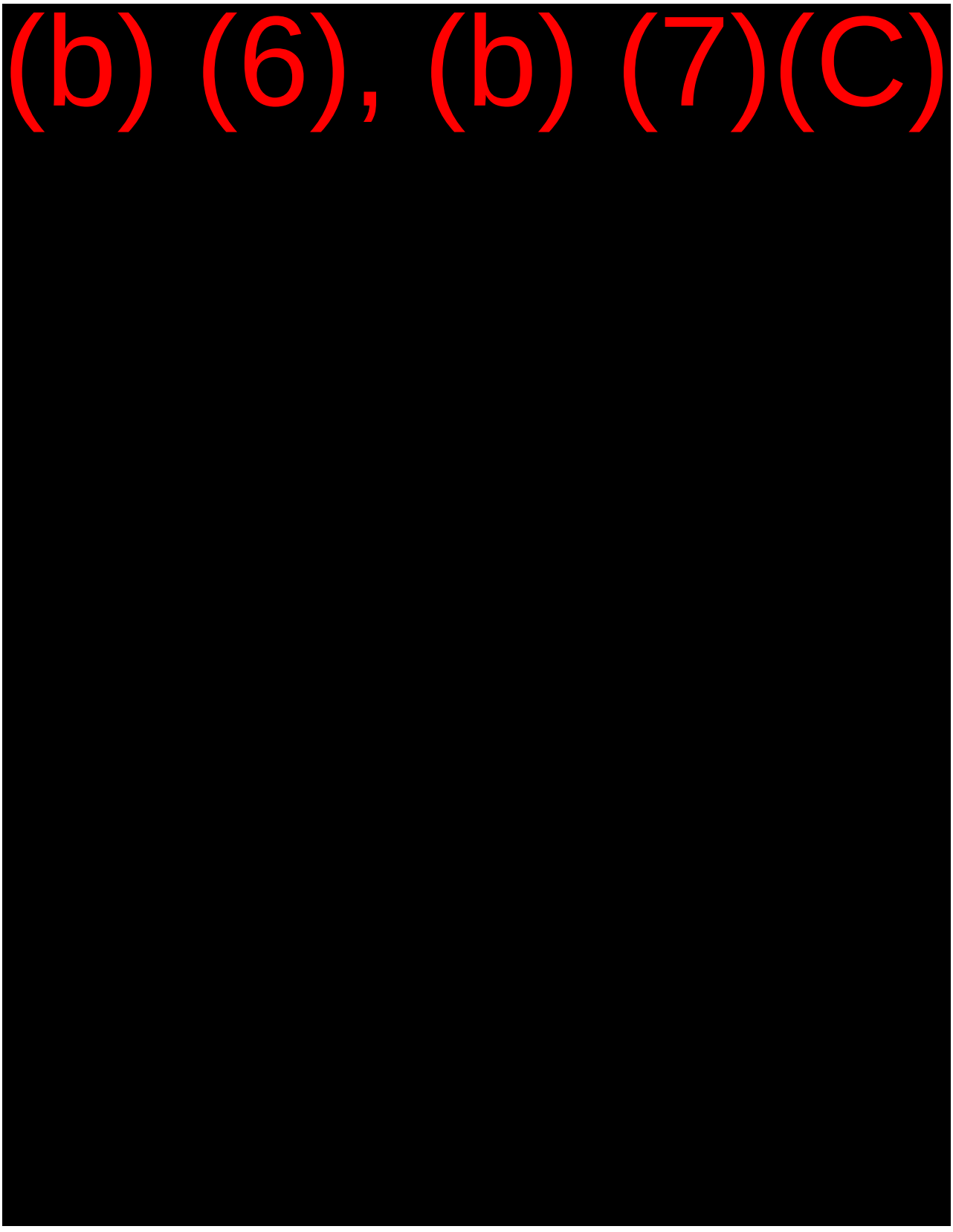
(b) (6), (b) (7)(C)


(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Issue 2(a): Stone's Participation in the Harvard University Recanati-Kaplan Foundation Fellows Program

DHS OIG determined that Stone's participation in the ten-month-long Harvard University Recanati-Kaplan Foundation Fellows Program (Harvard Program), which caused him to be out of the office with limited access to classified information for all but a few days each month, resulted in gross mismanagement of the IC IG.

1. **Factual Findings**

A. *Stone's Decision to Attend the Harvard Program*

ODNI has slots reserved for certain educational programs, including the Harvard Program. Stone originally applied for the Harvard Program as an ODNI employee, and was approved in 2015, and again in 2016, prior to moving to the IC IG. Stone originally deferred attendance for those two years because he was told his ODNI work responsibilities took priority. In 2015, Stone was asked by the ODNI Chief Management Officer (CMO) to defer because they needed Stone to oversee some recently opened Personnel Evaluation Boards (PEBs).[23] In 2016, Stone deferred again because the CMO was scheduled to retire, and the ODNI needed the remaining management staff to help assume his duties temporarily. Stone said he had no issues in deferring those two years, and was not upset with the ODNI for making him do so.

According to Stone, he could have continued to defer the Harvard Program without limit. Stone said that when he was appointed Acting IG in March 2017, he could have deferred the Harvard Program for that year as well, and simply reapplied in 2018 when he was no longer Acting IG. Stone applied to the Harvard Program again in 2017,

[21] See Kevin Poulson, *U.S. Intelligence Shuts Down Damning Report on Whistleblower Retaliation*, The Daily Beast, 2018, at 1-7, http://www.thedailybeast.com/us-intelligence-shut-downs-damning -report-on-whistleblower-retaliation (last visited May 2018).
[22] The concern was that the inspector was utilizing the review to find negative information on the CIA for purposes of his lawsuit, and his bias would taint the inspection's findings.
[23] Stone said PEBs are not uncommon, occurring up to 5 times per year, but said at his level, they are "fairly serious matters."

knowing that he was scheduled under the Vacancies Act to be the Acting IG when McCullough retired. Stone stated that he never intended to take on the position of Inspector General permanently, and only ever intended to be the Acting IG for a few months. He claimed to believe that an IC IG nominee was imminent.[24] According to Stone, he never told anyone at the IC IG of his intentions, and wanted to keep this information to himself to avoid the perception of being a "lame duck."

Harvard notified DNI Coates of Stone's selection for the program on April 13, 2017 via email. Upon receipt of the approval, Stone committed to attending the Harvard Program. The program was offered through the Belfer Center at Harvard, and focused on government intelligence. The program required physical attendance at classes and workshops at the Harvard campus in Boston, Massachusetts, and lasted for a period of 10 months.

Following the April 13, 2017 approval, Stone notified the IC IG staff in an all-hands meeting in or around June 2017 of his intent to attend Harvard. During his announcement, Stone informed the staff that it would "business as usual," that attending Harvard would only affect him and not their day-to-day, and that he would continue to "march on with the mission." Stone notified the staff that, in his absence, they would report to (b) (6), (b) (7)(C).[25]

Stone signed a Continuing Service Agreement (CSA) with the ODNI, related to attendance at the Harvard Program, on May 15, 2017. The CSA requires Stone to continue working for the United States Government for a period of 30 months following his completion of the Harvard Program. According to a Memorandum of Agreement (Harvard MOA) between Stone and ODNI signed and executed on July 27, 2017, ODNI covered the costs of attendance for 10 months between August 1, 2017, and June 30, 2018.[26] The MOA specifically covered:

- One round trip between the permanent duty station (Reston 3) and the temporary duty location (Harvard/Boston)
- Full Lodging for 30 days
- Lodging from 31st day through 364 days not to exceed 55% per diem rate

[24] Stone told CIGIE Integrity Committee Chairman Dahl in a March 30, 2018 letter that "[p]rior to beginning the Harvard Fellowship in September 2017, the White House Personnel office indicated that an IC IG nominee was imminent. Therefore, I was under the impression that I would only remain in an Acting role for a few more weeks."

[25] Although not officially designated as the "Acting IG."

[26] DHS OIG reviewed previous MOAs for ODNI Harvard Program attendees, and found the covered expenses to be similar, except for the $275/month for parking and the $60/month for wireless internet. (b) (6), (b) (7)(C), began attending the Harvard Program in August 2018 and also got the parking fee covered, but not the wireless internet, as that was a special concession for Stone due to his status as Inspector General. The internet provided was specifically cited for "official use as needed to keep open telephone and unclassified internet communications with the Inspector General office while on temporary duty."

- Meals and Expenses first 30 days at 100% per diem
- School supplies and expenses not to exceed $2000
- Renter's insurance $20/month
- Wi-Fi internet $60/month
- Parking $275/month

Stone also confirmed that the ODNI also covered his expenses for returning to the DC area periodically during his program, an additional expense not covered for other attendees.

Stone's CSA, executed on May 15, 2017, estimated the Harvard Program tuition at $47,000. Stone's Boston apartment lease, signed on June 26, 2017, provided a lease term of 12 months at $3,469/month rent, or approximately $115/day.

Stone began attending the Harvard Program in August 2017, while still serving as Acting IG. Stone left for Boston on August 2, 2017. Stone's original approval email from April 13, 2017, noted that the Harvard Program did not officially begin until August 15, 2017, but recommended that students arrive on August 1, 2017 to secure housing and begin administrative processing.[27] In an August 24, 2017 email, Stone noted that he had yet to engage any professors or begin classes.

B. *IC IG Management and Operations During Stone's Absences*

As the designated replacement for Stone when he was away, (b) (6), (b) (7)(C) continued her responsibilities as (b) (6), (b) (7)(C), while also serving as (b) (6), (b) (7)(C) [28], and was responsible for Stone's Acting IG duties as well.

Both (b) (6), (b) (7)(C) and Stone said that they felt that the office was running well in Stone's absence. However, several IC IG witnesses reported that while (b) (6), (b) (7)(C) was trying her best, she was overwhelmed with the multiple roles, and it created a backlog of work. Specifically, one witness told DHS OIG that it was very difficult to get a hold of (b) (6), (b) (7)(C) for legal advice or guidance, or to get her signature on documents for one of her official or unofficial roles. Another witness described productivity slowdowns, a "bottleneck" of work created by the leadership vacuum, and it resulted in many tasks "falling through the cracks."

For instance, there was a backlog of FOIA requests sent to the IC IG, in which the handling and processing of the requests was severely delinquent. The IC IG needed (b) (6), (b) (7)(C) signature to process FOIA requests, but FOIA staff were unsuccessful in getting (b) (6), (b) (7)(C) to address the backlog, because she reportedly just had too much on her plate. Atkinson reported that upon his arrival as IC IG, the FOIA backlog numbered "in the hundreds." (b) (6), (b) (7)(C) acknowledged the FOIA backlog, but blamed

[27] Stone's Boston apartment lease was signed and executed June 26, 2017.
[28] (b) (6), (b) (7)(C) had left for a detail in or around March 2017. (b) (6), (b) (7)(C) had taken on his duties at that time.

M&A for the problem. Atkinson countered this, stating that his belief was that the backlog originated in (b) (6), (b) (7)(C) and made a change to limit (b) (6), (b) (7)(C) role in the process when he became IC IG. This change reportedly reduced a multi-page spreadsheet of delinquent FOIA requests down to a handful.

Other examples of backlogged tasks include ERP Requests that went back years without being processed, and a severe backlog of Hotline complaints and contacts that had gone unreturned. When Atkinson arrived at the IC IG in May 2018, he found hundreds of open Hotline matters from 2017.[29]

Stone would communicate with (b) (6), (b) (7)(C) on a daily basis while attending the Harvard Program. According to (b) (6), (b) (7)(C) , Stone's Executive Assistant, Stone communicated through multiple means while attending the Harvard Program. Stone had a government-issued phone (with access to government email), a personal phone, and a personal laptop, which could connect to his government email via a security token, referred to as a "fob."[30]

However, Stone preferred using his personal email rather than the government email because of ease of accessibility. The evidence showed Stone routinely conducted government activity from his "gmail" account while at Harvard. DHS OIG reviewed supporting evidence in the form of an email from September 17, 2017, where (b) (6), (b) (7)(C) sends an unclassified email to Stone's gmail account regarding an IC IG performance review. An employee from M&A then instructed (b) (6), (b) (7)(C) that Stone was not to use personal email to conduct government business. Despite that September 2017 warning, DHS OIG found dozens of other examples of Stone conducting IC IG business from his personal email address. These personal emails included administrative tasks such as setting his travel schedule. In addition, there were other performance reviews, hiring and vacancy information, a copy of a draft SAR report, a sworn statement in an Equal Employment Opportunity matter containing allegations of discrimination, notes in preparation for a briefing in front of the SSCI, and several other tasks conducted on an unsecured, commercial email system.

Stone did have access to a Sensitive Compartmented Information Facility (SCIF) in the Boston area, which he could visit to utilize "high side"[31] communications. (b) (6), (b) (7)(C) believes that Stone rarely utilized the Boston-area SCIF, (estimated less than 5 times, if at all) and said that he may have just waited until he was back in the DC area to use

[29] Atkinson assigned additional employees to close out the open Hotline complaints in June 2018, and by August 2018, had reduced the hundreds of 2017 complaints to 76.
[30] Despite having the IC IG give him access to his government email on his personal laptop via a "token" or "fob," Stone said he never took the steps to properly set up the token, because he did not like to use it.
[31] In the Intelligence Community, "high side" and "low side" communications are sent through two different communication networks. The high side secure communications systems are more secure, and contains any classified communications or Top Secret or TS/SCI information. The IC IG utilizes the [redacted] high side communications system.

high side communications. (b) (6), (b) (7)(C) believed that Stone never utilized a SCIF in Boston, saying that "he didn't need it," because he would return to Reston 3 to handle classified matters every 2-3 weeks. Multiple witnesses told us that they believed Stone did not have high side communications while at Harvard, and confirmed this would severely limit Stone's ability to discuss any substantive IC IG matters from Boston. Stone stated that he did have access to the Boston SCIF, but would not verify how many times he accessed the SCIF, claiming that information was classified.

Stone would travel from Boston back to the IC IG approximately every 2-3 weeks, for 1-2 days at a time, while at Harvard. Even though he returned on a regular basis, several witnesses, even at the AIG level, describe Stone as being largely absent from the IC IG, and rarely seeing him while he was attending the Harvard Program.

Besides (b) (6), (b) (7)(C) other high-ranking IC IG employees did have Stone's contact information. While witnesses said they rarely contacted Stone during the Harvard Program, if they did, he would usually respond to them within a day. However, most witnesses said they were told to go to (b) (6), (b) (7)(C) exclusively while Stone was in Boston, and (b) (6), (b) (7)(C) would then be the point of contact for Stone.

While (b) (6), (b) (7)(C) served in her multiple roles, IC IG employees struggled to know in what capacity she was acting on any particular matter. Several employees reported that they felt (b) (6), (b) (7)(C) operating in multiple roles created conflicts of interest within the IC IG, specifically in her providing advice (b) (6), (b) (7)(C), to herself as the "de facto" IC IG leadership. Additionally, employees reported that when they went to (b) (6), (b) (7)(C) for guidance, they were unsure whether she was answering them as "de facto" Acting IG, (b) (6), (b) (7)(C), or (b) (6), (b) (7)(C).[32] When asked, employees did not necessarily cite specific conflicts, but generally felt that one person should not be in official capacities that often conflict with each other. Many employees felt it was unfair of Stone to leave (b) (6), (b) (7)(C) and the IC IG in this compromised position.

One IC IG staff member compared (b) (6), (b) (7)(C) being in charge while Stone was away to a substitute teacher in school, and said that there was a clear drop in IC IG productivity and teamwork. The same employee said that she *"can't say it wasn't chaos before,"* meaning while Stone was there, but that *"it got worse"* when he went to Harvard. Multiple witnesses reported that Stone's absence and decision to attend Harvard resulted in morale issues at the IC IG. When Atkinson arrived at the IC IG, he said that his sense was that (b) (6), (b) (7)(C) was "extremely overextended" in her various roles, and it resulted in deficient performance from (b) (6), (b) (7)(C) office. Atkinson confirmed that morale was poor and attributed it to Stone's Harvard attendance.

2. Analysis of Impact of Stone's Attendance at Harvard Program on IC IG

DHS OIG concluded by a preponderance of evidence that Stone's attendance at the Harvard Program resulted in gross mismanagement of the IC IG. The evidence

[32] Witness testimony showed that (b) (6), (b) (7)(C) also served as (b) (6), (b) (7)(C).

establishes that Stone's Harvard Program attendance slowed productivity in the form of delayed reports, created or worsened backlogs of key tasks, resulted in Stone having limited access to classified information, created a leadership void through his the extended absences from the IC IG, and overall harmed the IC IG's ability to accomplish its mission.

"Gross mismanagement" is defined as a "management action or inaction that creates a substantial risk of significant impact on an agency's ability to accomplish its mission." *Schaeffer v. Department of the Navy,* 86 M.S.P.R. 606, ¶ 8 (2000). Gross mismanagement must also be "more than de minimis wrongdoing or negligence." *White v. Dep't of the Air Force*, 391 F.3d 1377, 1382 (Fed. Cir. 2004).

The IC IG mission is to "conduct independent and objective audits, inspections, investigations, and reviews to promote economy, efficiency, effectiveness, and integration across the Intelligence Community."[33] The evidence establishes that Stone's absence resulted in productivity slowdowns as reports were delayed in the review process by an overworked chain of command, or that sat waiting for official signature from Stone via a sporadic appearance at Reston 3 or by autopen. Further evidence demonstrated significant backlogs of unprocessed FOIA requests, and Hotline complaints, found by Atkinson when he arrived in May 2018. According to Atkinson, while these backlogs existed prior to Stone, they significantly worsened in 2017, in part due to (b) (6), (b) (7)(C) being "extremely overwhelmed" by her duties in Stone's absence.

The record is clear that Stone's communications options were limited in Boston, and his access to classified communications were especially lacking compared to his everyday access via Reston 3. The evidence showed that Stone relied mainly on unclassified communications in Boston, despite (b) (6), (b) (7)(C) and Atkinson testifying to the IC IG's overwhelming reliance on classified communications, and the importance in conducting work on the high side for the protection of the IC IG mission. Stone's use of his government phone for communications, combined with returning to Reston 3 periodically to use the SCIF does not compare to an IG at Reston 3 on a full-time basis. Compounding the limited government email options, Stone regularly and repeatedly utilized personal email for government business because he found it easier and preferred it to connecting via security token, a violation of security protocol.

Stone contends that he did not require constant access to classified communications, and could manage the IC IG with unclassified communications supplemented with access to Reston 3 every 2-3 weeks. Every other witness DHS OIG spoke to refuted this belief, as each IC IG witness highlighted the importance of protecting information via the high side, and described how they conducted the vast majority of work on the high side. For instance, current IC IG Atkinson estimated that 90% of his work is conducted on the high side, with 70% of the documents he reviews as IG being classified. (b) (6), (b) (7)(C) went farther, stating that she conducted 100% of her work on the

[33] IC IG Semiannual Report to Congress April – October 2015.

high side, and noting that "when I am not classified, I am not doing my job." (b) (6), (b) (7)(C) continued that keeping IC IG business classified was for "protection of the IG mission, as well as information."

Next, the evidence showed that Stone's absence exacerbated an already significant leadership void at the IC IG. Stone's reported reliance on his IC IG Senior Leadership Team appeared to be wholly inadequate given the state of IC IG leadership. The IC IG Senior Leadership Team had 8 positions, but only 5 people in those roles when Stone was away.[34] In addition, multiple witnesses reported confusion as to (b) (6), (b) (7)(C) multiple roles, and difficulty reaching her when they needed either her counsel or management. Whether or not (b) (6), (b) (7)(C) was effectively conflicted in her multiple roles, the record is clear that she was at the very least overwhelmed by them, and could not effectively perform each task. It also, at the very least, created questions about her impartiality and independence, as the duties of one role often converge with another.

Stone's extended and regular absence from the IC IG was particularly impactful as the agency head of the IC IG. According to McCullough, it would be difficult to both serve as the Acting IG and attend Harvard. (b) (6), (b) (7)(C) was more direct, saying "You can't be the Acting and go to Harvard." (b) (6), (b) (7)(C) also said he had multiple conversations with Stone prior to his appointment as Acting IG, in which he told Stone he would have to choose one or the other because the responsibilities were too great to do both. (b) (6), (b) (7)(C) said Stone agreed with him, and knew he could not be Acting IG and attend the Harvard Program. Stone denied that he ever had a conversation with (b) (6), (b) (7)(C) about not being able to handle being Acting IG and the Harvard Program, and accused (b) (6), (b) (7)(C) of lying about the conversation.

Notwithstanding these conflicting accounts, Stone conceded that most Harvard Program students did not maintain their current workload while attending the Harvard Program, and instead were on some sort of sabbatical. This was supported by (b) (6), (b) (7)(C), who began attending the Harvard Program in August 2018. (b) (6), (b) (7)(C) said that he is not even attempting to perform his duties while at Harvard because he doesn't want to be "distracted" while in school, and did not feel he could handle both responsibilities. Stone said, to his knowledge, he was the only current Inspector General to ever attend the Harvard Program.

Stone's defenses to his decision to attend and remain at Harvard are not compelling. Stone argued that his decision to attend Harvard was only a short-term plan because he expected to be relieved by the White House nominee in short order, but Stone had no evidence that a replacement nominee was coming in the short term. Stone told DHS OIG that, while he believed that a nomination would be made soon, he had no evidence to support this in August 2017, and had not communicated with the White

[34] (b) (6), (b) (7)(C) as Acting IG, (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C).

House in several months. Stone admitted that when he left for Harvard, he had not received any information regarding potential names for the IC IG nominee or a nomination schedule or timeline. Neither had he received any indication that the subsequent confirmation process would run smoothly. Multiple IC IG witnesses contested Stone's idea that the entire nomination and confirmation process would come together quickly, saying it was unrealistic to expect a Presidential nomination and Senate confirmation to occur within "a few more weeks," and a more realistic timeframe was a few months at best. In actuality, Michael Atkinson was not officially nominated as the IG until November 2017, and was not confirmed and appointed until May 14, 2018.

Stone's claim that he thought the IC IG was running well in his absence is also belied by the evidence, including congressional inquiries, CIGIE inquiries and complaints, IC IG complaints, and negative press articles regarding his Harvard attendance. In Stone's March 30, 2018 letter to the CIGIE Integrity Committee, Stone stated that the "IC IG office is very well managed by myself and the IC IG Senior Leadership Team." Stone clarified to DHS OIG that the IC IG Senior Leadership Team consisted of the IG, the DIG, four AIGs, and the Executive Director of the WB Program. DHS OIG confirmed that when Stone was at Harvard, (b) (6), (b) (7)(C) was occupying three of those roles (Acting IG, (b) (6), (b) (7)(C)), (b) (6), (b) (7)(C) was serving as (b) (6), (b) (7)(C) and by November 2017 (b) (6), (b) (7)(C) was a recent replacement serving in an acting capacity.

Additionally, an article in Foreign Policy magazine[35] from October 18, 2017 described an IC IG in danger of crumbling due to mismanagement and cited four sources saying that Stone had spent the majority of his tenure at graduate school at Harvard, with no access to classified information. The article also stated that following McCullough's retirement in early March 2017, the office was "barely functioning" under the leadership of Stone. Stone said he disregarded the article, which he believes came from (b) (6), (b) (7)(C) and therefore was biased and untrue.

Word of Stone's participation in the program while serving as Acting IG also caught the attention of Congress and Stone's peers in the IG community. For instance, a congressional staffer on SSCI wrote in a July 10, 2017 email to an IC IG employee: "I understand Wayne Stone is going to Harvard for the year. Can you confirm what he's doing for the year and who will be acting instead? (I have heard a seeming stray rumor that he was remaining acting, though I'm not sure how that would/could work.)" Then, on October 24, 2017, Stone was sent a letter from Senator Claire McCaskill regarding his Harvard attendance. CIGIE also sent Stone a letter dated February 7,

[35] See Jenna McLaughlin, A *Turf War is Tearing Apart the Intel Community's Watchdog Office – Internal scuffling thereatens to dismantle the Intelligence Community Inspector General.*" Foreign Policy, 2017, at 1-8, http://foreignpolicy.com/2017/10/18/turf-war-intelligence-community-watchdog-falling-apart (last visited May 2018).

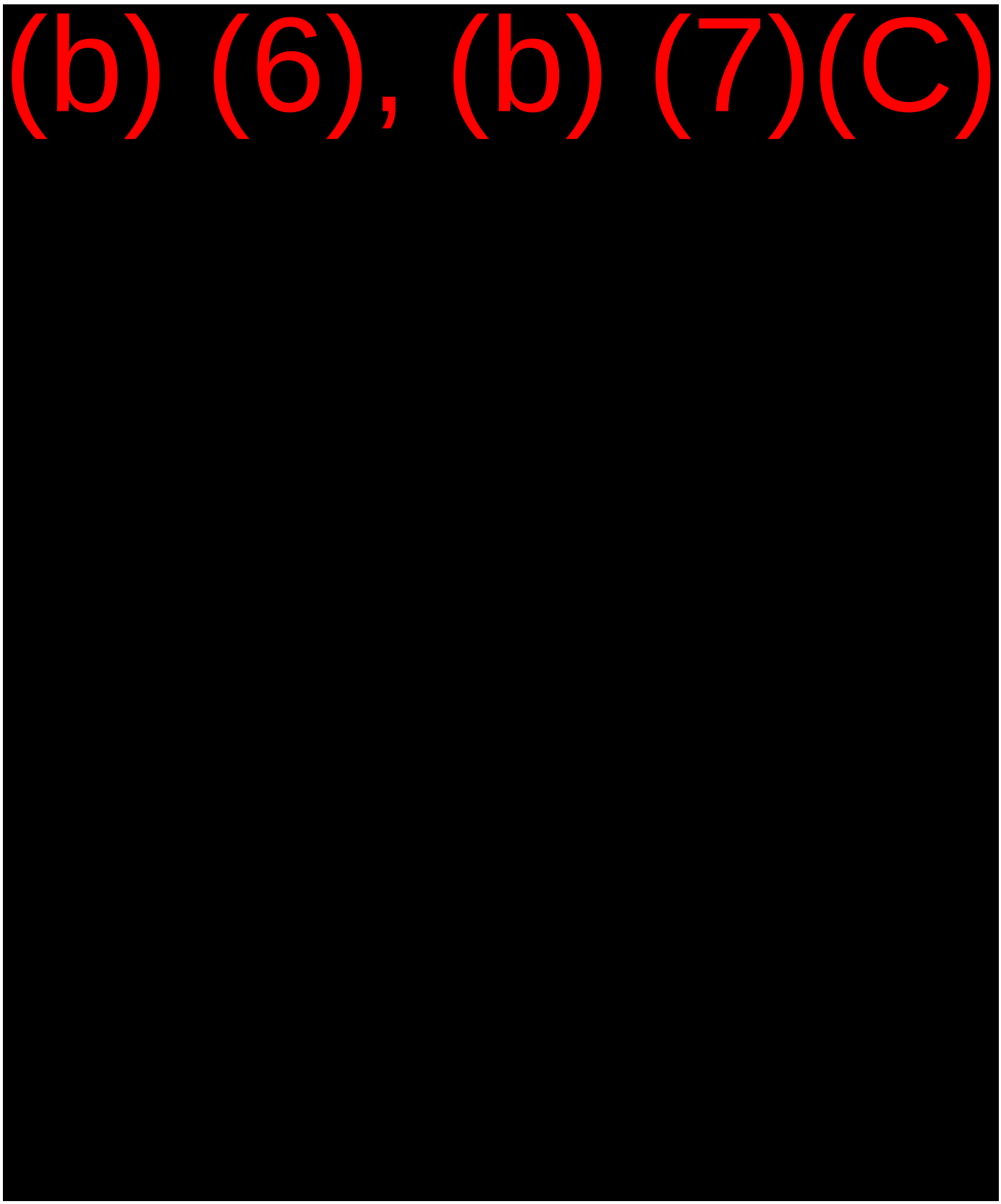
2018 alleging that his participation in the Harvard program was resulting in a dereliction of duty.

While Stone dismissed this criticism, telling DHS OIG that he did not feel it demonstrated that his Harvard attendance was a problem, this outside attention from Congress, CIGIE, and the press is evidence indicating that Stone's Harvard attendance as a significant issue and not de minimis. Additionally, Stone's insistence that things were going well in the face of these multiple warning signs demonstrates Stone's judgment was flawed and myopic.

This is not to say that Stone did not accomplish anything in his tenure as Acting IG. As the previous section demonstrates, Stone made improvements to the WB Program by addressing myriad issues and problems. Stone also points to the IC IG Climate survey taken in August 2017 demonstrating improvements in several categories. However, a climate survey taken in August 2017 would not address Stone's departure for Harvard, which began in August 2017. Further, several of Stone's WB Program process improvements occurred prior to his leaving for Harvard.[36] While there is some evidence of things Stone did well from Harvard[37], there is significantly more evidence that the IC IG suffered productivity slowdowns and work backlogs, Stone lacked adequate access to classified systems in Boston, and the IC IG experienced a leadership void because of Stone's attendance at Harvard starting in August 2017.

Therefore, a preponderance of evidence establishes that Stone's participation in the Harvard Program created a substantial risk of impeding the IC IG's ability to accomplish its mission. DHS OIG therefore concludes that Stone's attendance at the Harvard Program resulted in gross mismanagement of the IC IG.

(b) (6), (b) (7)(C)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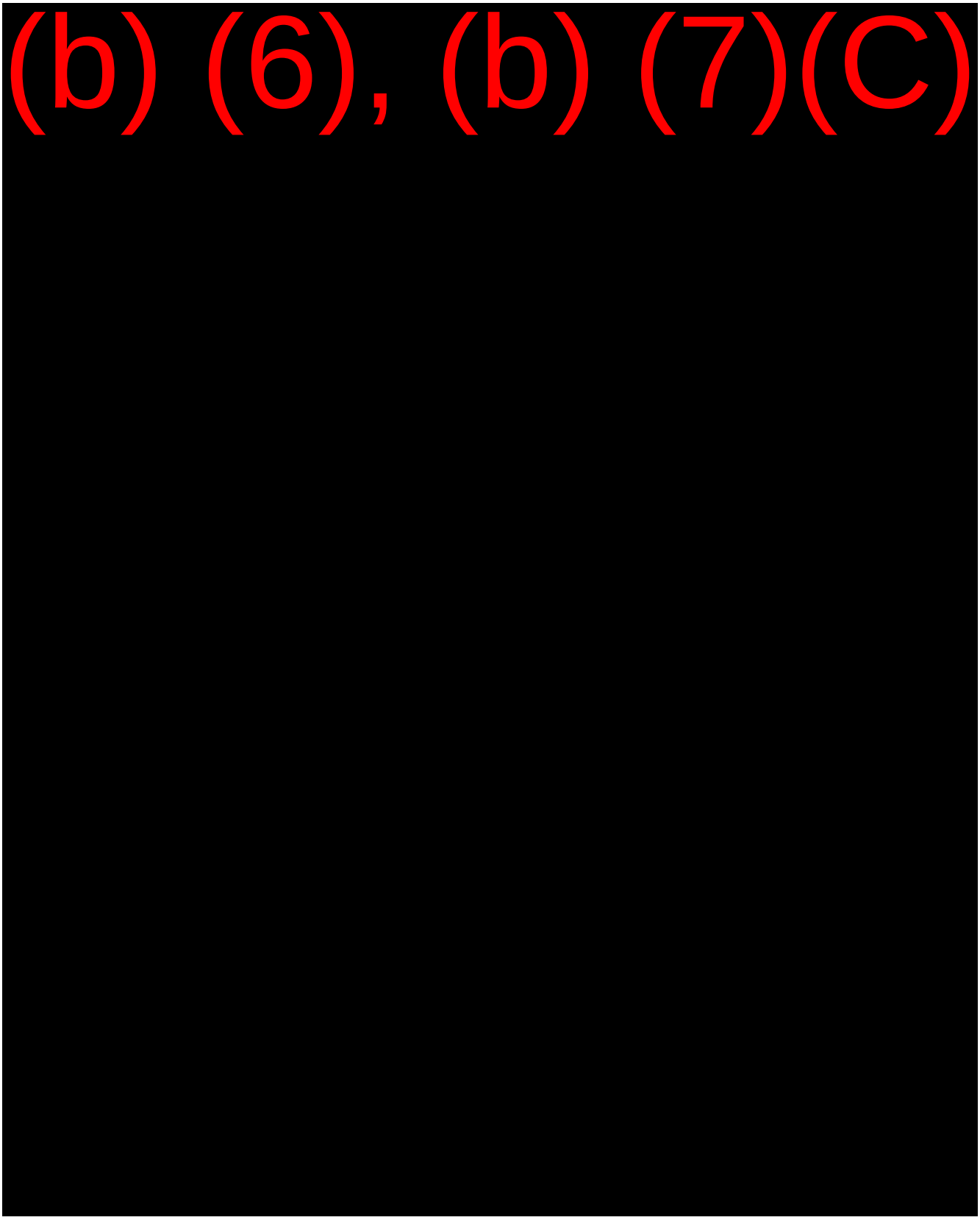
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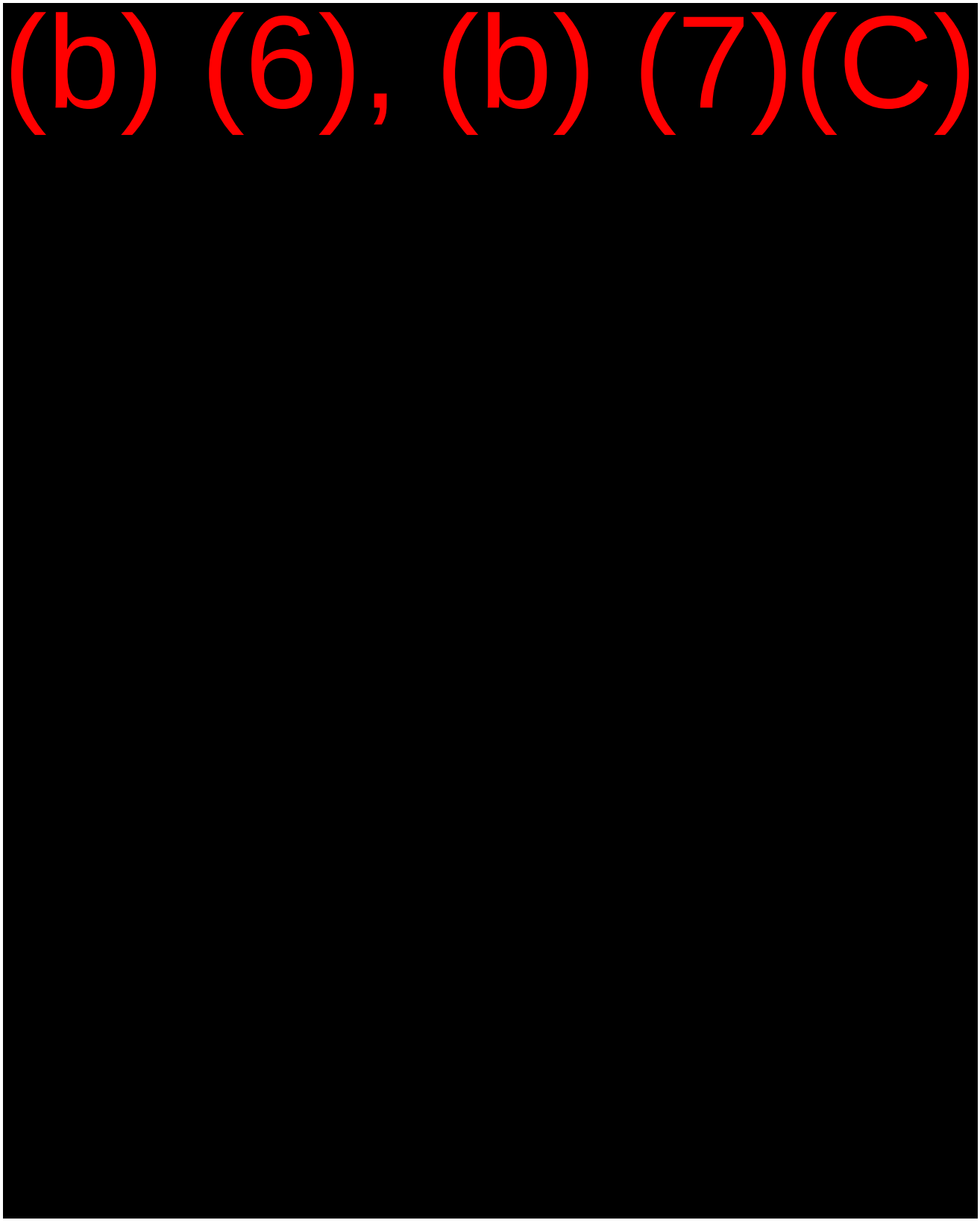
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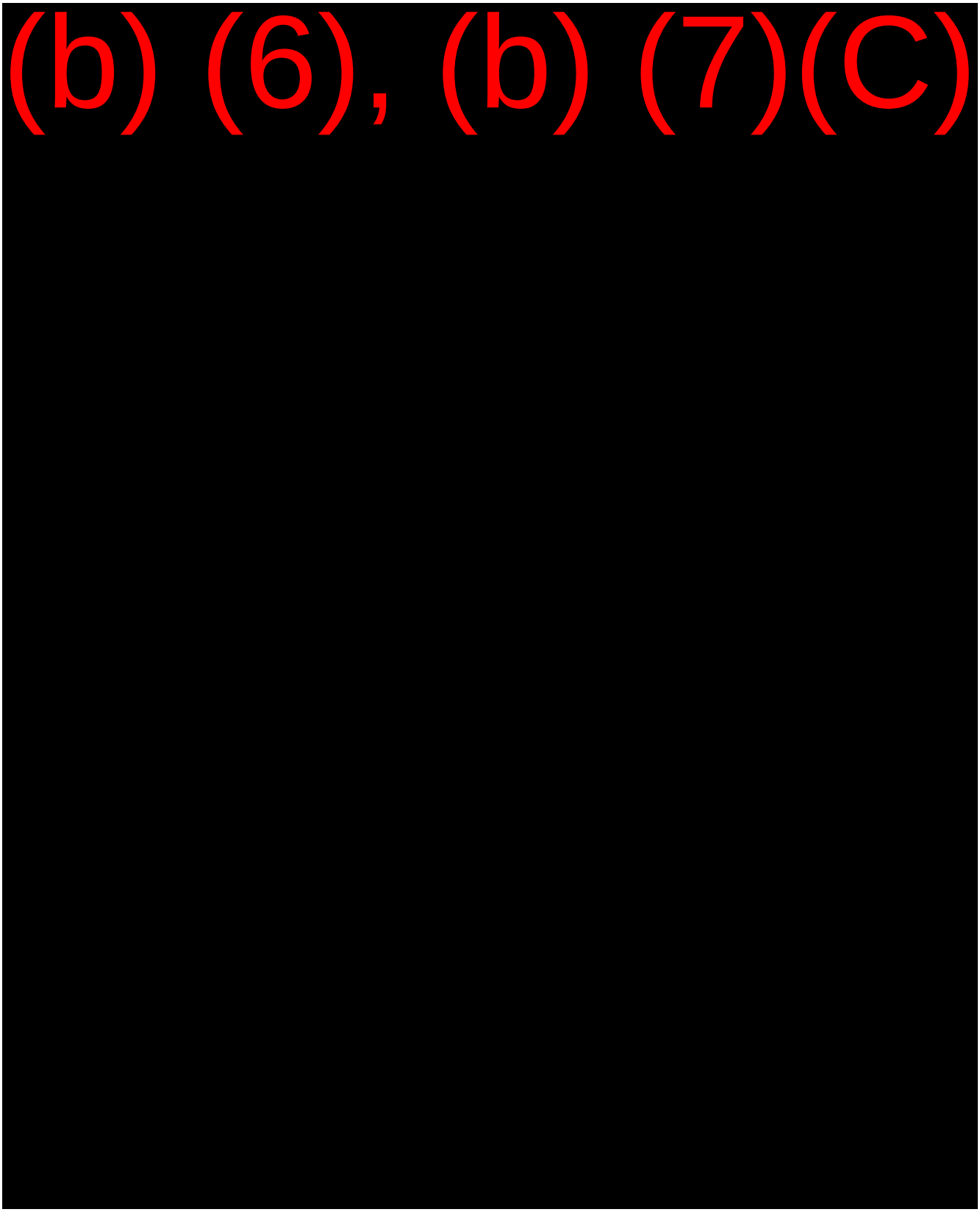
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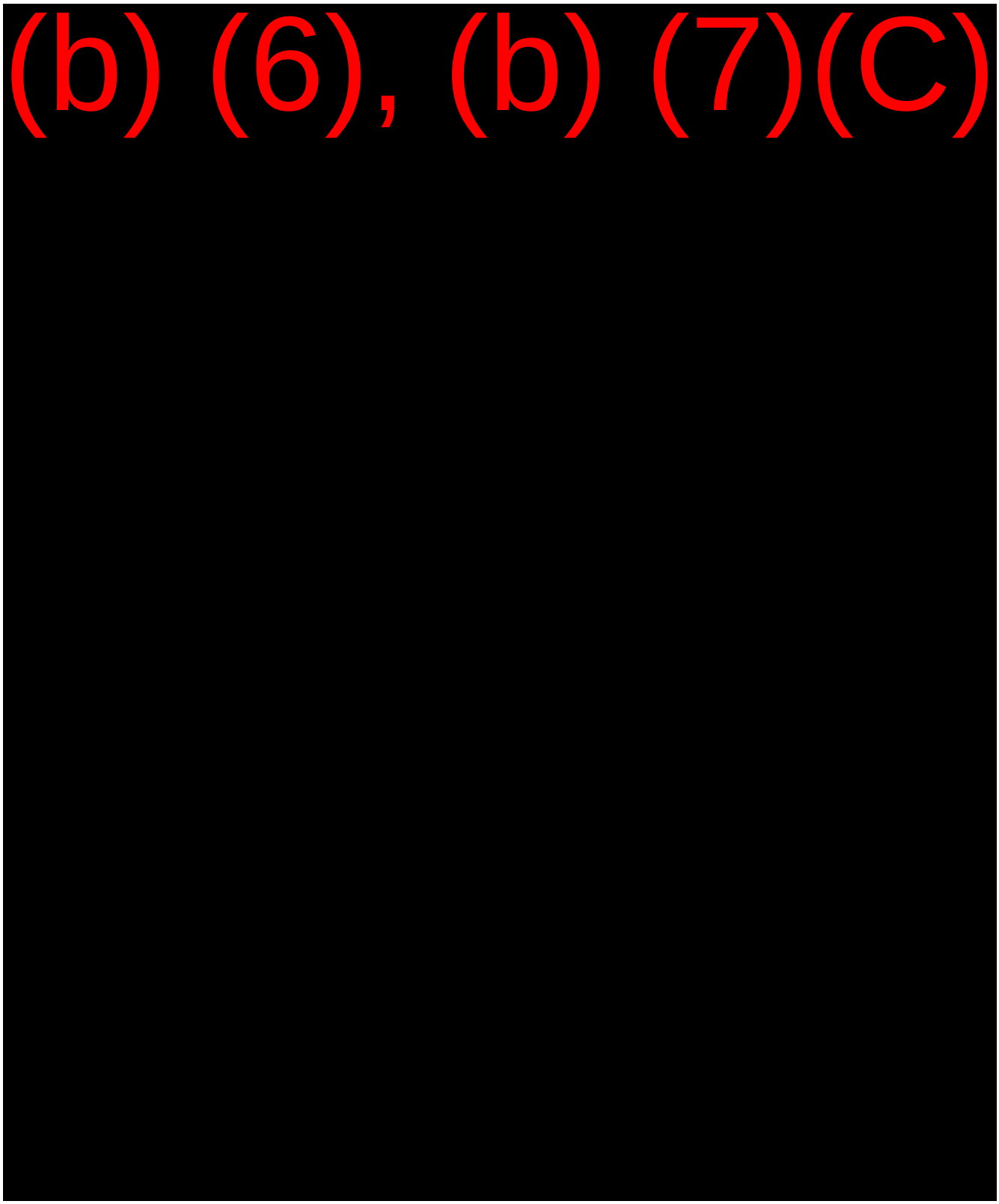
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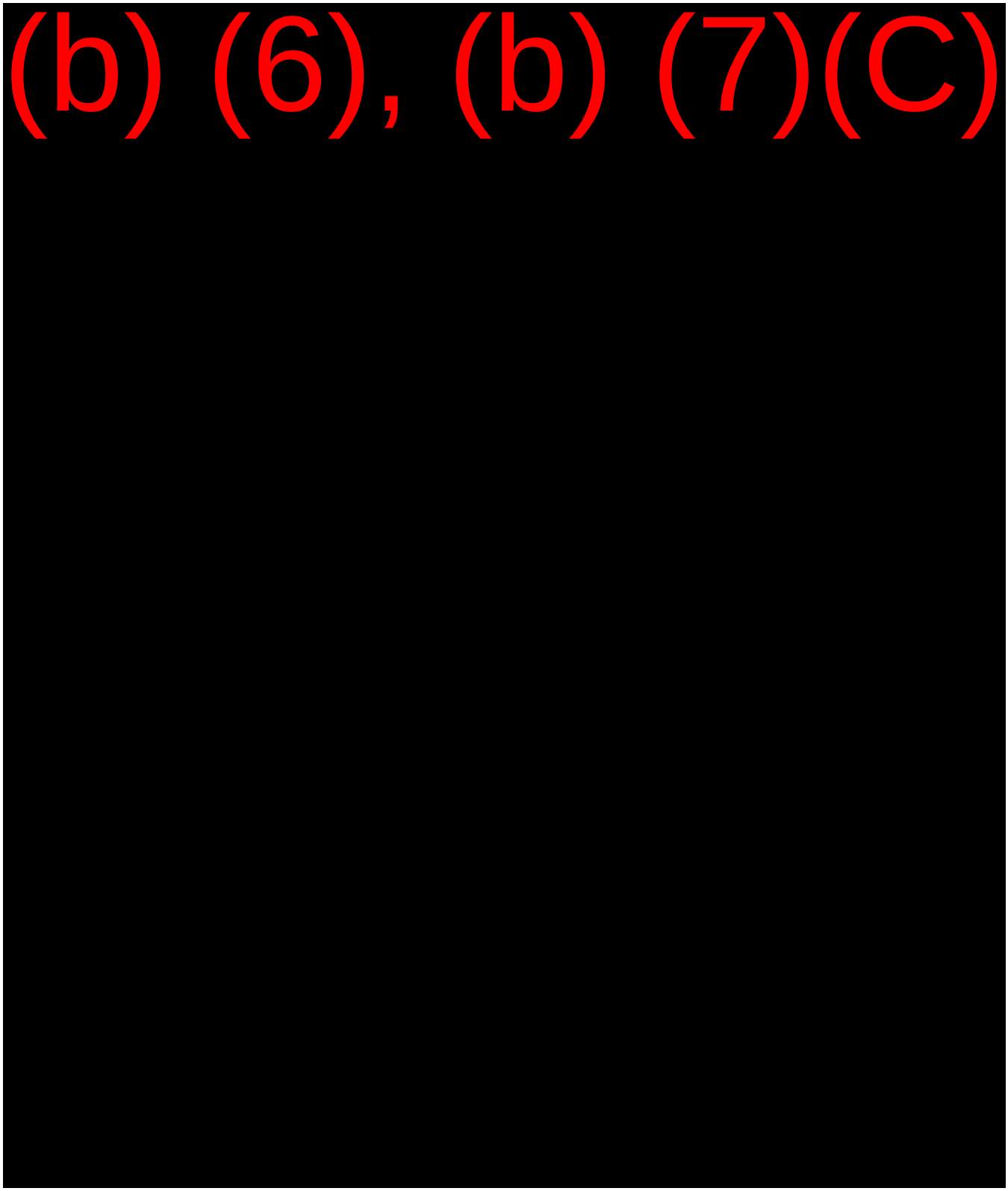
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(b) (6), (b) (7)(C)

Issue 4: Stone's Alleged Retaliatory and/or Coercive Personnel Actions

DHS OIG's investigation focused on the circumstances of two former IC IG employees who Stone allegedly pressured to accept details or other outside employment in order to remove them from the IC IG.[44] While DHS OIG determined that Stone abused his authority by engaging in retaliatory actions against one of the employees, the investigation was inconclusive with respect to the other employee.

1. (b) (6), (b) (7)(C)

The evidence established that Stone was upset that (b) (6), (b) (7)(had questioned his participation in the Harvard Program at a training event attended by members of the IG community at Stone's *alma mater*. The evidence further established that Stone took retaliatory actions against (b) (6), (b) (7)(following her comments, including cancelling her current and future training courses. Finally, the evidence showed that Stone used the results of the inquiry into (b) (6), (b) (7)(C) comments as a pretext to remove her from the IC IG.

A. Factual Findings

While attending a CIGIE training event at American University from July 17-21, 2017, (b) (6), (b) (7)(C) asked a question regarding Stone's participation in the Harvard Program, which Stone had recently announced. Specifically, (b) (6), (b) (7)(asked the class if anyone else had ever experienced his or her Inspector General leaving for school for an extended period. (b) (6), (b) (7)(C) question was

[44] In addition to the two employees discussed here, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) also alleged that Stone took adverse personnel actions against them in retaliation for protected whistleblowing activity. (b) (6), (b) (7)(C)

relayed back to Stone on July 24, who reportedly was very upset that his actions had been questioned before IG peers at his alma mater, American University.

Stone called [redacted] that same day and told him he had lost all faith in [redacted] and had no confidence that she could speak for the office during outreach events. [redacted] responded that [redacted] should handle the situation through a management inquiry. That same day, [redacted] asked Stone via email: "Should [redacted] proceed with training or should we advise CIGIE to withdraw from this course?" Stone responded the next day: "Withdraw her from Current and ALL future training immediately" (emphasis in the original). In a separate email to [redacted] he also wrote: "I am cancelling all [redacted] training immediately. She has abused our training policy."

When [redacted] arrived back in the office on July 31, 2017, she was approached by [redacted], and another investigator and told that she had to sit for an interview. [redacted] was given a "Garrity" warning[45] and told she was being investigated for allegedly "disparaging the IG." During the interview, [redacted] denied disparaging the IG at the training event and insisted that she was genuinely curious to know if anyone else had been through a similar situation.

According to [redacted] the interviewers then began questioning her regarding [redacted] including how he treated her, if he had made her cry, etc. Feeling pressured to provide negative information about [redacted], [redacted] told the interviewers that [redacted] could be brutally honest and brusque. [redacted] interview notes provide the following summary of [redacted] comments regarding her work environment:

> SUBJECT continued by describing an increasingly difficult work environment surrounding [the WB Program]. SUBJECT is concerned a number of recent initiatives have been slowed down or halted entirely, and is concerned it reflects poorly on her professional reputation. SUBJECT believes leadership changes, as with any major turnover of key leaders, are taking [the WB Program] in a new direction, but the details have not been shared with her by her manager.

Following the interview, [redacted] was brought into Stone's office to meet with Stone and [redacted] Stone told her that he was going to remove her from the IC IG by finding her another position. In the meeting, Stone characterized the move as beneficial to [redacted] because he found she had been operating under a hostile work environment created by [redacted] said she never mentioned the words "hostile work environment" during her interview or in her conversation with Stone; nor did she ask

[45] An advice of rights warning informing interview subjects that they are being interviewed voluntarily, do not have to respond, and that any answers given can be used against them in an administrative or criminal matter.

to be removed. Rather, [redacted] stated that the new position was Stone's idea. [redacted] said the situation felt like she was "being fired."

[redacted] was removed from the IC IG, and spent the next week at ODNI headquarters awaiting further instructions from Stone. On August 7, 2017, one week after [redacted] interview, the IC IG announced [redacted] was leaving for the [redacted]. Stone helped her acquire the new position with [redacted] which had some positive attributes, including that [redacted] worked there. [redacted] said after this incident she could no longer trust the front office under Stone and [redacted] and therefore is happy that she no longer works for the IC IG.

B. *Analysis of Stone's Handling of the Situation with* [redacted]

Stone told DHS OIG that he removed [redacted] because she was subject to a hostile work environment created by [redacted] He asserted that [redacted] made a formal complaint against [redacted] through the Hotline and that she told Stone she wanted to move. Initially, Stone did not mention to DHS OIG the CIGIE training event, [redacted] comment about his participation in the Harvard Program, his reaction to her comment, or the fact that he initiated a management inquiry into her comment. Upon further questioning, however, Stone admitted that [redacted] comments about [redacted] were made during an interview regarding her allegedly disparaging comments regarding himself. Stone claimed, however, that the management inquiry was focused on [redacted] comments bashing "numerous" senior IG officials — not just himself — and that the inquiry was justified because her comments constituted "misconduct" and unprofessional behavior.

Stone's claims are belied by the evidence. First, evidence corroborates [redacted] claim that she asked a simple question during the CIGIE event that did not include any disparaging comments. Specifically, [redacted] who attended the event with [redacted] told DHS OIG that [redacted] merely asked a question regarding IG leadership during an open forum, the topic of which was IG leadership. There is simply no evidence that [redacted] said anything critical of Stone.

Second, there is no evidence that [redacted] made allegedly critical or disparaging comments regarding any other senior IG official. In fact, the inquiry Stone ordered demonstrates that his sole concern was [redacted] comments about himself. Specifically, when [redacted] was interviewed, the investigator began the interview by explaining the purpose of the inquiry as follows: "so the purpose of this interview is to uncover if disparaging comments were made about the Acting IC IG – Mr. Wayne Stone." Stone's assertion that the inquiry's focus extended to alleged comments [redacted] made about other senior officials is simply not supported by any evidence.

Third, there is compelling evidence indicating that Stone was personally offended that [redacted] had openly questioned his participation in the Harvard Program and that this animus was the primary motivation for the actions he immediately took against [redacted] Specifically, immediately upon learning of [redacted] comment, Stone told [redacted] that he (Stone) had lost all faith in [redacted] Stone then ordered that all her current and future

training courses be cancelled. He did not speak to [redacted] about her alleged misconduct, nor did he place her on investigative leave or conduct any fact finding before taking these retaliatory actions.

Finally, the evidence indicates that Stone used the alleged "hostile work environment" as a pretext for pushing [redacted] out. First, contrary to Stone's assertions, there is no evidence that [redacted] affirmatively raised any concerns about her work environment. The statements [redacted] made regarding [redacted] came in response to what she perceived as pressure from the interviewers to provide negative information on [redacted] during an interview [redacted] believed to be a precursor to being fired. In any event, even if the statements had been willingly made, they do not meet the threshold for establishing a "hostile work environment." *Demoret v. Zegarelli,* 451 F.3d 140, 149 (2d Cir.2006).[46]

It is also worth noting that Stone's interactions with DHS OIG raise questions about his credibility. When asked about [redacted] departure, Stone omitted any mention of [redacted] comment about his participation in the Harvard Program, his instruction to cancel all her training events, or his decision to initiate an inquiry into her comment. Not until he was questioned further did he acknowledge the above facts preceding her departure. Further, as discussed above, Stone's assertion about his reason for removing [redacted] — *i.e.*, that she was suffering in a hostile work environment — is not credible. Rather, the totality of the evidence indicates that Stone used the alleged hostile work environment as a pretext for pushing [redacted] out of the IC IG.

Accordingly, DHS OIG concluded that Stone engaged in retaliatory actions against [redacted] — including cancelling her training and coercing her departure from the IC IG — for raising questions about his participation in the Harvard Program. DHS OIG also concluded that these actions constituted an abuse of his authority. An "abuse of authority" is defined as an "arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *Pulcini v. Social Security Administration*, 83 M.S.P.R. 685, ¶ 9 (1999). The evidence establishes that Stone's intentional actions were unjustified, resulting in an adverse impact on [redacted] Accordingly, DHS OIG substantiated that Stone abused his authority with respect to his treatment of [redacted]

2. [redacted]

DHS OIG's investigation did not produce sufficient evidence to substantiate allegations that Stone used threats and intimidation to force [redacted] out of the IC IG.

[46] Holding that in order to establish a hostile work environment claim under Title VII, a plaintiff must produce enough evidence to show that "the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.

A. *Factual Findings*

(b) (6), (b) (7)(C) supervised an employee named (b) (6), (b) (7)(C), who was believed to have engaged in whistleblowing activity of which Stone did not approve. According to (b) (6), (b) (7)(C) Stone said words to the effect of, "we can move her out of here, we can get rid of her," referring to (b) (6), (b) (7)(C) Additionally, Stone allegedly repeatedly questioned (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) trustworthiness, implying that she could not or should not be trusted. Nevertheless, (b) (6), (b) (7)(C) refused to remove (b) (6), (b) (7)(C)

Shortly thereafter, in a June 8, 2017 meeting with (b) (6), (b) (7)(C), Stone told (b) (6), (b) (7)(C) he was being removed because the (b) (6), (b) (7)(C) department had received a poor peer review. (b) (6), (b) (7)(C) responded that his performance reviews were excellent, he was not on a Performance Improvement Plan, and so he could not be removed. According to (b) (6), (b) (7)(C) Stone responded with a series of alleged threats, offering (b) (6), (b) (7)(C) the "easy way or the hard way" and telling him "I will crush you" and "make you a hallway walker."[47] Stone then ordered (b) (6), (b) (7)(C) to report to ODNI headquarters the next Monday, June 12, 2017, where (b) (6), (b) (7)(C) spent the next several weeks sitting in a cubicle with no specific work tasks. (b) (6), (b) (7)(C) eventually secured a non-intelligence detail with another OIG, which began in October 2017.

(b) (6), (b) (7)(C) and Stone both denied threatening (b) (6), (b) (7)(C) in any way and specifically denied the threats alleged above. According to Stone, (b) (6), (b) (7)(C) was a poor performer and out of his depth, which necessitated his removal from the IC IG. Stone cited the poor peer review as evidence of (b) (6), (b) (7)(C) unacceptable performance. However, in (b) (6), (b) (7)(C) final performance appraisal with the IC IG, Stone rated (b) (6), (b) (7)(C) a 4.93 out of 5 — an improvement over (b) (6), (b) (7)(C) previous performance review — and provided glowing comments.

B. *Analysis of Stone's Handling of the Situation with* (b) (6), (b) (7)(C)

Although the glowing performance appraisal is inconsistent with Stone's assertion that he sought to remove (b) (6), (b) (7)(C) due to poor performance, DHS OIG's investigation was inconclusive as to the specific allegation of abuse of authority. An "abuse of authority" is defined as an "arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *Pulcini v. Social Security Administration*, 83 M.S.P.R. 685, ¶ 9 (1999). Due to Stone's short tenure as Acting IG, there is limited evidence against which to compare Stone's treatment of (b) (6), (b) (7)(C) However, a poor peer review undeniably reflects badly on the individual leading an (b) (6), (b) (7)(C), and could serve as a legitimate basis for a performance-based

[47] The alleged threats are not direct quotes, but were provided by (b) (6), (b) (7)(C) to give a flavor of the conversation. A "hallway walker" is apparently an Intelligence employee who shamefully roams the halls of ODNI with nothing to do, but is technically still employed. Stone apparently boasted about making many people "hallway walkers."

personnel action. Accordingly, we cannot conclude that Stone's stated reason for removing [redacted] standing alone, reflects an arbitrary or capricious exercise of power.

However, strong evidence of other impropriety on Stone's part — *e.g.*, evidence that Stone drove [redacted] out with threats, or removed [redacted] because he refused to retaliate against a whistleblower — might support such a conclusion. Apart from [redacted] representations about his verbal communications with Stone, however — which both [redacted] and Stone dispute — DHS OIG was unable to uncover any evidence to corroborate the claim that Stone abused his authority by threatening and/or coercing [redacted] to cause him to accept a detail outside the IC IG. Additionally, apart from [redacted] assumptions about the link between Stone's actions and [redacted] refusal to remove [redacted] there was insufficient evidence to corroborate the claim that Stone's actions were retaliatory. Accordingly, DHS OIG's investigation on this issue was inconclusive.

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

December 20, 2018

The President
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. President:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards its findings, conclusions, and recommendation regarding Mark Thorum, former Assistant Inspector General for Inspections and Evaluations for the Export-Import Bank of the United States (EXIM).

After a thorough review of the allegations and supporting documents, Mr. Thorum's responses, and other limited inquiry, the IC made findings, conclusions, and recommendation as to some of the allegations. The IC substantiated the allegations that Mr. Thorum engaged in wrongdoing through his conduct that undermined the independence and integrity reasonably expected of a senior OIG official when he improperly duplicated EXIM OIG information in his doctoral dissertation. The IC also concluded that Mr. Thorum's responses to the IC lacked candor. (b) (6), (b) (7)(C), (b) (5) [redacted].

The IC also provided the attached report with our recommendation to the CIGIE Executive Chairperson and the congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6) [redacted]

Scott Dahl
Chairman
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

December 20, 2018

The Honorable Michael Horowitz
Chairperson
Council of the Inspectors General
on Integrity and Efficiency
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Chairperson Horowitz:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the report of our findings and our recommendation regarding Mark Thorum, former Assistant Inspector General for Inspections and Evaluations for the Export-Import Bank of the United States (EXIM).

The IC also provided the attached report and recommendation to the President of the United States, the congressional committees of jurisdiction, the CIGIE Executive Chairperson, the EXIM Acting IG, and Mr. Thorum.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

December 20, 2018

(b) (6), (b) (7)(C)
Export-Import Bank of the United States
811 Vermont Ave. NW, Office 1050
Washington, D.C. 20571

Dear (b) (6), (b) (7)(C):

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the report and our recommendation regarding Mark Thorum, former Assistant Inspector General for Inspections and Evaluations for the Export-Import Bank of the United States (EXIM), [redacted].

The IC provided the attached report with our recommendation to the President of the United States, the congressional committees of jurisdiction, the CIGIE Executive Chairperson, and the CIGIE Chairperson.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

December 20, 2018

The Honorable Margaret Weichert
Executive Chairperson
Council of the Inspectors General
on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, D.C. 20006

Dear Executive Chairperson Weichert:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to section 11(d)(8)(A) of the IG Act of 1978, the IC hereby forwards the report of our findings and our recommendation regarding Mark Thorum, former Assistant Inspector General for Inspections and Evaluations for the Export-Import Bank of the United States (EXIM).

Pursuant to section 11(d)(8)(B), please report to the IC the final disposition of this matter, including what action, if any, was taken by EXIM. The IC has also provided the report and recommendation to the President of the United States, the CIGIE Chairperson, the EXIM Acting IG, and the congressional committees of jurisdiction.

Sincerely,

(b) (6)

Scott Dahl
Chairman
Integrity Committee

Enclosure

cc: (b) (6), (b) (7)(C)

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, NW, Suite 825, Washington, DC 20006 ▪ Integrity-Complaint@cigie.gov

Date: December 20, 2018

Subject: Report of Findings for Integrity Committee Case 954

Executive Summary

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of wrongdoing made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG). Pursuant to that mandate, the IC received and reviewed allegations of wrongdoing made against Mark Thorum, Assistant Inspector General for Inspections and Evaluations for the Export-Import Bank of the United States (EXIM). Specifically, it was alleged that:

> (b) (6), (b) (7)(C) [redacted] Mr. Thorum improperly duplicated EXIM OIG information in his doctoral dissertation; and Mr. Thorum conducted himself with a general lack of integrity.

After a thorough review of the allegations and supporting documents, Mr. Thorum's responses, and other limited inquiry, the IC made findings, conclusions, and recommendation as to some of the allegations. The IC considered the original complaint, dated June 8, 2018, and supporting materials; Mr. Thorum's response to the allegations, dated August 17, 2018; Mr. Thorum's responses to the proposed findings and conclusions, dated November 5, 2018, and November 20, 2018; and other documents and information obtained upon limited inquiry, as referenced herein.

The IC **substantiated** the allegations that Mr. Thorum engaged in conduct that undermines the independence and integrity reasonably expected of a senior OIG official when he improperly duplicated substantial portions (over 90%) of EXIM OIG information in his doctoral dissertation, without attribution, and that he lacked candor in his responses to the IC.

Background

Mr. Thorum began his Ph.D. candidacy with Virginia Polytechnic Institute and State University in 2007 and the university approved his dissertation topic, "In Search of a Governance Model for The International Capital Markets," in 2010. In November 2010, EXIM OIG established an Office of Inspections (OI) when they hired Mr. Thorum as (b) (6), (b) (7)(C), Senior Inspector.[1] The mission of the OI was to "conduct internal and external inspections of loan guarantees and

[1] EXIM OIG Semiannual Report to Congress October 1, 2010—March 31, 2011, page 1. https://www.exim.gov/sites/default/files/newsreleases/semiannualreport_congress_Mar2011.pdf

insurance policies authorized by Ex-Im Bank."[2]

Mr. Thorum stated that at his initial job interview, he informed IG Osvaldo Gratacos that he was a Ph.D. candidate and Mr. Thorum provided IG Gratacos with "regular updates" on the progress of his dissertation from November 2010 until IG Gratacos' resignation on June 27, 2014. After IG Gratacos resigned, Mr. Thorum did not provide updates on the progress of his dissertation to OIG management, nor did he obtain guidance or approval to publish his dissertation from an agency ethics official.

Planning for inspections OIG-INS-12-01 and OIG-INS-12-02 began in February/March 2011 and September 2011, respectively, and the final reports were published on March 27, 2012, and September 28, 2012. At the time the OIG reports were issued, Mr. Thorum held the position of Acting Assistant Inspector General for Inspections and Evaluations (AIGIE) for OIG-INS-12-01 and AIGIE for OIG-INS-12-02.

In late 2013/early 2014, Mr. Thorum expanded the scope of his doctoral dissertation and submitted two additional chapters to his academic advisors for review: Chapter 4 ("The U.S. Export-Import Bank: Observations on Portfolio Risk") and Chapter 5 ("Doing More with Less—How the Export-Import Bank Can Utilize Performance Metrics to Improve Customer Service"). Chapter 4 of Mr. Thorum's dissertation includes substantial passages of identical language from OIG-INS-12-02 and an EXIM OIG Letter to the Chief Financial Officer, "Review of Portfolio Risk Mitigation Techniques" (CFO letter), dated September 28, 2012. Chapter 5 of Mr. Thorum's dissertation includes substantial passages of identical language from OIG-INS-12-01, dated March 27, 2012.

Mr. Thorum did not include these documents as references in his dissertation, nor did he cite them as sources of the duplicated material. Mr. Thorum's doctoral dissertation was published in May 2015 and was made available online in January 2018.

On June 8, 2018, (b) (6), (b) (7)(C) [redacted], referred the allegations of wrongdoing against Mr. Thorum to the IC. The referral stated that on May 21, 2018, several staff members of EXIM OIG alleged Mr. Thorum (b) (6), (b) (7)(C) [redacted] may have improperly duplicated OIG information; and may have conducted himself with a general lack of integrity. On July 31, 2018, the IC requested Mr. Thorum's response to the allegations, which he provided on August 17, 2018. After a thorough review of the allegations and supporting documents, Mr. Thorum's response, and other limited inquiry, the IC Chairperson drafted proposed findings as to some or all of the allegations and, on October 15, 2018, provided the proposed findings to Mr. Thorum for comment. Mr. Thorum provided his comments on the proposed findings to the IC Chairperson on November 5, 2018, and he supplemented those comments on November 20, 2018.

[2] *Id*.

Findings

The IC substantiates the allegation that Mr. Thorum engaged in conduct that undermines the independence and integrity reasonably expected of a senior OIG official when he improperly duplicated substantial portions (over 90%) of EXIM OIG information, without attribution, in his doctoral dissertation. The IC also found that Mr. Thorum conducted himself with a general lack of integrity. In addition, the IC concluded that Mr. Thorum lacked candor in his responses to the IC.

In Mr. Thorum's response to the IC, dated August 17, 2018, Mr. Thorum "emphatically and categorically den[ied] that [he] in any way …improperly duplicated EXIM OIG information."[3] However, the facts clearly demonstrate otherwise. Thirty-four of the 38 substantive pages of Chapter 4 of Mr. Thorum's dissertation include substantial passages of identical language from OIG-INS-12-02 and the CFO letter, both dated September 28, 2012. Additionally, 19 of the 21 substantive pages of Chapter 5 of Mr. Thorum's doctoral dissertation include substantial passages of identical language from OIG-INS-12-01.

Mr. Thorum stated that Chapter 5 of his dissertation was a reprint of his article, *Doing More with Less—How Export Credit Agencies Are Using Performance Metrics to Improve Operational Efficiency*, which was published in the winter 2011 issue of the Journal of Public Inquiry (JPI).[4] However, that article also contained substantial passages that were identical to language in OIG-INS-12-01.

In response to the allegations Mr. Thorum told the IC, "My understanding at the time was that as long as the information was in the public domain and not confidential, I was able to *reference* the report in my dissertation" (emphasis added).[5] Yet, as noted above, Mr. Thorum did not reference or cite the OIG material in his dissertation in any meaningful way. Instead, Mr. Thorum republished and reused identical portions of previously written OIG texts and therefore had a duty to cite and credit those sources. Failure to do so misleads the reader into believing the material was Mr. Thorum's original work, rather than misappropriated OIG material.

In Mr. Thorum's comments to the proposed findings he told the IC Chairperson, "I fully agree that the earlier OIG reports should have been properly referenced both in the text, as well as the bibliography and it was my intention to do so."[6] However, Mr. Thorum then made numerous statements attempting to minimize or justify his wrongdoing. Specifically, Mr. Thorum stated:

- "…it was my understanding that I was following the requisite government policies related to the writing and publication of those works and that I had the clearance to use

[3] Mark Thorum's Response to the IC, dated August 17, 2018 (Response).
[4] http://www.dtic mil/dtic/tr/fulltext/u2/a579579.pdf (JPI).
[5] Response at pages 3-4.
[6] Mark Thorum's Comments to the Proposed Findings and Recommendations, dated November 5, 2018 (Comment).

publicly available material from prior OIG reports."[7]

- "…I inserted the [] disclaimer in the abstract of the standalone portfolio risk management article and a similar disclaimer in the portfolio metrics article…As I learned later, the disclaimers were removed without appropriate conforming changes when the separate essays were reformatted to create the manuscript as part of the ETD formatting process."[8]

- "Unfortunately, in the haste to submit the dissertation for defense, the Attribution page was overlooked by me."[9]

- "Concerning the duplication of information from OIG-INS-12-01 and OIG-INS-12-02, the material was used in an academic setting for the sole purpose of sharing it with a broader audience including academics and other federal agencies that would not normally read OIG reports."[10]

The IC found Mr. Thorum's comments to the proposed findings to be lacking in credibility. First, there's no evidence that any draft of Mr. Thorum's dissertation included citations for the duplicated OIG material. Second, despite any changes during the reformatting or editing process, it was Mr. Thorum's responsibility to ensure the final product followed all publishing requirements. Mr. Thorum's purpose for duplicating OIG material is irrelevant considering his duty to cite and credit the source of that material. Even if Mr. Thorum's dissertation had included the disclaimer as he intended,[11] the disclaimer does not credit the work of the OIG and it explicitly states that the dissertation, and the numerous pages of duplicated OIG material, should not be interpreted as reflecting the views of EXIM OIG. Finally, even if Mr. Thorum was the primary drafter of the OIG documents, they do not belong to him personally – they are official OIG documents issued by the government agency and cannot simply be appropriated by Mr. Thorum, verbatim, for his private purposes.

In his comments to the IC Chairperson's proposed findings, Mr. Thorum attempted to justify his actions by stating, "There is no clear standard as to how much of a previously published work an author can reproduce in another article. One reference suggests 30%."[12] The IC found Mr. Thorum's comments to lack credibility. First, the previously published work Mr. Thorum

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[7] *Id*. at page 2.
[8] *Id*. at pages 5-6.
[9] *Id*. at page 6.
[10] *Id*.
[11] "Mark Thorum is the Assistant Inspector General for Inspections and Evaluations with the U.S. Export Import Bank, Office of Inspector General. Mr. Thorum is ABD and PhD candidate at the Virginia Polytechnic Institute and State University. Much of the research and findings of this paper was previously released by the author in a report from the Office of the Inspector General U.S. Export Import Bank dated September 28, 2012. The report can be accessed at http://www.exim.gov/oig/upload/Fimal-20Report-20Complete-20Portfolio-20Risk-20120928-1.pdf. This paper represents the views of the author and should not be interpreted as reflecting those of the Office of the Inspector General of the Export-Import Bank or those of the management of the Export-Import Bank." *Id*.
[12] Comment at page 7.

reproduced was material from OIG documents, not his own, and as Mr. Thorum stated in his comments to the proposed findings, he "did not have the authority…to write them independently from OIG senior management."[13] Second, 34 of the 38 pages in Chapter 4 and 19 of the 21 pages in Chapter 5 of Mr. Thorum's dissertation contain duplicated OIG material. Consequently, over 90% of Mr. Thorum's dissertation chapters in question contain previously published OIG work.

Regarding his participation in OIG-INS-12-01 and OIG-INS-12-02, Mr. Thorum stated, "I have/had no self-interests or biases that would have impaired my objectivity and independence with respect to those assignments."[14] He also described how OI uses a multi-step planning process to identify and propose potential inspections to show that he was not responsible for deciding which inspections and evaluations to conduct. Mr. Thorum told the IC his role "was to facilitate the process, not to select the actual assignments."[15] He further minimized his position and involvement with those inspections by stating, "[a]t the time I worked on the 2012 reports, I was a (b) (6), (b) (7)(C) Senior Inspector, not the AIGIE."[16]

The IC did not find Mr. Thorum's statements credible based on his position and level of involvement with OIG-INS-12-01 and OIG-INS-12-02. First, Mr. Thorum failed to disclose that until December 2012, he was the sole employee in OI; a fact Mr. Thorum acknowledged only after the IC Chairperson included it in the proposed findings.[17] Therefore, at the time of the inspections in question there was no team to participate in a consensual process to discuss and prepare a short list of possible inspection candidates, there was only Mr. Thorum. Second, Mr. Thorum listed his position as Acting AIGIE in his JPI article and in report OIG-INS-12-01. As Acting AIGIE, Mr. Thorum was "responsible for establishing, planning, directing and conducting inspection and evaluation functions within the OIG."[18] Finally, OIG-INS-12-01 includes identical language from six of the seven pages of Mr. Thorum's JPI article, which he wrote and published in winter 2011 while the inspection was still in progress. The report for OIG-INS-12-01 was not completed until March 27, 2012.

Pursuant to CIGIE Quality Standards for Inspection and Evaluation (2012), "Inspectors and inspection organizations have a responsibility to maintain independence so that opinions, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by knowledgeable third parties. The independence standard should be applied to anyone in the organization who may directly influence the outcome of an inspection and includes both Government and private persons performing inspection work for an OIG."[19]

At the time the OIG reports were issued, Mr. Thorum was the acting AIGIE and was the senior official of the office responsible for conducting the review and drafting the OIG reports in

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[13] *Id*. at page 4.
[14] Response at page 1.
[15] *Id* at page 3.
[16] Response at page 3.
[17] Comment at page 4.
[18] JPI.
[19] https://www.ignet.gov/content/quality-standards

question. Around that same time, Mr. Thorum was also working on his doctoral dissertation. He therefore had the ability to steer the work and the findings to benefit his dissertation and, without fully disclosing to his OIG superiors his intent to appropriate significant portions of the reports to his dissertation, he posed a significant risk to independence. For example, if the agency had learned of his conduct, it might have asserted that the OIG findings were improperly skewed to support his doctoral dissertation. Therefore, by failing to fully disclose to his OIG superiors his intent to appropriate significant portions of OIG documents to his doctoral dissertation, Mr. Thorum engaged in wrongdoing that undermined the independence and integrity reasonably expected of a senior OIG official.

Conclusion

Based on these findings, the IC concludes that Mr. Thorum engaged in conduct that undermines the independence and integrity reasonably expected of a senior OIG official when he improperly duplicated substantial portions of EXIM OIG information in his doctoral dissertation, without attribution, and that he lacked candor in his responses to the IC.

Exhibits

1. Referral of Allegations to the IC, dated June 8, 2018
2. IC Request for Response, dated July 31, 2018
3. Mr. Thorum's Response to the IC, dated August 17, 2018
4. IC Chairperson's Proposed Findings, dated October 15, 2018
5. Mr. Thorum's Comments to the Proposed Findings, dated November 5, 2018
6. Mr. Thorum's Supplemental Comment to the Proposed Findings, dated November 20, 2018

Date: November 5, 2018

To: Scott Dahl Chairman, Integrity Committee

From: Mark Thorum Assistant Inspector General
Subj: Response to Integrity Committee Case 954

Dear Integrity Committee:

I am writing in response to the CIGIE Integrity Committee's statements regarding alleged misconduct as an Assistant Inspector General for Inspections and Evaluations of the Export-Import Bank of the United States dated October 15, 2018. I would like to thank the Committee for the opportunity to respond to your letter and to provide additional information for your consideration. For convenience and organizational clarity, I have listed and numbered the Committee's statements that I would like to address followed by my responses and clarifications.

Committee's statement #1:
"You began your Ph.D. candidacy with Virginia Polytechnic Institute and State University in 2007 and the university approved your dissertation topic, "In Search of a Governance Model for The International Capital Markets," in 2010. In November 2010, EXIM OIG established an Office of Inspections (OI) when they hired you as [redacted], Senior Inspector. The mission of the OI was to "conduct internal and external inspections of loan guarantees and insurance policies authorized by Ex-Im Bank."

"In your response to the IC you stated you informed Inspector General (IG) Osvaldo Gratacos at your initial job interview that you were a Ph.D. candidate and you provided him with regular updates on the progress of your dissertation from November 2010 until his resignation on June 27, 2014. After IG Gratacos resigned, you did not provide updates on the progress of your dissertation to OIG management, nor did you obtain guidance or approval to publish your dissertation from your ethics official."

Response:
It is correct that I regularly briefed IG Gratacos on the progress of my dissertation. In addition, I sought guidance from IG Gratacos related to the writing and publication of my dissertation, and permission to use publicly-available information from the prior OIG reports, OIG-INS-12-01 and OIG-INS-12-02.

With respect to the timing of the preparation of the dissertation, I am confident that the dissertation chapters were largely completed prior to IG Gratacos' departure on June 27, 2014. Further, I had planned to submit my dissertation in July 2014 and was initially scheduled to defend my dissertation on September 26, 2014. However, as certain dissertation committee members were not accessible over the summer months, I continued to make minor revisions until November, 2014. (See Appendix One). [1] Having missed the cutoff date to submit and defend my dissertation during the fall semester, I was required to reschedule my defense for spring semester 2015. After the defense, the dissertation was embargoed until January, 2108 when it

[1] See September and November 30, 2014 emails to dissertation co-chairs, [redacted] and [redacted].

was made available on line.

I respectfully disagree with the Committee's assertion that I did not provide updates on the progress of my dissertation to OIG management once IG Gratacos left. As the following bullet points clearly establish, (b) (6), (b) (7)(C) was aware that I was working on my dissertation and I informed him of my progress:

- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) under Osvaldo Gratacos for several months and was informed of my dissertation research by IG Gratacos.

- After IG Gratacos left, I recall having at least two conversations with (b) (6), (b) (7)(C) about my dissertation. On one occasion he wanted to confirm that my dissertation work would not interfere with my normal duties. I confirmed that I only worked on my dissertation after work and on the weekends. He then asked, "How do I know that you are not thinking about your research while you are in the office?" On another occasion we discussed an article he had written and published while he was a student. Finally, when I successfully defended my dissertation in spring of 2015, (b) (6), (b) (7)(C) congratulated me at an OIG all hands meeting and presented me with a small gag gift.

Concerning the Committee's assertion that I did not obtain guidance or approval to publish my dissertation from my ethics official, it is my understanding that IG Gratacos and (b) (6), (b) (7)(C) received this authority from EXIM's Designated Agency Ethics Official (DAEO) for the Office of Inspector General and further delegated that authority to OIG legal counsel. As such, they were tasked with "Providing advice and counseling to prospective and current employees regarding government ethics laws and regulations and providing former employees with advice and counseling regarding post-employment restrictions applicable to them." [2]

OIG employees were/are instructed to seek ethics guidance and approval from OIG counsel on a broad range of issues including the filing of the financial disclosure (OGE form 450), Hatch Act restrictions, publishing articles and speaking engagements, attending widely attended gatherings, etc. For example, when I sought ethics clearance to attend an IACPM conference in May 2012, I was instructed by IG Gratacos to write a memo to our then legal counsel, (b) (6), (b) (7)(C). When I sought ethics clearance to write and publish an article in March 2017, I was advised to seek clearance from our then legal counsel, (b) (6), (b) (7)(C). (Please see attached memos in Appendix Two).

In summary, I maintain that when working on the JPI article, my dissertation chapters and the 2017 article entitled, "Determinants of Transnational Regulation," I sought guidance and approval to publish those works from my supervisors. Moreover, it was my understanding that I was following the requisite government polices related to the writing and publication of those works and that I had the clearance to use publicly available material from prior OIG reports.

[2] OFFICE OF GOVERNMENT ETHICS; Executive Branch Ethics Program; CFR Part 2638 RIN 3209–AA42 available at https://oge.gov/Web/OGE.nsf/Resources/5+C.F.R.+Part+2638:+Executive+Branch+Ethics+Program

Committee's statement #2:
"Planning for inspections OIG-INS-12-01 and OIG-INS-12-02 began in February/March 2011 and September 2011, respectively, and the final reports were published on March 27, 2012 and September 28, 2012. In your response to the IC you minimized your position and involvement with the inspections by stating, "[a]t the time I worked on the 2012 reports, I was a [redacted] Senior Inspector, not the AIGIE." However, in your article, "Doing More with Less-How Export Credit Agencies Are Using Performance Metrics to Improve Operational Efficiency," which was published in the winter 2011 issue of the *Journal of Public Inquiry* (JPI), you list your position as the Acting Assistant Inspector General for Inspections and Evaluations (AIGIE). Additionally, the reports in question list your position as Acting AIGIE (OIG-INS-12-01) and AIGIE (OIGINS- 12-02)."

Response:
First and foremost, I apologize for any miscommunication on my part in my previously submitted letter to the Committee. I was not attempting to minimize my position and involvement in the above-referenced reports. Rather, I was addressing two separate items from the Committee's initial letter: (i) the allegation that as an AIG I directed staff assignments for the benefit of completing my dissertation; and (ii) question three of the Committee's July 31 letter, "What was your role as Assistant Inspector General for Inspections and Evaluations in deciding which inspections and evaluations to conduct?"

Reiterating my earlier response, I confirm that only the IG/Acting IG has the final authority to approve the selection of an inspection in our office. Second, for the vast majority of the period I worked on inspections OIG-INS-12-01 and OIG-INS-12-02, I was a [redacted] Senior Inspector, working under the direct supervision of (b) (6), (b) (7)(C) and IG Gratacos. During this period, OIG senior management assigned the inspection assignments, attended internal meetings related to the assignment, reviewed all drafts of the report and communicated the results to senior management.

Having since reviewed my prior SF 50 statements, I can confirm the veracity of the statement "[a]t the time I worked on the 2012 reports, I was a [redacted] Senior Inspector, not the AIGIE." Specifically, the JPI article was written in September 2011, but not released until Spring of 2012. Similarly, inspection OIG-INS-12-01 was published on March 27, 2012. I was a [redacted] Senior Inspector from November 2010 until March 25, 2012, when I was made Acting [redacted] Supervisory Senior Inspector on a temporary basis. I then reverted back to my Senior Inspector [redacted] position in July 2012. Finally, I was promoted from a [redacted] Senior Inspector to a [redacted] Supervisory Senior Inspector effective September 9, 2012. OIG INS- 12-02 was released several weeks later on September 28, 2012. (Please see the attached SF 50 statements in Appendix Three).

Committee's statement #3:
"Regarding these two inspections, you told the IC that you "have/had no self-interests or biases that would have impaired [your] objectivity and independence with respect to those assignments." You also stated EXIM OIG uses a multi-step planning process to identify and propose potential inspections. In your response to the IC you wrote, "First, OIE staff meets as a

team to discuss possible candidates. Based on a consensual process, a short list of potential assignments is prepared. The short list is then subject to a rigorous risk assessment and ranked. The candidates are then discussed with members of the management team and forwarded to the IG/Deputy IG for final selection." You told the IC your role "was to facilitate the process, not to select the actual assignments.

Your statements to the IC are not credible based on your position and level of involvement with OIG-INS-12-01 and OIG-INS-12-02. First, you were the only employee in OI until December 2012. Therefore, at the time of the inspections in question there was no team to participate in a consensual process to discuss and prepare a short list of possible inspection candidates, there was only you. Second, as Acting AIGIE you were "responsible for establishing, planning, directing and conducting inspection and evaluation functions within the OIG."

Response:
I again apologize for any lack of clarity on my part. The multi-step planning process describes the protocols that have been in place for the past five years and addresses the allegation that I used my AIGIE position to select assignments that were beneficial to my research. It is correct that I did not have staff until late 2012. However, as confirmed above, I worked on inspections OIG-INS-12-01 and OIG-INS-12-02 as a [redacted] Senior Inspector and under the close supervision of IG Gratacos and (b) (6), (b) (7)(C) [redacted]. I did not have the authority to select inspections OIG-INS-12-01 and OIG-INS-12-02, nor to write them independently from OIG senior management.

As part of the consensual process and safeguards, I referenced in my earlier response, potential assignments have always been subjected to a risk assessment process, discussed and reviewed by senior management team members including the IG, Deputy IG/legal counsel, the AIG for Audits, and the AIG for Investigations.

As previously stated in my July 22, 2018, Memo on Independence/ Conceptual Framework for Independence and earlier response to the Committee, I confirm that I have/had no self-interests or biases that would have impaired my objectivity and independence with respect to OIG-INS-12-01 and OIG-INS-12-02 or any other assignments I worked on. This conclusion was supported by (b) (6), (b) (7)(C) [redacted] in her August 7, 2018 assessment of my July 22, 2018 Memo on Independence/ Conceptual Framework for Independence.

Committee's Statement #4:
"In late 2013/early 2014 you expanded the scope of your dissertation and submitted two additional chapters to your academic advisors for review: Chapter 4 ("The U.S. Export-Import Bank: Observations on Portfolio Risk") and Chapter 5 ("Doing More with Less-How the Export-Import Bank Can Utilize Performance Metrics to Improve Customer Service").

In your response to the IC you stated Chapter 4 of your dissertation discusses the introduction of portfolio risk management practices at EXIM and "references the earlier report, OIG-INS-12-02." In fact, 34 of the 38 substantive pages of Chapter 4 of your dissertation include identical language from OIG-INS-12-02 and an EXIM OIG Letter to the Chief Financial Officer, "Review

of Portfolio Risk Mitigation Techniques," both dated September 28, 2012. You did not include these documents as references in your dissertation, nor did you cite them as sources of the duplicated material. Moreover, the only mention of an OIG report in your dissertation is in one generic footnote that minimizes the extent to which you copied the information. []

Additionally, you stated Chapter 5 of your dissertation was a reprint of your JPI article but, as noted above, that article also contained information that was identical to language in OIG-INS-12-01. In fact, 19 of the 21 substantive pages of Chapter 5 of your dissertation include identical language from OIG-INS-12-01 and your JPI article. You did not include the JPI article or the OIG-INS-12-01 as a reference in your dissertation, nor did you cite to or credit those documents.

You told the IC, "My understanding at the time was that as long as the information was in the public domain and not confidential, I was able to reference the report in my dissertation" (emphasis added). However, as discussed above, you did not reference or cite the reports in your dissertation in any meaningful way. Instead, you republished and reused identical portions of previously written texts and therefore had an ethical duty to cite and credit those sources. [3] In your response to the IC you also "emphatically and categorically den[ied] that [you] in any way ...improperly duplicated EXIM OIG information" or "exhibited a lack of independence and integrity," however the above facts clearly demonstrate otherwise."

Response:
The JPI article was written and submitted in September and October 2011, respectively. Its primary focus was to discuss the performance metrics of the ECA community. With the permission of the IG, I used material from the JPI article in report OIG-INS-12-01. As stated above, OIG-INS-12-01 was completed on March 27, 2012, approximately five months after I submitted the article. It is correct that Chapter Five of my dissertation also included material from the JPI article. This fact was disclosed to my VT dissertation committee. Finally, I confirm that at the time I worked on OIG-INS-12-01 and OIG-INS-12-02, I did not envision including the topics in my dissertation research.

I fully agree that the earlier OIG reports should have been properly referenced both in the text, as well as the bibliography and it was my intention to do so. I fully disclosed to my dissertation committee and VT editing staff that the chapter on risk management was based on a prior OIG report and that the Chapter five article on metrics had been previously published in the *Journal of Public Inquiry*. To this end, I inserted the below disclaimer in the abstract of the standalone portfolio risk management article and a similar disclaimer in the portfolio metrics article. (Please see Appendix Four).

[3] https://ori.hhs.gov/avoiding-plagiarism-self-plagiarism-and-other-guestionable-writing-practices-guide-ethicalwriting

The U.S. Export-Import Bank: Observations on Portfolio Risk Management

"Mark Thorum is Assistant Inspector General for Inspections and Evaluations with the U.S. Export Import Bank, Office of Inspector General. Mr. Thorum is ABD and PhD candidate at the Virginia Polytechnic Institute and State University. Much of the research and findings of this paper was previously released by the author in a report from the Office of the Inspector General U.S. Export Import Bank dated September 28, 2012. The report can be accessed at http://www.etxim.gov/oig/upload/Final-20Report-20Complete-20Portfolio-20Risk-20120928-1.pdf

This paper represents the views of the author and should not be interpreted as reflecting those of the Office of the Inspector General of the Export-Import Bank or those of the management of the Export-Import Bank."

As I learned later, the disclaimers were removed without appropriate conforming changes when the separate essays were reformatted to create the manuscript as part of the ETD formatting process. According to VT's dissertation publishing guidelines, references to co-authors, and articles previously published should be stated on a separate "Attribution Page" before the Table of Contents and not as part of the Abstract of a chapter. Unfortunately, in the haste to submit the dissertation for defense, the Attribution Page was overlooked by me. I recently wrote to my dissertation chair to request clarification, but as this was almost four years ago and neither of us can recall what happened and why the disclaimers were deleted.

Concerning the duplication of information from OIG-INS-12-01 and OIG-INS-12-02, the material was used in an academic setting for the sole purpose of sharing it with a broader audience including academics and other federal agencies that would not normally read OIG reports. The 2012 report on risk management (OIG-INS-12-02) was unique in that it was the first evaluation of EXIM Bank's risk management framework using federal regulatory guidance (OCC and FDIC) for private sector financial institutions. In sharing the material, the objective was to bridge the policy gap between private sector financial institutions and U.S. government agencies with international credit exposure. [4]

In response to the allegation that I personally benefited from the recycling of text I had previously authored, I maintain that I received no tangible benefit or remuneration from using the material. The discussion on EXIM was not material to my original dissertation topic. Indeed, the inclusion of the extra material required a substantial rewrite of the manuscript and prolonged the completion time. The rationale for including a large section of the recycled text was to keep the narrative intact, rather than paraphrasing. I did not receive a promotion or salary increase to finish the Ph.D., nor was there any intention to seek a new job after earning my Ph.D. I published my dissertation at age [redacted], with the expectation that I would work at the agency until retirement.

[4] The abstract of the dissertation states, "the dissertation provides specific policy recommendations designed to enhance the portfolio risk management practices of the US Export Import Bank. By extension, these recommendations are relevant to a wider audience of federal agencies with similar portfolio credit risks and may help inform the design of a robust risk management framework that is critical to the government's ability to manage its burgeoning credit portfolio. "

Committee's statement #5:
Based on these findings, we conclude that you engaged in wrongdoing that undermines the independence and integrity reasonably expected of you as a senior OIG official.

Response:
It was always my intention to follow proper ethical standards for government employees and to provide adequate disclosure of the prior OIG reports. I made some mistakes and would certainly do things differently today. However, I never intended to violate any rules or undermine the independence and integrity of my office and myself as an OIG official. The fact that the two disclaimers were dropped from my earlier draft and that the dissertation does not adequately reference the prior OIG inspections was an honest error. This was not a calculated attempt to abuse my office for personal gain. Over my entire professional career, I have endeavored to follow high ethical standards and to observe appropriate protocols.

It is important to note that my dissertation was under embargo/restricted access and not available on line until January, 2018. This is a common procedure for dissertation research and allows the author time to address possible issues related to the research. Upon discovering that the abstract disclaimers were missing, I wrote to the VT graduate school Dean requesting that the dissertation be taken off line, and for approval to make the necessary revisions including the reassertion of the full disclaimers. See Appendix Five. I was given approval to move forward on that basis and the dissertation was taken offline.

I am currently revising the two chapters in question and have been researching the concept of self-plagiarism or text recycling, While I certainly do not want to downplay the importance of the issue, the concept was less understood in 2013/2014 when I wrote my dissertation. [5] Further, it is less defined with respect to the use of government reports:

- Self-plagiarism primarily relates to the recycling of material from a work that was previously published and protected by copyright. [6]
- Once released, U.S. government work passes into the public domain, is not protected by copyright and may be freely used by everyone. See Appendix Six. [7]
- There is no clear standard as to how much of a previously published work an author can reproduce in another article. One reference suggests 30%.
- In researching the concept of self-plagiarism on the HHS Office of Research Integrity web site, I noted that research misconduct does not include "honest error." Further, it states, "Note: 42 CFR Part 93 does not consider self-plagiarism to be research misconduct." [8]

I am a dedicated employee of the EXIM OIG and have received favorable appraisals over the past eight years. To date, our I&E team completed seventeen assignments that produced over one

[5] "Self Plagiarism" is barely addressed in two important academic publication manuals: *MLA Style Manual and Guide to scholarly Publication* (1998) and the *Publication Manual of the American Psychological Association* (2001)
[6] See https://ori.hhs.gov/avoiding-plagiarism-self-plagiarism-and-other-questionable-writing-practices-guide-ethical-writing
[7] See http://www.unc.edu/~unclng/public-d.htm
[8] See https://ori.hhs.gov/federal-research-misconduct-policy

hundred recommendations to improve the agency's operational efficiency and to reduce waste, fraud and abuse. I have also been an active member of the CIGIE ERM working group and have served on the committee for professional development.

Finally, as these allegations touch on some more fundamental basic core values, I would like to respond with a short statement. (b) (6), (b) (7)(C) , I have always endeavored to teach my children to follow core values and principles. (b) (6), (b) (7)(C) . I understand the members of the OIG community must adhere to strict standards, and I have always attempted to do so. In hindsight, certain errors were made—however, it is my sincere hope that the Committee can see that it was not done as a calculated attempt to abuse my office for personal gain. Thank you for your consideration.

Appendix One

VIRGINIA TECH

Mark Thorum (b) (6), (b) (7)(C)

Dissertation draft

Mark Thorum (b) (6), (b) (7)(C) Sun, Nov 30, 2014 at 12:53 PM
To: (b) (6), (b) (7)(C)

Dear (b) (6), (b) (7)(C):

I hope you enjoyed your Thanksgiving break and found time to relax.
I am writing to let you know that I have completed a first full draft of my dissertation including the conclusion. Again, I apologize for the delays. As you may know I received some comments from (b) (6), (b) (7)(C) late summer and needed to revise the first chapter to provide a more balanced discussion on financial governance. I also had several trips abroad for work and have been busy with meetings on the Hill related to the re-authorization of Ex-Im Bank.

I realize that it is too late to defend this semester. If you agree. I would propose to postpone the defense to early January. This would allow committee members time to review the dissertation and provide comments. Please let me know if you are in agreement. In the interim, I am correcting formatting errors and checking references. I should be in a position to circulate the full draft in the coming days.

Thank you for your consideration.

Mark

Appendix Two

Appendix Two:

From: Mark Thorum/IG/EXIMBANK

To: (b) (6), (b) (7)(C)

Cc: Osvaldo I Gratacos/IG/(b) (6), (b) (7)(C)

Date: 04/27/2012 02:21 PM

Subject: Ethics clearance for my participation in the IACPM seminar in May, 2012.

(b) (6), (b) (7)(C):

I am writing this memo to request formal ethics clearance for my participation in the IACPM seminar in May, 2012. As discussed, The Executive Director offered to waive the participation fee so that I could participate in the ECA round table discussion on portfolio risk mitigation as well as the seminar.

The conference begins at 8 am on the 22nd with an all day seminar for ECAs, followed by two days of technical sessions on related risk management issues including techniques to mitigate portfolio risks, how to measure sovereign risk, stress testing, loss reserve/economic capital requirements.

These topics are directly related to my ongoing research on ECA best practices related to portfolio risk mitigation.

Please let me know if you require further information. Thanks

Mark Thorum

Acting Assistant Inspector General for
Inspections and Evaluations
Office of Inspector General
Export-Import Bank
811 Vermont Ave, NW
Washington, DC 20571
(b) (6), (b) (7)(C)
202-565-3908 (Main Line)
202-565-3988 (fax)

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Friday, March 17, 2017 9:55 AM
To: Mark Thorum
Subject: RE: Article and recusal from future remuneration

Thank you, Mark. This should be sufficient. I will let you know if I need anything additional.

From: Mark Thorum
Sent: Thursday, March 16, 2017 5:27 PM
To: (b) (6), (b) (7)(C)
Cc: Mark Thorum
Subject: RE: Article and recusal from future remuneration

Dear (b) (6), (b) (7)(C)

I am writing this e-mail in response to the questions you posed related to an article I co-authored entitled, " Determinants of Transnational Regulatory Regimes." As mentioned, I expect that the article will be published
as part of a collection. I will answer each question in the order they appear.

1. Did the writing "relate to your official duty"?
   This article did not relate to my official duties with the Office of Inspector General, Export Import Bank.
2. Is the article "part of your official duties"?
   This article is not part of my official duties.
3. Was the invitation to engage in the activity extended to you primarily because of your official position?
   No, the invitation to write the article was not extended because of my official position.

Finally, in an abundance of caution, I am recusing myself from receiving any future remuneration from the publication of this article. I trust I have addressed your questions satisfactorily. Thank you.

Mark Thorum

Mark Thorum, Ph.D. | Assistant Inspector General for Inspections and Evaluations

Export-Import Bank of the United States
811 Vermont Ave. NW, Office 1050 | Washington, DC 20571
(b) (6), (b) (7)(C) | (b) (6), (b) (7)(C)

EXIM
EXPORT-IMPORT BANK
OF THE UNITED STATES

Office of the Inspector General

Appendix Three

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

Appendix Four

Essays in International Financial Governance

Mark Thorum

A Dissertation submitted in manuscript format to the faculty of Virginia Polytechnic Institute and State University, in partial fulfillment of the requirements for the degree of Doctor of Philosophy in Public and International Affairs.

Dissertation Committee

(b) (6), (b) (7)(C) [redacted]

January, 2015
Blacksburg, Virginia

Keywords: MIFID, financial regulation, governance, financial crisis, export credit agency, OECD, capital markets, U.S. Export-Import Bank, performance metrics.

The U.S. Export-Import Bank: Observations on Portfolio Risk Management

Mark Thorum

ABSTRACT

Export-Credit Agencies (ECAs) face a diverse spectrum of risks ranging from credit risk to country risk to portfolio concentration risk. In response, ECAs have developed risk management governance and policies that reflect core institutional parameters including the ECA's mission, level of government support, and market philosophy.

The U.S. Export Import Bank (Ex-Im Bank) is the official Export-Credit Agency of the United States. Ex-Im Bank was created in 1934 as an independent federal agency to aid export financing and support U.S. employment. In pursuing its mission, Ex-Im Bank has experienced rapid growth and emerging risk trends in recent years. These trends have resulted in higher portfolio concentration levels that represent greater risk to the U.S. Government, and ultimately U.S. taxpayers. Traditional risk management policies prescribed under the 1990 Federal Credit Reform Act and OMB Circulars rely primarily on historical, quantitative data. This framework does not provide sufficient guidance on portfolio risks and the use of qualitative risk factors in the loss reserve analysis.

This article examines the risk governance and portfolio credit risk management policies of Ex-Im Bank and benchmarks them against the policies of a select group of peer ECAs and the best practices observed by a broader group of public and private financial institutions. The article provides several policy recommendations that may be relevant to other federal agencies with similar portfolio credit risks.

Mark Thorum is Assistant Inspector General for Inspections and Evaluations with the U.S. Export Import Bank, Office of Inspector General. Mr. Thorum is ABD and PhD candidate at the Virginia Polytechnic Institute and State University.
Much of the research and findings of this paper was previously released by the author in a report from the Office of the Inspector General U.S. Export Import Bank dated September 28, 2012. The report can be accessed at http://www.exim.gov/oig/upload/Final-20Report-20Complete-20Portfolio-20Risk-20120928-1.pdf

"Doing More with Less—How the U.S. Export-Import Bank Can Utilize Performance Metrics to Improve Customer Service"

Mark Thorum

Abstract

Government agencies across the globe are under increasing pressure to improve public sector performance against a back drop of budget cuts and a challenging economic environment. The new mantra of the decade has indeed become, "Do more with less." The old paradigm that relates quality of service to costs incurred is no longer valid as public sector managers must learn to optimize costs, quality and customer service.

The Export-Import Bank of the United States (Ex-Im Bank) is no exception. Tasked with promoting domestic exports, the agency must balance complex stake holder considerations, competing Congressional mandates and an OECD framework for government –sponsored export credits. Although there is no single blueprint to enhance the quality of public service, the use of performance metrics and lean techniques to improve operational efficiency can play an important role in this process. By improving operational efficiency and adopting a more customer- centric approach, Ex-Im Bank seeks to better align scarce resources with the needs of its customers.

This article examines how Ex-Im Bank and peer Export Credit Agencies (ECAs) are using performance metrics, customer surveys, and "lean techniques" to improve the overall customer experience. It benchmarks Ex-Im Bank's policies against the best practices articulated by peer ECAs and a broader group of public and private financial institutions. The author's observations and recommendations are informed by a review of Ex-Im Bank's financial reports, interviews with Ex-Im Bank staff and a survey of ECA peers on performance metrics for operational efficiency.

The ECA survey results confirm the importance of improving operational efficiency including transaction response time and its linkage with customer satisfaction. Second, that soliciting customer feedback in a timely and systematic manner provides valuable insight as to customer priorities and potential areas for improvement. Customer feedback informs future resource allocation as well as the selection of performance metrics to measure operational efficiency. A growing number of ECAs are implementing lean principles to streamline internal processes including the flow of information associated with these processes. Informed by the lean process, management can better align internal work processes with customer priorities and track progress in a transparent manner.

Mark Thorum is Assistant Inspector General for Inspections and Evaluations with the U.S. Export Import Bank, Office of Inspector General. Mr. Thorum is ABD and PhD candidate at the Virginia Polytechnic Institute and State University. Much of the research and findings of this paper were previously released by the author in a report from the Office of the Inspector General U.S. Export Import Bank dated September 28, 2012. The report can be accessed at http://www.exim.gov/oig/upload/Final-20Report-20Complete-20Portfolio-20Risk-20120928-1.pdf

This paper represents the views of the author and should not be interpreted as reflecting those of the Office of the Inspector General of the Export-Import Bank or those of the management of the Export-Import Bank.

Appendix Five

VIRGINIA TECH

Mark Thorum (b) (6), (b) (7)(C)

Request to insert disclaimer in dissertation

Mark Thorum (b) (6), (b) (7)(C) Fri, Apr 15, 2016 at 11:28 AM
To: (b) (6), (b) (7)(C)

Dear (b) (6), (b) (7)(C):

I hope this e-mail finds you well. I am writing in relation to my dissertation thesis that was submitted using the ETD format and approved in May/June of 2015. The dissertation is entitled "Essays in International Financial Governance." While re-reading the dissertation, I noticed that the disclaimer I had inserted previously in two of the stand alone essays had been deleted. I suspect it happened when I reformatted and combined the separate essays.

As I currently work for the U.S. federal government, I need to insert standard language stating that the views expressed in the articles are mine and do not reflect the views of the agency. I would also like to extend the period of restricted public access for an additional year. Is there a convenient time I may call you to discuss this request?

Thank you for your consideration.

Mark Thorum

Appendix Six

WHEN U.S. WORKS PASS INTO THE PUBLIC DOMAIN

By Lolly Gasaway University of North Carolina

Definition: A public domain work is a creative work that is not protected by copyright and which maybe freely used by everyone. The reasons that the work is not protected include: (1) the term of copyright for the work has expired; (2) the author failed to satisfy statutory formalities to perfect the copyright or (3) the work is a work of the U.S. Government.

DATE OF WORK	PROTECTED FROM	TERM
Created 1-1-78 or after	When work is fixed in tangible medium of expression	Life + 70 years[1] (or if work of corporate authorship, the shorter of 95 years from publication, or 120 years from creation[2]
Published before 1923	In public domain	None
Published from 1923 - 63	When published with notice[3]	28 years + could be renewed for 47 years, now extended by 20 years for a total renewal of 67 years. If not so renewed, now in public domain
Published from 1964 - 77	When published with notice	28 years for first term; now automatic extension of 67 years for second term
Created before 1-1-78 but not published	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2002, whichever is greater
Created before 1-1-78 but published between then and 12-31-2002	1-1-78, the effective date of the 1976 Act which eliminated common law copyright	Life + 70 years or 12-31-2047 whichever is greater

1 Term of joint works is measured by life of the longest-lived author.

2 Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. § 302(c).

3 Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between 1-1-78 and 3-1-89, effective date of the Berne Convention Implementation Act, retained copyright only if efforts to correct the accidental omission of notice was made within five years, such as by placing notice on unsold copies. 17 U.S.C. § 405. (Notes courtesy of Professor Tom Field, Franklin Pierce Law Center and Lolly Gasaway)

LOLLY GASAWAY Last updated 11-04-03

Date: November 20, 2018

To: Integrity Committee

From: Mark Thorum Assistant Inspector General

Subj: Response to Integrity Committee Case 954

Dear Integrity Committee:

Further to my letter dated November 5, 2018 I am attaching an additional email for your consideration. The email is from my dissertation advisor, (b) (6), (b) (7)(C) and is dated January 15, 2015. As you will note in comment three, (b) (6), (b) (7)(C) suggests to move the credits to the prior publications and my author bios from the article abstracts (pages 58, 86, 128) to the front of the manuscript. I received similar guidance from the VT graduate school editing staff. The importance of the email is that it supports my assertion that the disclaimers were originally submitted as part of my dissertation, but inadvertently dropped from the full manuscript later in the formatting process. Please see the full text of the email in Appendix One.

Thank you for your consideration.

Mark Thorum

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VIRGINIA TECH

Mark Thorum (b) (6), (b) (7)(C)

Dissertation draft

(b) (6), (b) (7)(C) > Thu, Jan 15, 2015 at 10:20 AM
To: Mark Thorum (b) (6), (b) (7)(C) >
Cc: (b) (6), (b) (7)(C) >

Mark:

Thanks for this draft, and it is looking good. Arguably, it is defensible now, but I am not sure if you can make the deadlines for defending student status. (b) (6), (b) (7)(C) would know better.

I have a PDF, so I cannot make suggestions in your text. With regard to how it sits now, I have some questions:

1) I am not sure the front and back matter all meet the specs of the Grad School, and I have never heard before that a statement needed to be made on the title page about the document being a manuscript dissertation.

2) Chapter 1 and 2 appear to be new material, and this is fine, but they are tagged as "Introduction and Overview" (pp. 1-28) and then "Lit Review and Conceptual Framework" (pp. 29-57). Often the y seem to be doing the same work, and I wonder if it would be better to interweave some of Chp. 2 into Chp. 1 as part of introducing and giving an overview of the thesis. Right now, they almost read like two introductions to the same work.

3) Chapters 3, 4 and 5 are presented more as reprints of your essays (especially in the top matter, credits, and author bios on pps. 58, 86., and 128). Just making look like the other chapters, and then putting these credits about the publications at the end or in the beginning of the manuscript would be more suitable. Also you run all of your footnotes consecutively through the chapters, but it would make more sense to run them 1 to X in each chapter individually. You use in text citations, and put them at the end of each chapter, so this parallel text construction with the footnotes and citations would be less confusing.

4) Chapter 6 appears at times to rehash much of Chps. 1 and 2. What is restatement/summary of each section is uncalled for with Chps. 1 and 2 already doing some of this overview. Your current conclusiveness is held in only three pages, namely, pp. 165-167. Bits and pieces of the summaries that precede these three pages would make the conclusions you seem more hefty, but each essay has its conclusion as well. So making the section more of an afterword, epilogue, or lessons learned section is maybe better. It need not be long, but three pages does not allow you much room to sail forward with your own professional insights now for a conclusion.

5) These comments are about organization, layout, and designing the narrative. It could remain as it is now, and basically work. A certain awkwardness to the current narrative, however, could dull its impact. A few tweaks would make it hold together and have more influence all at the same time.

See what (b) (6), (b) (7)(C) says, but these are more initial impressions. The draft is very good, and the quality of the papers is duly noted in

their placement and purpose. Making some of the suggested refinements would enhance the presentation, and make your case that much stronger.

All of that said, I am looking forward to the oral defense, soon.

Best wishes,

(b) (6), (b) (7)(C)

[Quoted text hidden]

[Quoted text hidden]
<Essays_in_International_Financial_Governance_ January 2015___.pdf>

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(b) (6), (b) (7)(C)