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COMMITTEE ON GOVERNMENT REFORM**

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**INTOLERANCE AND THE POLITICIZATION OF
SCIENCE AT THE SMITHSONIAN**

*SMITHSONIAN'S TOP OFFICIALS PERMIT THE DEMOTION AND
HARASSMENT OF SCIENTIST SKEPTICAL OF DARWINIAN EVOLUTION*

STAFF REPORT

**PREPARED FOR
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DRUG POLICY AND HUMAN RESOURCES**

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TABLE OF CONTENTS

EXECUTIVE SUMMARY.....	3
INTRODUCTION.....	8
A CHRONOLOGY OF RETALIATION.....	10
1. EVIDENCE OF HARASSMENT AND A HOSTILE WORK ENVIRONMENT.....	10
2. EVIDENCE OF AN INTENT TO DISCRIMINATE AGAINST SCIENTISTS BASED ON THEIR <i>OUTSIDE ACTIVITIES</i> REGARDING EVOLUTION.....	18
3. EVIDENCE OF HOSTILITY BASED ON ANTI-RELIGIOUS AND POLITICAL MOTIVATIONS.....	21
3. EVIDENCE OF A CAMPAIGN TO SMEAR DR. STERNBERG BY GOVERNMENT OFFICIALS.....	22
THE SMITHSONIAN RESPONSE: STONEWALLING RATHER THAN ACTION.....	26
RECOMMENDATIONS.....	28
APPENDIX.....	ATTACHMENT

EXECUTIVE SUMMARY

In January 2005, an opinion piece published in the *Wall Street Journal* first raised public awareness about disturbing allegations that officials at the Smithsonian Institution's National Museum of Natural History (NMNH) had retaliated against museum Research Associate (RA) Richard Sternberg because he allowed publication of an article favoring the theory of intelligent design in a biology journal.¹ A well-published evolutionary biologist with two doctorates in biology, Dr. Sternberg claimed that after publication of the article, his colleagues and supervisors at the NMNH subjected him to harassment and discrimination in an effort to force him out as a Research Associate.

In November of 2004, Dr. Sternberg filed a complaint with the U.S. Office of Special Counsel (OSC), the agency charged with "protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing." The OSC eventually found evidence to corroborate Dr. Sternberg's complaint, concluding that "[i]t is... clear that a hostile work environment was created with the ultimate goal of forcing" Dr. Sternberg out of the Smithsonian. Despite this finding, the OSC was unable to pursue its investigation due to a question of jurisdiction. In August of 2005, subcommittee staff initiated their own investigation into the possible mistreatment of Dr. Sternberg by the Smithsonian. During their investigation, staff met with Dr. Sternberg and senior Smithsonian officials, and reviewed internal emails provided by the Smithsonian in response to requests from the subcommittee.

The staff investigation has uncovered compelling evidence that Dr. Sternberg's civil and constitutional rights were violated by Smithsonian officials. Moreover, the agency's top officials—Secretary Lawrence Small and Deputy Secretary Sheila Burke—have shown themselves completely unwilling to rectify the wrongs that were done or even to genuinely investigate the wrongdoing. Most recently, Burke and Small have allowed NMNH officials to demote Dr. Sternberg to the position of Research Collaborator, despite past assurances from Burke that Dr. Sternberg was a "Research Associate in good standing" and would be given "full and fair consideration" for his request to renew his Research Associateship.² The failure of Small and Burke to take any action against such discrimination raises serious questions about the Smithsonian's willingness to protect the free speech and civil rights of scientists who may hold dissenting views on topics such as biological evolution.

Major findings of this staff investigation include:

- ***Officials at the Smithsonian's National Museum of Natural History created a hostile work environment intended to force Dr. Sternberg to resign his position as a Research Associate in violation of his free speech and civil rights.*** There is

¹ David Klinghoffer, "The Branding of a Heretic," *The Wall Street Journal*, January 28, 2005.

² Letter from Sheila Burke to Rep. Mark Souder, May 3, 2006.

substantial, credible evidence of efforts to abuse and harass Dr. Sternberg, including punitively targeting him for investigation in order to supply a pretext for dismissing him, and applying to him regulations and restrictions not imposed on other researchers. Given the factual record, the Smithsonian's pro-forma denials of discrimination are unbelievable. **Indeed, NMNH officials explicitly acknowledged in emails their intent to pressure Sternberg to resign because of his role in the publication of the Meyer paper and his views on evolution.** On September 13, 2004, Dr. Jonathan Coddington, chair of the zoology department, wrote to crustacean curator Dr. Rafael Lemaitre that he could not find a legal basis for terminating Sternberg, but added: "I suppose we could call him on the phone and verbally ask him to do the right thing and resign?"³ A few hours later, Dr. Lemaitre responded that "a face to face meeting or at least a 'you are welcome to leave or resign' call with this individual, is in order."⁴ Finally, in an email on October 6, 2004, Dr. Coddington (in his capacity as Dr. Sternberg's "supervisor") stated that he was planning to meet with Dr. Sternberg to convey the message "that if he had any class he would either entirely desist or resign his appointment."⁵ Clearly, the NMNH management was trying to make Dr. Sternberg's life at the Museum as difficult as possible and encourage him to leave, since they knew they had no legal grounds to dismiss him.

- ***In emails exchanged during August and September 2004, NMNH officials revealed their intent to use their government jobs to discriminate against scientists based on their outside activities regarding evolution.*** For example, Dr. Hans Sues, Associate Director for Research and Collections, suggested in emails on August 30, 2004, and again on September 9, 2004, that Dr. Sternberg would never have been appointed as an RA if Smithsonian officials had known about his non-governmental activities regarding evolution. Sues even blamed the scientist who nominated Sternberg as a Research Associate for not adequately investigating his background: "Sternberg is a well-established figure in anti-evolution circles, and a simple Google search would have exposed these connections."⁶ The clear implication was that had a background check been conducted on Sternberg's non-governmental activities, he would have been barred from being a Research Associate. **Given the attitudes expressed in these emails, scientists who are known to be skeptical of Darwinian theory, whatever their qualifications or research record, cannot expect to receive equal treatment or consideration by NMNH officials.** As a taxpayer-funded institution, such blatant discrimination against otherwise qualified individuals *based on their outside views and activities* raises serious free speech and civil rights concerns. With regard to Dr. Sternberg, this discriminatory attitude makes it all-but-impossible

³ Jonathan Coddington, "Re: Upcoming in Helsinki," September 13, 2004, 10:51 AM, email to Rafael Lemaitre and Hans Sues.

⁴ Rafael Lemaitre, "Re: Upcoming in Helsinki," September 13, 2004, 1:46 PM, email to Jonathan Coddington and Hans Sues.

⁵ Jonathan Coddington, "Re: Research Associate sponsor," October 6, 2004, 1:29 PM, email to Hans Sues.

⁶ Hans Sues, "Re: Reply [3]," September 9, 2004, 10:57 AM, email to Frank Ferrari.

for him to be fairly considered for reappointment when his current term as Research Associate ends in 2007. Indeed, NMNH officials expressed in their emails a clear expectation that Dr. Sternberg would *not* be reappointed as a Research Associate after expiration of his current appointment. True to their statements at the time, NMNH officials have recently notified Dr. Sternberg that they will not renew his position as a Research Associate. Rather, they will only permit him to continue his research at the Smithsonian as a Research Collaborator—a demotion from his previous position.⁷

- ***The hostility toward Dr. Sternberg at the NMNH was reinforced by anti-religious and political motivations.*** Dr. Sternberg’s OSC complaint describes efforts to discover or disparage his supposed religious and political beliefs, and the OSC investigation concluded that there was “a strong religious and political component to the actions taken after the publication of the Meyer article.” The emails reviewed by subcommittee staff corroborate this finding. In a memo prepared on February 8, 2005, NMNH scientist Marilyn Schotte admitted that after publication of the Meyer paper, Dr. Coddington wanted to know “if Dr. Sternberg was religious.” Dr. Schotte further admitted telling Coddington that Sternberg “was a Republican.” Schotte even conceded that Coddington may have asked her whether Sternberg “was a fundamentalist” and whether “he was a conservative.” Dr. Schotte insisted that by asking such questions “Dr. C. was not being judgmental, only curious.”⁸ But given the demonstrably hostile atmosphere toward Sternberg at the NMNH during the period in question, there is nothing innocuous about an official with supervisory authority inquiring into Sternberg’s religious and political beliefs. The email traffic also substantiates Sternberg’s concern about a viscerally anti-religious culture existing at the Museum. For example, on February 22, 2005, NMNH Research Associate Sue Richardson sent an email of solidarity to Dr. Coddington regarding the Sternberg situation. She complained about the time she spent living in the “Bible Belt,” mockingly reporting that “the most fun we had by far was when my son refused to say the Pledge of Allegiance because of the ‘under dog’ part...”⁹ Would similar expressions of disparagement have been tolerated by Smithsonian officials if directed at a racial minority?
- ***NMNH officials conspired with a special interest group on government time and using government emails to publicly smear Dr. Sternberg; the group was also enlisted to monitor Sternberg’s outside activities in order to find a way to dismiss him.*** In cooperation with the pro-evolution National Center for Science Education (NCSE), Museum officials attempted to publicly smear and discredit

⁷ Richard Vari, “RE: NMNH Research Associateship: CV and Research,” October 5, 2006, 12:42 AM, email to Richard Sternberg; Letter from Cristian Samper K. to Richard Sternberg, November 2006.

⁸ Marilyn Schotte, “statements,” March 22, 2005, 9:53 AM, email to Jonathan Coddington with attached memo dated February 8, 2005.

⁹ Sue Richardson, “Re: misc,” February 22, 2005, 9:38 AM, email to Jonathan Coddington.

Dr. Sternberg with false and defamatory information. While NMNH officials have the right to criticize scientific views with which they disagree, using government time and resources to publicly smear with false information someone whom they supervise is an abuse of their authority as government employees. In addition, Dr. Sues promised the director of the NCSE on August 26, 2004, that “[f]rom now on, I will keep an eye on Dr. (von) Sternberg, and I’d greatly appreciate it if you or other NCSE specialists could let me [know] about further activities by this gentleman in areas poutside [sic] crustacean systematics.”¹⁰ The clear purpose of having the NCSE monitor Sternberg’s outside activities was to find a way to dismiss Sternberg. Dr. Sues hoped that the NCSE could unearth evidence that Sternberg had misrepresented himself as a Smithsonian employee, which would have been grounds for dismissal as a Research Associate.

- ***Secretary Small and Deputy Secretary Burke have exhibited a head-in-the-sand attitude toward wrongdoing at their agency; they have engaged in stonewalling and spin rather than dealing forthrightly with the discrimination that has occurred.*** In Deputy Secretary Burke’s most recent response dated May 3, 2006, she acknowledged that Dr. Sternberg’s viewpoint on evolution sparked “strong disagreement” among other scientists at the NMNH, but insisted that “[w]hile the tone of the disagreement between scholars may seem harsh, disagreement does not equal discrimination.”¹¹ However, the issue is not the disagreement of Smithsonian scientists with Dr. Sternberg’s views on evolution, **but rather their effort to use their official powers to punish Dr. Sternberg by seeking to remove him as a Research Associate, and their effort to publicly smear him with false information on government time using government emails. More broadly, NMNH officials have made clear their intent to prevent any scientist publicly skeptical of Darwinian theory from ever being appointed as a Research Associate, no matter how sterling his or her professional credentials or research.** This is discrimination, plain and simple. The abject failure of the Secretary and Deputy Secretary to protect the basic rights of Dr. Sternberg to a civil work environment is indefensible.

Because of the Smithsonian’s continued inaction in the Sternberg case, Congress should consider statutory language that would protect the free speech rights regarding evolution of scientists in the Smithsonian and other federally-funded institutions. Since the treatment of Dr. Sternberg came to light in early 2005, evidence has accumulated of widespread discrimination against other qualified scientists who dissent from Darwinian theory, making further violations by federal agencies likely. While the majority of scientists embrace Darwinian theory, it is important that neither federal funds nor federal power be used to punish or retaliate against otherwise qualified scientists merely because they dissent from the majority view.

¹⁰ Hans Sues, “Re: Meyer article,” August 26, 2004, 1:41 PM, email to Eugenie Scott.

¹¹ See note 2.

INTRODUCTION

Dr. Richard Sternberg is an evolutionary biologist who holds two Ph.D.s in biology, one in molecular evolution and the other in theoretical biology.¹² Dr. Sternberg has authored more than 30 refereed scientific publications. He is a staff scientist with the National Center for Biotechnology Information at the National Institutes of Health as well as a Research Associate at the Smithsonian Institution's National Museum of Natural History. From 2001-2004 Dr. Sternberg was managing editor of the *Proceedings of the Biological Society of Washington*, a peer-reviewed biology journal published by the Biological Society of Washington. Although legally separate from the National Museum of Natural History, the *Proceedings* is governed by a council that typically includes scientists from the NMNH, and it has been supported in the past by public funds and other benefits from the Smithsonian.

As managing editor of the *Proceedings*, Dr. Sternberg in 2004 accepted for publication an article titled "The Origin of Biological Information and the Higher Taxonomic Categories" by Dr. Stephen C. Meyer. Dr. Meyer holds a Ph.D. in the history and philosophy of science from Cambridge University and is co-editor of *Darwinism, Design, and Public Education* (2003), a volume published by Michigan State University Press. Meyer's article was accepted for publication after undergoing standard peer-review by three scientists. The publication of the article in August 2004 generated immediate controversy in the scientific community because of its viewpoint: it critiqued Darwinian explanations for the origin of biological information and proposed intelligent design as a better explanation. Pro-evolution groups expressed consternation and even outrage that a scholar favoring intelligent design had been able to publish his ideas in a peer-reviewed biology journal. The resulting controversy received considerable attention in the scientific community, being reported in such publications as *Science*, *Nature*, and the *Chronicle of Higher Education*.

According to Dr. Sternberg, his harassment by supervisors and colleagues at the NMNH commenced soon after publication of the Meyer article. Dr. Sternberg on his website maintains that the harassment and retaliation took many forms, including:

- "*Efforts to remove me from the Museum.* After Smithsonian officials determined that there was no wrong-doing in the publication process for the Meyer paper and that they therefore had no grounds to remove me from my position directly, they tried to create an intolerable working environment so that I would be forced to resign...."
- "*Perceived political and religious beliefs investigated.* Smithsonian officials attempted to investigate my personal religious and political beliefs in gross violation of my privacy and my First Amendment rights."

¹² The background information cited here about Dr. Sternberg and his original complaint can be found on his website, <http://www.rsternberg.net>.

- “*Smearred with false allegations.* My professional reputation, private life, and ethics were repeatedly impugned and publicly smeared with false allegations by government employees working in tandem with a non-governmental political advocacy group, the National Center for Science Education (NCSE).”
- “*Creation of hostile work environment...* I was transferred from the supervision of a friendly sponsor (supervisor) at the Museum to a hostile one... I was twice forced to move specimens from my office space on short notice for no good reason, my name plate was removed from my office door, and eventually I was deprived of all official office space and forced to use a shared work area as my work location in the Museum...I was subjected to an array of new reporting requirements not imposed on other Research Associates... My access to the specimens needed for my research at the Museum was restricted. (My access to the Museum was also restricted. I was forced to give up my master key.)”
- “In sum, it is clear that I was targeted for retaliation and harassment explicitly because I failed in an unstated requirement in my role as editor of a scientific journal: I was supposed to be a gatekeeper turning away unpopular, controversial, or conceptually challenging explanations of puzzling natural phenomena. Instead, I allowed a scientific article to be published critical of neo-Darwinism, and that was considered an unpardonable heresy.”

In November of 2004, Dr. Sternberg filed a complaint with the U.S. Office of Special Counsel (OSC), the agency charged with “protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing.”¹³ The OSC eventually found evidence to corroborate Sternberg’s complaint, concluding that “[i]t is... clear that a hostile work environment was created with the ultimate goal of forcing” Sternberg out of the Smithsonian.¹⁴ Despite this finding, the OSC was unable to pursue its investigation due to a question of jurisdiction. In August of 2005 subcommittee staff initiated their own investigation into the possible mistreatment of Dr. Sternberg by the Smithsonian. During their 12-month investigation, staff met with Dr. Sternberg and senior Smithsonian officials,¹⁵ requested information and responses to various questions through written correspondence, and reviewed internal emails provided by the Smithsonian in response to requests from the subcommittee.

As will be discussed in detail below, subcommittee staff were able to corroborate or confirm many parts of these allegations through examination of emails supplied to the subcommittee by the Smithsonian. The emails reviewed reveal that NMNH staff did create a hostile work environment for Dr. Sternberg and treated him unfairly as a direct result of his editorial involvement with the publication of the Stephen Meyer paper.

¹³ U.S. Office of Special Counsel website, <http://www.osc.gov/intro.htm>.

¹⁴ Letter from U.S. Office of Special Counsel to Dr. Richard von Sternberg, August 5, 2005. This letter has been released to the public by Dr. Sternberg on his website.

¹⁵ On November 18, 2005, Rep. Souder, Senator Santorum and their staff met with Smithsonian Secretary Lawrence Small and Deputy Secretary and Chief Operating Officer Sheila Burke.

A CHRONOLOGY OF RETALIATION

1. EVIDENCE OF HARASSMENT AND A HOSTILE WORK ENVIRONMENT

Almost immediately after the August 2004 issue of the *Proceedings* was published, there was email traffic between Museum staff indicating they were considering ways to penalize Dr. Sternberg or dismiss him altogether for his non-job-related involvement in the publication of the Meyer article. These considerations were being discussed without any substantiated evidence of unethical behavior on the part of Dr. Sternberg.

To understand some of the background behind the email discussions, it is important to note that the invertebrate zoology department was undergoing a major reshuffling of office space at the time the Meyer paper was published. Dr. Sternberg had been asked on July 28, 2004,¹⁶ by Dr. Jonathan Coddington, the chair of the zoology department, to move to his late sponsor Brian Kensley's office (W-107) and share the space with two other "long-term visitors." Dr. Coddington did indicate, however, that "[t]his particular destination may not eventuate, as the space committee has to consider various options."¹⁷ Dr. Sternberg agreed to make the move and did so around August 19, the same day the Museum staff became aware of the Meyer article.

Immediately after the Meyer publication became known, certain Museum staff began sending hostile email messages that indicated not only their disapproval of Dr. Sternberg's publication of the Meyer article, but also their desire to take discriminatory action against Dr. Sternberg or dismiss him from his Research Associate position all together. On August 19, 2004, Dr. Rafael Lemaitre, a zoologist and crustacean curator at the Museum with a known personal dislike for Dr. Sternberg, sent an email to Dr. Coddington and Dr. Jon Norenburg, another zoologist at the Museum, indicating his displeasure with the fact that Dr. Sternberg was to be given new office space within the crustacean department "with even a name on it."¹⁸ Dr. Norenburg replied to Dr. Lemaitre and Dr. Coddington that he hoped the department wasn't "even considering extending his access to space...As is, I feel like I want my office re-keyed."¹⁹ Dr. Coddington, who was overseeing the department's space realignments, replied to Dr. Lemaitre and Dr. Norenburg several days later by indicating he would be willing to consider some of these suggestions: "Aha. Well, this is why I want the space meeting. Need to know what the

¹⁶ Jonathan Coddington, "Space..." July 28, 2004, 5:46 PM, email to Richard Sternberg and Mary Mickevich.

¹⁷ Ibid.

¹⁸ Rafael Lemaitre, "FYI," August 19, 2004, 8:12 AM, email to Jonathan Coddington and Jon Norenburg.

¹⁹ Jon Norenburg, "Re: FYI," August 19, 2004, 12:47 PM, email to Rafael Lemaitre and Jonathan Coddington.

consensus is...”²⁰ This email indicates that Dr. Coddington was at least considering some kind of demotion in office space for Dr. Sternberg as a result of the hostile and discriminatory remarks being expressed within NMNH.

On August 23, the email record shows that Dr. Lemaitre continued his efforts to place Dr. Sternberg in less than desirable office space by seizing the opportunity posed by the coincidental space realignment. In an email to Dr. Coddington that was forwarded to the “space committee,” Dr. Lemaitre asked, “What has the committee (or anybody else for that matter) decided so far on the intended use of the ex-Kensley office (W-107): a visitor lab? a dedicated space for Sternberg and/or Mickevich, and if for these individuals, on what basis? I gather Sternberg’s stock is sinking fast.”²¹

A few days later, on August 25, Dr. Coddington emailed Dr. Hans Sues, the Associate Director for Research and Collections at the Museum, to seek his advice. “At present I am not tossing him out because we have the space to accommodate him, but as I doubt that we can [find] anyone to nominate him as a research associate...Do you want anything done?”²² Again, the implication in this email was that Dr. Coddington was open to considering some sort of penalty or demotion for Dr. Sternberg.

On August 31, Dr. Lemaitre continued his campaign to restrict Dr. Sternberg’s research privileges as a Research Associate. He sent a series of questions to Dr. Sues and Dr. Coddington inquiring about “the current situation.” Some of the questions he asked in the email suggest he was seeking approval to restrict Dr. Sternberg’s access to collections and access to other rooms, including the library, in the building. He inquired:

The RA has access to collections, but SI Directive 205 states: “Access to and use of collections must be approved in advance by the appropriate unit staff member in accordance with established policy and procedures”. Who is this staff member? Has any curator been consulted on the research being conducted, or how the collections are being used?

...I presume this RA has a key to most rooms in the floor (including mine), and the stacks, to allow entry at out of the ordinary business hours, i.e. when no SI staff is here. If true, who authorized this key, and is it all legal for RAs to have keys on a permanent basis?

He then described the “working environment” in the invertebrate zoology department: “The recent events are fastly precipitating serious personnel issues as it is clear that tensions are at a high level on the floor. Is this a proper working environment for all the

²⁰ Jonathan Coddington, “Re: FYI,” August 23, 2004, 1:06 PM, email to Rafael Lemaitre and Jon Norenburg.

²¹ Rafael Lemaitre, “Wed 1pm Schmitt Rm meeting to discuss IZ Space usage and allocations,” August 23, 2004, 12:06 PM, email to Jonathan Coddington.

²² Jonathan Coddington, “Fwd: FW: Meyer critique on PT (evoblog) [meyer2004],” August 25, 2004, 4:46 PM, email to Hans Sues.

staff that lives on this floor? Does the admin really expect us to live normally in this environment for 2.5 years, and will things really change after that?”²³

The irony of this email is that the only person being threatened on the first floor was Dr. Sternberg himself as a direct result of Dr. Lemaitre’s efforts to retaliate against him for his involvement with publishing the Meyer paper. Instead of putting a stop to Dr. Lemaitre’s hostilities, however, Dr. Sues lent his support to Dr. Lemaitre’s suggested restrictions:

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

One important thing to keep in mind, however, is the equal treatment of all RAs in the section. You must not impose more onerous restrictions on one particular RA than on other RAs in the section.”²⁴

The latter statement demonstrates that Dr. Sues knew that, legally, any restrictions imposed on Dr. Sternberg would need to be imposed on everyone else within the crustacean division, but he did not view the creation of these new restrictions—which were developed solely because some museum staff were outraged at Dr. Sternberg’s views and publication of the Meyer paper—as discriminatory in and of themselves. If the restrictions had been developed prior to the Meyer paper being published out of a neutral desire to have greater oversight over all RAs, the decision to impose new restrictions would have been objective and without a retaliatory motive. But, given the circumstances and email debate surrounding the recommendations for greater restrictions, it is clear that NMNH staff were actively seeking to punish Dr. Sternberg. In the end, based on a review of the emails, it does not appear that any other RA was forced to comply with the restrictions and oversight placed on Dr. Sternberg.

In response to Dr. Sues’ email, Dr. Coddington replied back to Dr. Sues alone: “I’m not going to get bit to death by daily emails. *The access and key issues are trivial and can be*

²³ Rafael Lemaitre, “Re: Life on West Wing 1st floor,” August 31, 2004, 12:09 AM, email to Jonathan Coddington and Hans Sues.

²⁴ Hans Sues, “Re: Life on West Wing 1st floor,” September 1, 2004, 8:28 AM, email to Jonathan Coddington and Rafael Lemaitre.

fixed, if out of line [emphasis added].”²⁵ Again, although Dr. Coddington knew it was “out of line,” under pressure from both Dr. Lemaitre and the more senior museum official, Dr. Sues, he was willing to consider restrictions on Dr. Sternberg.

Several days later, on September 8, Dr. Sues reiterated his support for Dr. Lemaitre’s efforts, telling him via email, “Sternberg has not broken any rules applicable to Smithsonian Research Associates; we just have to wait until his current term expires. In the meantime, you should get your operational concerns dealt with by Zoology; *I fully support your positions on Visitor Office and collection access* [emphasis added].” Dr. Sues’ statement indicated that he endorsed what was, in essence, a punishment for Dr. Sternberg’s outside activities as editor of the *Proceedings* and his viewpoints on biological evolution.

At this point in the email record, it appears that Dr. Coddington had finally decided to move Dr. Sternberg to a visitor space in W120 at the constant urging of Dr. Lemaitre, who did not want Dr. Sternberg to remain in what was essentially his own private space (while he technically shared the space in Kensley’s office with Mary Mickevich, she apparently rarely came into the office). When it was suggested that W-120 be outfitted with four spacious cubicles or five smaller cubicles for visitors, Kristian Fauchald, a NMNH research zoologist, makes an interesting comment: “I assume that we are here talking about short-term visitors only in W120 and that the long-term people, Chris Tudge, Rick Sternberg and Mary Mickevich will be accommodated elsewhere.”²⁶ This telling email makes a distinction between long- and short-term visitors and implies that W120 would be inappropriate for long-term RAs. Yet, on September 13, Dr. Coddington announced, “Decided that responsible could be divisions...it’s up to them to decide, rather than making an individual responsible, except in particular cases. Sternberg and M are still left in 107 until they actually move to 120.”²⁷ This email indicates that Dr. Coddington had finally given in to Dr. Lemaitre, who was the crustacean division head, and had decided to permanently move Dr. Sternberg to visitor space in W120—a move that Dr. Sues supported.

On October 5, the discussion of access to collections, access to keys and other office issues continued. Dr. Lemaitre emailed Dr. Coddington and Dr. Sues:

I will not be able to resolve anything re the collections unless you back me up. Hans has said he will. I will of course consult with you first. When the new visitor lab is set up and ready for occupation (est. mid to late November), working

²⁵ Jonathan Coddington, “Re: Life on West Wing 1st floor,” September 1, 2004, 11:46 AM, email to Hans Sues.

²⁶ Kristian Fauchald, “Re: W-123 & 1st Floor Visitor Space,” August 31, 2004, 9:19 AM, email to Cheryl Bright, Tim Coffey, Jonathan Coddington and Rafael Lemaitre.

²⁷ Jonathan Coddington, “ZooSpace,” September 13, 2004, 12:43 PM, email to Cheryl Bright, Tim Coffey, Kristian Fauchald and Rafael Lemaitre.

schedules, access to keys, and use of collections in Crustacea will have to be addressed for the 2 resident RAs on this floor (Sternberg, Tudge).²⁸

While Dr. Lemaitre mentioned that another RA—“Tudge”—would be affected, there is no email evidence to suggest that Tudge was ever spoken to regarding new restrictions and oversight as Dr. Sternberg was on October 13 (discussed later). Despite Dr. Lemaitre’s refusal to the contrary, (his email says “I did not imply any retaliation for anything.”), it is explicit throughout the email record that he was targeting Dr. Sternberg specifically and no one else.

Additionally, the emails indicate that NMNH staff not only intended to impose restrictions on Dr. Sternberg’s ordinary research privileges, but they also intended that the restrictions might be sufficient to force Dr. Sternberg to resign his position since they couldn’t legally fire him.

On October 5, 2004, Dr. Coddington told Dr. Lemaitre that he should exert greater oversight over Dr. Sternberg’s research activities by asking him to provide “abstracts of his current research projects, and the impact of the collection thereof. In addition to info on his presumptive schedule, *that should take care of Sternberg the research associate, right?* [emphasis added]”²⁹ The content and tone of this email suggests that Dr. Coddington knew that these new burdensome requirements would sufficiently discourage Dr. Sternberg, perhaps enough to cause him to leave.

Indeed, later, on October 6, Dr. Coddington told Dr. Sues via email that he was planning to meet with Dr. Sternberg to discuss the conditions of his ongoing research associate position and to “hint that if he had any class he would either *entirely desist or resign his appointment* [emphasis added].”³⁰ In this email, Dr. Coddington’s real intentions are obvious. Clearly, he was singling Dr. Sternberg out for retaliation. Yet, when presented with this evidence, the Smithsonian Secretary and Deputy Secretary flatly deny any wrongdoing on the part of NMNH senior staff, dismissing it as only “strong disagreement” over viewpoints and not discrimination.³¹

On October 13, 2004, Dr. Coddington did meet with Dr. Sternberg to discuss his research associate status, and at the meeting he discussed the new terms of Dr. Sternberg’s position. Dr. Sternberg described the meeting at length in his OSC complaint:

“[Coddington] wanted Sternberg to know that Lemaitre had “fiduciary responsibility” with respect to the research going on in the Division of Crustacea and so Lemaitre needed to be fully apprised of what Sternberg was doing at the Museum at all times. Therefore, Sternberg needed to provide Lemaitre an outline

²⁸ Rafael Lemaitre, “Re: Sternberg Web Page,” October 5, 2004, 1:41 PM, email to Jonathan Coddington and Hans Sues.

²⁹ Jonathan Coddington, “Re: Sternberg Web Page,” October 5, 2004, 2:55 PM, email to Rafael Lemaitre.

³⁰ See note 5.

³¹ See note 2.

of research. Sternberg asked what he meant by an outline of research activities. Coddington said that Sternberg needed to provide Lemaitre with [a] detailed research plan, the exact research projects he would be working on, the papers he planned to write and on what schedule from start to finish, the expected journals that he would be submitting his papers to for publication, a complete list of the specimens and materials that Sternberg would be using, the catalog numbers for the specimens and materials, as well as the times and dates he would plan to use them, and also Sternberg's planned office hours...

...He told Sternberg that those were the terms for how his Research Associateship would continue. Sternberg had to provide Lemaitre with what he wants, or Sternberg's connection with the Museum would not work out. Coddington said they would not terminate Sternberg officially, but that he would get no space and access to collections would be limited and constrained in many important ways...

...He told Sternberg that office and work space at the Museum was severely limited, and that a lot of reorganization was going on. He said that Sternberg would not be able to keep the temporary space that he was currently sharing with another Research Associate. Coddington reported that he looked around for alternative office space but that Lemaitre had said no, that he didn't want Sternberg to be anywhere in the crustacean area. But, Coddington added, he might be able to find Sternberg a desk somewhere. Sternberg pointed out that his previous supervisor Brian Kensley had, before he died, committed to give Sternberg office space during the term of his Research Associateship. Coddington was unmoved; he said that things were different now with Kensley gone and Lemaitre in charge of Sternberg's area.

Coddington then went on to the question of keys. He told Sternberg that many people were very uncomfortable with Sternberg having a set of master keys; they were afraid that he might break into their offices, stealing or disturbing their materials, etc. At this wild accusation Sternberg grew angry. He told Coddington that he had a set of master keys from the time he started working in the Museum in January 2000. He asked Coddington to name any time that he had misused or abused that privilege. Coddington did not respond directly, but repeated that people in the Museum didn't trust Sternberg anymore. He said if anything is missing or damaged, there would be a good chance that Sternberg would be blamed...

...[Coddington] went back to the key question, stating that Sternberg was not going to be able to keep his master keys. If he was later given a workspace, he would be given a key to that workspace area and that's it. Sternberg asked if the other Research Associates were being treated the same way. Coddington responded, "This is not about the other RAs. This is only about you. You are being treated differently, but you know perfectly well why you're being treated differently..."

...Coddington also told Sternberg that he needed to come in to the Museum on a regular basis at times that he had agreed in advance to be there. Sternberg asked, what if he wanted to work on the weekends? Coddington said, "You should come in during normal hours while people are around and show that you are a normal researcher working normally on normal projects."³²

Dr. Coddington's recollection of the October 13 meeting, which he detailed in a February 15, 2005, letter to Dr. Sternberg (after the OSC complaint was made public in the *Wall Street Journal*), was that he was much more fair and evenhanded in how he treated Dr. Sternberg. Regarding Dr. Sternberg's claims about office space, Dr. Coddington clarified that this was only due to the fusion of Invertebrate and Vertebrate Zoology and the ensuing office shuffle. The key change was "due to NMNH implementation of proximity access identification cards, 9/11 and greatly increased attention to security, and a NMNH-wide review of all non-employee access and ID badges." And, the new requirements for Dr. Sternberg to submit summaries and information about his research was "because you [Dr. Sternberg] and I [Dr. Coddington] had no prior collegial relationship." Dr. Coddington went on to say, "I explained that you would continue to receive all research associate rights and privileges, including a standard research associate workspace, access to collections as were necessary for your research, and to literature. I agreed to work out the former and we both agreed that the w600 master key to all Invertebrate Zoology was unnecessary and inappropriate."³³

Obviously, the two accounts of the October 13 meeting between Dr. Sternberg and Dr. Coddington are quite different. Since we don't have any independent report of what was said at the meeting, we can only look at the email record prior to and after the meeting to understand what senior Museum officials were planning on requiring of Dr. Sternberg and their reasons for doing so.

While it is true that broader office moves were being made within Invertebrate Zoology, the email record shows that Dr. Lemaitre and Dr. Sues were pressuring Dr. Coddington to move Dr. Sternberg to a visitor space for both long- and short-term visitors³⁴—something that at least one Museum staff member (Kristian Fauchald) believed was unreasonable to do to long-term visitors.³⁵ Additionally, regarding stricter guidelines on collection

³² Dr. Sternberg's complaint can be found on his website, <http://www.rsternberg.net>.

³³ Jonathan Coddington, "RE: key," February 15, 2005, 4:56 PM, email to Rick Sternberg.

³⁴ Hans Sues, "Reply," September 8, 2004, 5:35 PM, email to Rafael Lemaitre: "I fully support your positions on the Visitor Office and collection access; Hans Sues, "Re: Sternberg Web Page," October 5, 2004, 3:53 PM, email to Jonathan Coddington and Rafael Lemaitre: "I expect Zoology to deal with Rafa's operational concerns – collection security and the question why a Research Associate has a private office when there is no visitor office – quickly and effectively. Private offices really should be reserved for NMNH and affiliated-agency staff."

³⁵ Kristian Fauchald, "Re: W-123 & 1st Floor Visitor Space," August 31, 2004, 9:19 AM, email to Jonathan Coddington, Cheryl Bright, Tim Coffey and Rafael Lemaitre: "I assume that we are here talking about short-term visitors only in W120 and that the long-

access and a more limited set of keys, originally, Dr. Coddington had believed these proposals from Dr. Lemaitre were “out of line.”³⁶ Apparently, he changed his mind under pressure from Dr. Sues and Dr. Lemaitre. Additionally, nowhere in the email record—when the topic of Dr. Sternberg’s key authorization is discussed—is it ever mentioned that 9/11, a review of proximity badges, and heightened security were the reasons for limiting Dr. Sternberg’s access. Rather, it appears more likely that the reason for limiting Dr. Sternberg’s key access was that some staff were strongly opposed to his views on evolution and feared that he might unethically snoop into their office space or use the Smithsonian collections to perform research supporting his anti-Darwinian views.

Perhaps the email that is most revealing about Dr. Coddington’s intent going into the October 13 meeting was his email on October 6 to Dr. Sues saying that he was considering hinting to Dr. Sternberg that he should “entirely desist or resign his appointment.”³⁷ This comment backs up Dr. Sternberg’s recollection that Dr. Coddington said he could not “officially” terminate Dr. Sternberg, “but that he would get no space and access to collections would be limited and constrained in many important ways.”³⁸

Finally, Dr. Coddington sent an email to Dr. Lemaitre on October 14 describing his meeting with Dr. Sternberg. In the email he also commented on Dr. Lemaitre’s proposed rules for RAs within the crustacean division, which Dr. Lemaitre had forwarded for approval on October 11—two days before the October 13 meeting. The email indicates that while Dr. Coddington had not imposed restrictions to the degree Dr. Lemaitre would have liked, he still had imposed new restraints on Dr. Sternberg: “I had a meeting with Rick, and have asked him to clarify what he is working on, a timeline for the research, his average schedule, what specimens he may require, and to what areas he needs access.”³⁹ These requirements closely resemble—except for a few details—what Dr. Lemaitre had proposed as #3 and #4 of his “Procedures”:

3. RA should notify in writing to his/her supervisor the expected working hours within these core hours [of 8 a.m. to 5 p.m.]. If possible a door key that will open only the visitor lab (W-120) may be issued to RA. Access to collections rooms must be coordinated with supervising curator (or in its defect the Department Chair), during these core hours.
4. RA is to report promptly, and in writing, to the scientific researcher (i.e. the supervising curator) the details of the research project(s) being conducted, and groups and/or specimens to be used, on a bi-annual basis.⁴⁰

term people, Chris Tudge, Rick Sternberg and Mary Mickevich will be accommodated elsewhere.”

³⁶ See note 25.

³⁷ See note 30.

³⁸ Dr. Sternberg’s OSC complaint; see note 32.

³⁹ Jonathan Coddington, “Re: The Great IZ Visitor Space Bake-off Results,” October 14, 2004, 5:39 PM, email to Rafael Lemaitre.

⁴⁰ Rafael Lemaitre, “DRAFT procedure and cover e-mail,” October 11, 2004, 1:37 PM, email to Jonathan Coddington.

In response to Dr. Lemaitre's proposed rule that RAs only have key access to their own office, Dr. Coddington responded, "Re keys, I agree, although Rick pointed out that access to the Library is also often essential, and I'd add to the range as well."⁴¹ And, with regard to Dr. Lemaitre's proposed 8 a.m. to 5 p.m. working hours, Dr. Coddington replied, "Have read your drafts and they seem ok except as regards 8-5pm. For many phds in the DC area (and they tend to accumulate), that would drastically curtail their ability to do research."⁴²

These comments help us understand what Dr. Coddington was thinking around the time of the meeting with Dr. Sternberg. While Dr. Coddington did not fully agree with Dr. Lemaitre's over-the-top restrictions, it is clear that he did impose new limitations on Dr. Sternberg that were not previously required and that—at least until that point—had not been imposed on any of the other RAs.

The new restrictions imposed on Dr. Sternberg also directly contradict Dr. Coddington's own description of a Research Associate in a letter to *Panda's Thumb*. In the letter, Dr. Coddington explained that an RA "has permission to visit the Museum for the purpose of studying and working with our collections *without the staff oversight visitors usually receive* [italics added for emphasis]."⁴³

Clearly, the email evidence demonstrates that it was the intent of Museum officials, including Dr. Lemaitre, Dr. Coddington, and Dr. Sues, to create a hostile working environment for Dr. Sternberg with the ultimate goal of pushing him to resign or leave on his own.

2. EVIDENCE OF AN INTENT TO DISCRIMINATE AGAINST SCIENTISTS BASED ON THEIR *OUTSIDE ACTIVITIES* REGARDING EVOLUTION

In the emails exchanged during August and September of 2004, NMNH officials revealed their intent to use their government jobs to discriminate against scientists based on their *outside* activities regarding evolution.

In a series of emails on August 30, Dr. Ferrari and Dr. Sues discussed the Smithsonian's procedures for hiring and firing a Research Associate and how Dr. Sternberg was approved for his RA position. Sues lamented that "The Sternberg situation could not have been prevented by senior management because his CV looks credible and does not reveal his interactions with the creationist movement."⁴⁴ Dr. Sues seemed to be suggesting that

⁴¹ Jonathan Coddington, "Re: The Great IZ Visitor Space Bake-off Results," October 14, 2004, 5:39 PM, email to Rafael Lemaitre.

⁴² Ibid.

⁴³ Jonathan Coddington, "Comment #14871," Online posting, February 3, 2005, The Panda's Thumb, http://www.pandasthumb.org/archives/2005/02/sternberg_vs_sm.html.

⁴⁴ Hans Sues, "Fwd: Re: Research Associate," August 30, 2004, 12:24 PM, email to Frank Ferrari.

if Sternberg's supposed interactions with the "creationist movement" were known, he would not have been approved as an RA, and the "situation" would have been prevented.

Dr. Ferrari's comments also suggested a very real bias in the selection process: "I wonder, however, if we might consider a more open process of vetting nominees? For example, while a post doc here Sternberg was listed in an advertisement in the NY Times as a scientist at the Smithsonian Institution who did not believe in evolution. I saw that page and certainly would have spoken up had I known he was a prospective research associate."⁴⁵ Ferrari seemed to be suggesting that questioning evolution would disqualify a candidate for a position.

Similarly, in an email on September 9, Dr. Sues blamed the scientist who nominated Sternberg as a Research Associate for not adequately investigating his background. "Sternberg is a well-established figure in anti-evolution circles, and a simple Google search would have exposed these connections."⁴⁶ The clear implication was that had a background check been conducted on Sternberg's non-governmental activities, he would have been barred from being a Research Associate.

Given the attitudes expressed in these emails, scientists who are known to be skeptical of Darwinian theory, whatever their qualifications or research record, cannot expect to receive equal treatment or consideration by NMNH officials. As a taxpayer-funded institution, such blatant discrimination against otherwise qualified individuals *based on their outside activities* raises serious free speech and civil rights concerns. Some NMNH officials apparently believe that they have the right to use their official positions to punish scientists who in their outside activities express skepticism toward Darwinian theory. The unwillingness of top Smithsonian officials to take proactive measures to correct this discriminatory environment is shameful. Imagine a parallel situation in which government officials expressed their intent to prohibit the appointment of anyone who is found to have participated (on their own time) in a gay or lesbian group, or in an abortion-rights group. Action to stop such an expression of discriminatory intent would be swift and certain. But in the present case, Smithsonian officials seem indifferent to ensuring that NMNH comply with the basic requirements of the Constitution, Title V civil service law,⁴⁷ and the Smithsonian's own anti-discrimination policy.⁴⁸

⁴⁵ Frank Ferrari, "Fwd: Re: Research Associate," August 30, 2004, 12:46 PM, email to Hans Sues.

⁴⁶ Hans Sues, "Re: Reply [3]," September 9, 2004, 10:57 AM, email to Frank Ferrari.

⁴⁷ The Smithsonian has argued that Dr. Sternberg is not protected by Title V civil service law since he is not an official employee of the Smithsonian; however, he is a federal employee at the National Institutes of Health with an agreement with the Smithsonian that he spend part of his work time doing research at the Smithsonian. Additionally, although the OSC found in its preliminary report that Title V may not cover Dr. Sternberg due to case law pending at the time (*Jonathan M. Fishbein v. Department of Health and Human Services*), that case law has recently been overturned, potentially allowing the OSC to again examine Dr. Sternberg's case.

⁴⁸ Lawrence Small, "Diversity and Equal Employment Policy Statement," June 30, 2005.

This unwillingness to discipline or even reprimand NMNH officials who have expressed an intent to discriminate makes a mockery of Deputy Secretary Burke's May 3rd assurance to Rep. Souder and Sen. Santorum that "[s]hould he [Sternberg] seek an extension of his appointment when it expires in January 2007, his application will receive full and fair consideration."⁴⁹ Until NMNH officials are required in no uncertain terms to change their behavior, their discriminatory attitude makes it all-but-impossible for Dr. Sternberg to be fairly considered for reappointment. Indeed, NMNH officials expressed in their emails a clear expectation that Dr. Sternberg would *not* be reappointed as a Research Associate after expiration of his current appointment. On February 15, 2005, Dr. Coddington stated in an email to Dr. Sues and another colleague that "Since nobody is now, nor probably ever will again, sponsor him, he [Sternberg] now realizes that his days at NMNH are limited."⁵⁰

Most recently, with Dr. Sternberg's Research Associateship coming to a close in January 2007, he was contacted by the NMNH director of the Fishes Department, Dr. Richard Vari, who invited Dr. Sternberg to reapply for his appointment as a Research Associate.⁵¹ However, when Dr. Sternberg notified Dr. Vari that he actually was interested in reapplying for the position, Dr. Vari all but withdrew his previous invitation and stated that under a "new system in place," Dr. Sternberg "would most likely fall into the category of Research Collaborator,"⁵² not Research Associate. Why didn't Dr. Vari tell Dr. Sternberg of this "new system" in his first communication? Dr. Sternberg asked but did not receive a response from Dr. Vari about the difference between a Research Associate and a Research Collaborator.⁵³

A review of the email discussions from 2004 reveals that Research Collaborators are a step below Research Associates. In August 2004, senior officials at NMNH were discussing how to prevent individuals like Dr. Sternberg from being placed into Research Associate positions in the future. Dr. Hans Sues, in an email to Dr. Frank Ferrari, mentioned that they already have a position known as a Research Collaborator for "academically less qualified associates."⁵⁴ He did not elaborate upon this, but one thing is certain: With two doctorates in biology, Dr. Sternberg is not an academically less qualified associate.

⁴⁹ See note 2.

⁵⁰ Jonathan Coddington, "Re: Reply," February 15, 2005, 8:50 AM, email to Hans Sues and Richard Vari.

⁵¹ Richard Vari, "NMNH Research Associateship," October 3, 2006, 7:02 AM, email to Richard Sternberg.

⁵² See note 7.

⁵³ Richard Sternberg, "Re: NMNH Research Associateship: CV and Research," October 5, 2006, 12:52 PM, email to Richard Vari; Richard Vari, "Address," November 14, 2006, 10:16 AM, email to Richard Sternberg.

⁵⁴ Hans Sues, "Fwd: Re: Research Associate," August 30, 2004, 12:24 PM, email to Frank Ferrari.

When Rep. Souder's office recently asked Deputy Secretary Burke to explain the difference between a Research Associate and a Research Collaborator, the response was, "The titles reflect differences in the level of involvement of the researcher with the museum and its mission. A Research Associate works more closely with NMNH staff, often on joint projects such as joint grant proposals or publications. A Research Collaborator is less closely with NMNH staff and generally works on his own projects using NMNH resources."⁵⁵ No mention was made of the qualifications required for each position, however, and when pressed to provide an official NMNH Directive describing both positions, Deputy Secretary Burke failed to respond.

Even if the Smithsonian is able to produce a document after the publication of this report that describes the qualifications for both Research Collaborators and Research Associates, it is clear from the emails that the senior hierarchy at NMNH, specifically Dr. Sues, believes Research Collaborators are inferior to Research Associates.

Once again, NMNH is demonstrating its clear bias against Dr. Sternberg. Without justification, NMNH has denied Dr. Sternberg's request to renew his Research Associate position. Instead, they have demoted him to a position for which he is overqualified.

3. EVIDENCE OF HOSTILITY BASED ON ANTI-RELIGIOUS AND POLITICAL MOTIVATIONS

The hostility toward Dr. Sternberg at the NMNH appears to have been reinforced by anti-religious and political motivations. Dr. Sternberg's OSC complaint describes efforts to discover or disparage his supposed religious and political beliefs, and the OSC investigation concluded that there was "a strong religious and political component to the actions taken after the publication of the Meyer article." The emails reviewed by subcommittee staff corroborate this finding. In a memo prepared on February 8, 2005, NMNH scientist Marilyn Schotte admitted that after publication of the Meyer paper, Dr. Coddington wanted to know "if Dr. Sternberg was religious."⁵⁶ Dr. Schotte further admitted telling Coddington that Sternberg "was a Republican." According to Dr. Sternberg's OSC complaint, Dr. Schotte had also told him in August 2004 that Coddington wanted to know whether he was a "religious fundamentalist" and a "right-winger." By February 2005, when the NMNH was working hard to repair the damage done to its reputation by the *Wall Street Journal* article on Sternberg, Dr. Schotte had a convenient lapse of memory regarding these additional damaging details. Still, Schotte did not deny Dr. Sternberg's account, conceding that Dr. Coddington "might" have asked her whether Dr. Sternberg "was a fundamentalist" and whether he "was a conservative." Dr. Schotte insisted "Dr. C. was not being judgmental, only curious."⁵⁷ But given the demonstrably hostile atmosphere toward Dr. Sternberg at the NMNH during the period in

⁵⁵ Sheila Burke, "Re: Research Collaborator," November 28, 2006, email to Erika Heikkila.

⁵⁶ See note 8.

⁵⁷ See note 8.

question, there is nothing innocuous about an official with supervisory authority inquiring into Sternberg's religious and political beliefs.

The email traffic also substantiates Dr. Sternberg's concern about a general anti-religious culture existing at the Museum. For example, on February 22, 2005, NMNH Research Associate Sue Richardson sent an email of solidarity to Dr. Coddington regarding the Sternberg situation. She complained about the time she spent living in the "Bible Belt," mockingly reporting that "the most fun we had by far was when my son refused to say the Pledge of Allegiance because of the 'under dog' part..."⁵⁸ Would similar expressions of disparagement have been tolerated by Smithsonian officials if directed at a racial minority?

4. EVIDENCE OF A CAMPAIGN TO SMEAR DR. STERNBERG BY GOVERNMENT OFFICIALS

Other emails reviewed by the subcommittee reveal improper and discriminatory activities on the part of Museum staff that were intended to damage Dr. Sternberg's public reputation and credibility. **Most, if not all, of these activities appear to have occurred during normal working hours and using government emails, so they are properly considered the actions of federal employees acting in their official capacities.**

Many of the efforts to publicly discredit Dr. Sternberg were done under the guidance of the National Center for Science Education, a private special interest group and pro-evolution advocacy organization. Early on in the controversy, the NCSE circulated a set of "talking points" to the BSW Council and NMNH officials on how to discredit both Sternberg and the Meyer article. The OSC investigation found that the "NCSE recommendations were circulated within the SI and eventually became part of the official public response of the SI to the Meyer article."

The NCSE was also enlisted by a NMNH official to monitor Dr. Sternberg's outside activities. On August 26, Dr. Sues promised NCSE director Eugenie Scott that "[f]rom now on, I will keep an eye on Dr. (von) Sternberg, and I'd greatly appreciate it if you or other NCSE specialists could let me [know] about further activities by this gentleman in areas poutside [sic] crustacean systematics [emphasis added]."⁵⁹ The clear purpose of having the NCSE monitor Dr. Sternberg's outside activities was to find a way to dismiss him. Dr. Sues hoped that the NCSE could unearth evidence that Dr. Sternberg had misrepresented himself as a Smithsonian employee, which would have been grounds for his dismissal as a Research Associate: "As a Research Associate, Sternberg is not allowed to represent himself as an employee of the Smithsonian Institution, and, if he were to do so, he would forfeit his appointment."⁶⁰

⁵⁸ See note 9.

⁵⁹ Hans Sues, "Re: Meyer Article," August 26, 2004, 1:41 AM, email to Eugenie Scott.

⁶⁰ Ibid.

The extent to which NMNH officials colluded *on government time and with government resources* with the NCSE to publicly discredit Dr. Sternberg's scientific and professional integrity and investigate opportunities to dismiss him is alarming.

Some NMNH staff also sought (on government time and with government resources) to smear Dr. Sternberg's reputation as a scientist within the scientific community. Dr. Lemaitre apparently conducted his own background research on Dr. Sternberg's outside activities and affiliations, including his involvement with some religious-based organizations, in an attempt to stir up outside support for dismissing Dr. Sternberg from the Museum. Dr. Lemaitre forwarded his background research on Dr. Sternberg to scientists outside of the Smithsonian, eliciting the following response from a scientist at the University of Amsterdam in the Netherlands:

“This is truly frightening! I cannot believe it has come down to this. Scientists have been perfectly willing to let these people alone in their churches. But now it looks like these people are coming out and invading our schools, biology classes, museums, and now our professional journals. These people to my mind are only a scale up on the fundies of a more destructive kind in other parts of the world.”⁶¹

While this unbelievably discriminatory and anti-religious statement did not come from NMNH staff, it was exactly this kind of reaction that Lemaitre was trying to encourage within the scientific community in an effort to damage Dr. Sternberg's reputation. It would be fine if Dr. Lemaitre had only privately disagreed with Dr. Sternberg's scientific beliefs, but it was inappropriate for him, in his official capacity, to send emails to the wider scientific community intended to damage Dr. Sternberg's career.

Another prominent example of NMNH staff deliberately seeking to discredit Dr. Sternberg is Dr. Coddington's letter to the pro-evolution blog *Panda's Thumb* on February 3, 2005. Dr. Coddington was responding to the *Wall Street Journal* opinion piece that first publicized the investigation by the OSC into the Sternberg matter.

In Dr. Coddington's letter, several claims were made that conflict with the Subcommittee's review of NMNH staff emails and Dr. Sternberg's recollection of events as explained in his OSC complaint. For instance, in the letter to *Panda's Thumb*, Dr. Coddington stated: “Dr. von Sternberg is still a Research Associate at the National Museum of Natural History, and continues to have the usual rights and privileges, including space, keys and 24/7 access. At no time did anyone deny him space, keys or access.”⁶²

To the contrary, as has been detailed in this report, Dr. Sternberg was singled out for additional oversight and limitations not applied to other RAs. In fact, these restrictions were so burdensome that Dr. Sternberg knew he would not be able to continue his research with the same kind of freedom as other RAs. Dr. Coddington, himself, had

⁶¹ Frederick Schram, “Re: believe it or not,” September 1, 2004, 1:29 AM, email to Rafael Lemaitre.

⁶² See note 43.

described RAs to *Panda's Thumb* as scientists who conduct research at NMNH “without the staff oversight visitors usually receive.”⁶³ This description does not comport with Dr. Sternberg’s experience at NMNH.

In fact, as a direct result of the new space, key and access restrictions imposed upon him, Dr. Sternberg finally asked to leave his position in Invertebrate Zoology and move to Vertebrate Zoology where he knew a scientist that was willing to let him conduct his research without the restrictions imposed on him by Dr. Coddington and Dr. Lemaitre. Still, per the request of Dr. Coddington, Dr. Sternberg put together a research plan that outlined his expected work hours and list of specimens needed for research.⁶⁴

Another way in which NMNH staff contributed to the damaging of Dr. Sternberg’s reputation was through their refusal to clarify erroneous rumors that were circulating around the museum and within the scientific community.

From the very beginning of the Sternberg controversy, there was much speculation within NMNH and the scientific community as to whether or not Dr. Sternberg had followed proper procedures in having the Meyer article peer-reviewed. In numerous emails reviewed by the Subcommittee, NMNH staff and others in the scientific community, such as the NCSE’s Dr. Scott, alleged that Dr. Sternberg must not have had the article peer-reviewed, and, if he did, the reviewers must have been either incompetent or a supporter of intelligent design.⁶⁵ All of these allegations were very damaging to Dr. Sternberg’s reputation within the scientific community as it is considered the ultimate demonstration of scientific irresponsibility to publish an article without proper peer review.

As the controversy heated up in the ensuing months and the allegations about Dr. Sternberg’s mishandling of the Meyer article remained unresolved, the BSW never issued a definitive statement about whether or not the peer-review allegations were true. Only in late January 2005, when Dr. Sues asked Dr. McDiarmid via email about whether the BSW was “satisfied that a proper review by specialists was undertaken,”⁶⁶ was there any recognition that the article was properly peer-reviewed. Dr. McDiarmid replied to Dr. Sues: “I have seen the review file and comments from 3 reviewers on the Meyer paper. All three with some differences among the comments recommended or suggested publication. I was surprised but concluded that there was not inappropriate behavior vs a vis [sic] the review process.”⁶⁷

⁶³ Ibid.

⁶⁴ Richard Sternberg, “Fwd: My research outline,” November 1, 2004, 11:55 AM, email to Jonathan Coddington.

⁶⁵ Eugenie Scott, “Re: Meyer Article,” August 26, 2004, 1:51 PM, email to Hans Sues; Frank Ferrari, “Re: Reply [2],” September 9, 2004, 10:12 AM, email to Hans Sues.

⁶⁶ Hans Sues, “Re: Request for information,” January 28, 2005, 1:40 PM, email to Roy McDiarmid.

⁶⁷ Roy McDiarmid, “Re: Request for information,” January 28, 2005, 2:25 PM, email to Hans Sues.

It is most disturbing that Dr. McDiarmid actually knew in late August 2004—soon after the controversy began—that the Meyer article had been properly peer reviewed. Dr. Sternberg states on his website that Dr. McDiarmid informed him in an email message on August 25, 2004, that, indeed, the peer reviews supported the publication of the article. Why then did Dr. McDiarmid not bring clarity to the situation early on in the controversy? It seems that Dr. McDiarmid would never have settled the question about peer reviewers had Dr. Sues not asked him the question in January 2005. He knew there had been no impropriety in August 2004, yet he chose not to disseminate this important information among NMNH staff or externally in the scientific community. And, even when Dr. Sues became aware of these facts, he, too, did not bring resolution to this ongoing question among NMNH staff.

In his official capacity with NMNH, Dr. Sues also improperly influenced the BSW in its publishing of a public disclaimer and apology of sorts regarding the publication of the Meyer paper in the *Proceedings*. While technically the BSW and NMNH are separate entities, Dr. Sues, the #2 scientist at the Smithsonian who had also secured Smithsonian funding for the *Proceedings*, emailed NCSE's executive director Dr. Scott: "I met with Roy McDiarmid [the President of the BSW and a scientist at the Smithsonian] yesterday, and urged him to publish, in the next issue of the *Proceedings*, an open letter to readers from the Council of BSW that Meyer's article does not represent views endorsed by BSW and that there was a clear failure of the editorial process."⁶⁸ Additionally, Dr. Sues forwarded a copy of the NCSE's "talking points" in an attempt to influence two BSW (and NMNH) members prior to a meeting of the BSW (which also occurred on government time) to discuss the official response to Dr. Sternberg's publication of the Meyer paper.

The official response that came out of the BSW Council meeting on August 27, 2004, was damaging to Dr. Sternberg's scientific reputation because it claimed that Dr. Sternberg had not followed "typical editorial practices" as it was "published without review by any associate editor; Sternberg handled the entire review process."⁶⁹

Contrary to the statement issued by the BSW, there is evidence to suggest that all articles were not always reviewed by associate editors. Dr. Sternberg states on his website that, "As managing editor it was my prerogative to choose the editor who would work directly on the paper, and as I was best qualified among the editors I chose myself, something I had done before in other appropriate cases." Dr. Sternberg states that he even consulted a colleague at NMNH who was also a member of the BSW on three occasions to "avoid making a unilateral decision on a potentially controversial paper..." "Each time, this colleague encouraged me to publish the paper despite possible controversy."

Even NCSE's Eugenie Scott acknowledged to Dr. McDiarmid that the BSW statement should not "come down too hard on Dr. Sternberg for errors in the procedure followed in

⁶⁸ Hans Sues, "Re: Meyer Article," August 26, 2004, 5:47 AM, email to Eugenie Scott.

⁶⁹ Council of the Biological Society of Washington, "Statement from the Council of the Biological Society of Washington," <http://www.biolsochwash.org/>.

accepting this article,” because “other editors have not always referred all articles to the Associate Editors, and because editors justifiably have discretion.”⁷⁰

These statements by Dr. Sternberg and Dr. Scott directly contradict the statement issued by the BSW. While NMNH officials do not have control over the BSW and can't force it to correct its public statement, Museum staff should not have participated in the first place (whether through improper influence or through participation in the development of the BSW statement on government time) in the smearing of Dr. Sternberg's reputation through misinformation.

If, indeed, the Smithsonian wants to live up to its policy of non-discrimination,⁷¹ it should take the steps necessary to ensure that misinformation and errant rumors being perpetuated by NMNH staff with government resources are stopped and corrected.

THE SMITHSONIAN RESPONSE: STONEWALLING RATHER THAN ACTION

Unfortunately, Secretary Small and Deputy Secretary Burke have exhibited a head-in-the-sand attitude toward the wrongdoing committed toward Dr. Sternberg at their agency. They continue to engage in stonewalling and spin rather than dealing forthrightly with the discrimination that has occurred.

In Deputy Secretary Burke's response to Rep. Souder dated May 3, 2006, she acknowledged that Dr. Sternberg's viewpoint on evolution sparked “strong disagreement” among other scientists at the NMNH, but insisted that “[w]hile the tone of the disagreement between scholars may seem harsh, disagreement does not equal discrimination.”⁷²

However, the issue is not the disagreement of Smithsonian scientists with Dr. Sternberg's views on evolution, but rather their effort to use their official powers to punish Dr. Sternberg by seeking to remove him as a Research Associate, and their effort to publicly smear him with false information on government time using government emails.

NMNH officials have made clear their intent to prevent any scientist publicly skeptical of Darwinian theory from ever being appointed as a Research Associate, no matter how sterling his or her professional credentials or research. This intent—made clear in emails from 2004—was most recently made evident when Dr. Sternberg was told he could not renew his Research Associateship, but could instead apply to be a Research Collaborator, a position, which, in the words of Dr. Sues was reserved for “academically less qualified associates.”⁷³ This is discrimination, plain and simple. The Secretary and Deputy

⁷⁰ Eugenie Scott, September 23, 2004, email to Roy McDiarmid.

⁷¹ See note 48.

⁷² See note 2.

⁷³ See notes 50-54.

Secretary should have ensured that there were appropriate consequences for those NMNH individuals who permitted, and even encouraged, the discrimination and hostile work environment Dr. Sternberg experienced.

In addition, the Secretary and Deputy Secretary have turned a blind eye to the smear campaign against Dr. Sternberg conducted on government time by NMNH officials. In a letter to Dr. Sternberg on January 31, 2006, Deputy Secretary Burke asserted that the Smithsonian had “no basis on which to determine your [Dr. Sternberg’s] reputation has been affected by statements made by NMNH staff.”⁷⁴ To the contrary, Dr. Sternberg’s professional reputation and integrity have been publicly impugned by the statements and actions of NMNH management and staff. Because the misinformation has never been clarified and is in the public record, it is not just Dr. Sternberg’s “perception” as suggested by the Deputy Secretary.

Finally, the Secretary and Deputy Secretary continue to ignore the clear findings of the Office of Special Counsel in its “pre-closure” letter to Dr. Sternberg. The OSC found that Dr. Sternberg’s allegations of discrimination were supported by the evidence uncovered through its preliminary investigation. Regardless of the fact that the OSC closed Dr. Sternberg’s case due to jurisdictional questions, we would think that the Smithsonian would be sufficiently concerned by the OSC’s findings that it would make appropriate internal changes and adjustments to ensure that such discrimination is properly penalized and never occurs again.

Specifically, the OSC found that had Dr. Sternberg been protected by Title V of U.S. Code, the NMNH staff would have violated Section 2303 (b) (10) referring to the prohibition on personnel to discriminate against an employee for non-job related activities. Additionally, the OSC found that “there is a strong religious and political component to the actions taken after the publication of the Meyer article.” The OSC letter concluded that the retaliation against Dr. Sternberg was supported by the evidence: “Our preliminary investigation indicates that retaliation came in many forms. It came in the form of attempts to change your working conditions and even proposals to change how the SI retains and deals with future RAs. During the process you were personally investigated and your professional competence attacked. Misinformation was disseminated throughout the SI and to outside sources. The allegations against you were later determined to be false. It is also clear that a hostile work environment was created with the ultimate goal of forcing you out of the SI.”

The OSC’s finding at the time that it lacked legal jurisdiction did not negate its findings; it only negated its ability to present the findings to the Merit Systems Protection Board, which adjudicates such matters. The OSC found evidence and instances of discrimination, and the Smithsonian completely disregarded these findings at the expense of a Research Associate’s scientific reputation.

In an April 7, 2006, letter from Rep. Souder and Senator Santorum, these facts were presented to Secretary Small and Deputy Secretary Burke, and they were asked: “If the

⁷⁴ Letter from Sheila Burke to Richard Sternberg, January 30, 2006.

Smithsonian believes that the OSC is wrong in its findings, why has there not been a comprehensive internal investigation to either disprove or confirm the OSC's report?"⁷⁵

The Deputy Secretary responded on May 3, 2006, by claiming that the Smithsonian has "conducted an internal inquiry, including a review of OSC's preliminary findings, and concluded that Dr. von Sternberg is a Research Associate in good standing at NMNH, and that he has the same access to office space, laboratories, collections, libraries and other common facilities as that accorded to other Research Associates."⁷⁶ **Tellingly, the Deputy Secretary's statement completely failed to address the central question of whether the harassment and discrimination identified in the OSC report took place.** Indeed, from the Deputy Secretary's non-responsive "response," one cannot determine whether the Smithsonian's "internal inquiry" even addressed this issue. If it did, why didn't the Deputy Secretary report the inquiry's findings and the specific evidence on which they are based? Unfortunately, this so-called "inquiry" appears to be yet another example of bureaucratic stonewalling on the part of the Smithsonian's top officials.

RECOMMENDATIONS

Because of the Smithsonian's continuous refusal to take action in the Sternberg case, Congress should consider statutory language that would protect the free speech rights regarding evolution of scientists at all federally-funded institutions.

Since the treatment of Dr. Sternberg came to light in early 2005, evidence has accumulated of widespread invidious discrimination against other qualified scientists who dissent from Darwinian theory and/or who are supportive of intelligent design. In November, 2005, for example, National Public Radio reported that it had "talked with 18 university professors and scientists who subscribe to intelligent design. Most would not speak on the record for fear of losing their jobs. One untenured professor at Kennesaw State University in Georgia wrote that talking to NPR would be, quote 'the kiss of death.' Another said, 'There is no way I would reveal myself prior to obtaining tenure.'"⁷⁷ In another case, the President of the University of Idaho issued a letter forbidding faculty from teaching alternatives to Darwin's theory in science classes there.⁷⁸ The widespread hostility of many scientists to criticisms of Darwinian theory makes further violations in this area by federally-funded institutions likely.

While the majority of scientists continue to support Darwinian theory, it is important that neither federal funds nor federal power be used to punish otherwise qualified scientists

⁷⁵ Letter from Senator Rick Santorum and Rep. Mark Souder, April 7, 2006.

⁷⁶ See note 2.

⁷⁷ Barbara Bradley Haggerty, "Intelligent Design and Academic Freedom," *All Things Considered*, National Public Radio, November 10, 2005.

⁷⁸ Timothy P. White, "Letter to the University of Idaho Faculty, Staff and Students," October 4, 2005, <http://www.president.uidaho.edu/default.aspx?pid=85947>.

merely because they articulate a dissenting scientific viewpoint on this issue. Scientific controversies should be decided through research and open debate, not through on-the-job harassment at federally-funded institutions or the blacklisting of certain scientists because of their outside activities. Scientists such as Dr. Sternberg have a First Amendment right to express their skepticism toward Darwinian evolution without having to fear government-sponsored retaliation.