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

August 5, 2005

Dr. Richard von Sternberg
[redacted]

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

Dear Dr. Sternberg:

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

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

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

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

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

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

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

Off-Duty Conduct

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

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

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

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

First Amendment Violations, Religious and Political Affiliation Discrimination

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

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

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

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

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

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

Retaliation

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

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

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

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

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

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

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

These are typical e-mails:

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

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

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

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

[redacted]
I believe [redacted] could have answered most of his questions by asking around 1Z--there was no need to bother you as you no doubt appreciate. As you see, he is presuming most of this rather than asking...there is no space shortage, except insofar as [redacted] wants to deny him space.
Anyway, on the core point, I obviously am not going to be able to find a sponsor for Sternberg, yet his official status is as a research associate for the next three years. If you don't want to make a martyr of him, I'll sponsor him.
As he hasn't (yet) been discovered to have done anything wrong, particularly compared to his peers, the sole reason to terminate his appt seems to be that the host unit has suddenly changed its mind. If that's 0Kw NMNH, let me know and I'll send him a letter stating so. However, as you decided originally, the political downside of that is costly.
Outside of pique, [redacted]'s main legitimate concern seems to be a fear of guilt by association. In any case [redacted] isn't going to shut up about this until he wins (i.e. banishes Sternberg) or gets told to.
I'm not going to get bit to death by daily emails. The access and key issues are trivial and can be fixed, if out of line.
The only grounds I see is [redacted]'s lack of support. If that isn't sufficient, then I basically have to tell [redacted] (again) to shut up (which I am also willing to do).
Which do you prefer?
[redacted]

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

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

"> [redacted] 08/31/04 12:09PM >>>
Thanks to both of you for your efforts in dealing with the current situation. Unfortunately the panorama of my work environment continues to be rather blurred. So, in an effort to try to understand what might be going on here in the Crustacea floor at east for the next 2.5 years, let me ask some questions to see if you can supply some answers.

1. We have an SI Research Associate (RA) who was appointed with the support of a curator that is now deceased. Which SI scientist now serves as support staff for this RA now? Can an RA continue to operate without a proper staff support person? If one is needed, who should this RA answer or report to?

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

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

4. The recent events are fastly precipitating serious personnel issues as it is clear that tensions are at a high level on the floor, Is this a proper working environment for all the staff that lives on this floor? Does the admin really expect us to live normally in this environment for 2.5 years, and will things really change after that?

[redacted]

CC: [redacted]

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

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

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

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

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

[redacted]

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

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

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

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

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

Two traps not to get caught in:

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

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

[redacted]

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

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

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

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

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

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

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

>>> [redacted] 09/09/04 10:46AM >>>
Excuse me [redacted] but I thought we were addressing the issue of the integrity of this museum's scientific research. In that respect, you are responsible for the actions of your researchers, as well as those scientists who use the name of this museum in any way related to research or collections [which includes research associates and those of the, euphemistically named, affiliated agencies]. Given the Meyer fiasco, how Sternberg represents himself to the world of science is of some consequence to you. I strongly suggest that you call [redacted] and start asking questions rather than waiting until the crisis becomes unmanageable. [redacted]

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

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

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

[redacted]
>>> [redacted] 09/09/0409 11AM >>>
I think there is, but the heat may have to increase a bit.
From: [redacted]
To: [redacted]
Date: 9/13/04 1:46PM
Subject: Re: Upcoming in Helsinki

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

If you have not yet seen the summary update, see:
htt D:/M~w.ncseweb.orp/resources/newst2flo4Jrl33~ id paoer continues to attract 9 10 2004.asD

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

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

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

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

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

[redacted]

>>> [redacted] 09/13/04 10:51AM>>>
I just reread 205, but I don't see any basis for terminating his appt based on this sort of activity, suppose we could call him on the phone and verbally ask him to do the right thing and resign?"

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

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

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

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

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

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

Sincerely,

James McVay

James McVay
Attorney