

OFFICE OF THE INSPECTOR GENERAL
U.S. Nuclear Regulatory Commission
Memorandum of Interview

OIG Case No: 07-63

On September 11, 2007, (b)(7)c, formerly with the Office of Commissioner MERRIFIELD, U.S. Nuclear Regulatory Commission (NRC), was interviewed by Special Agent (SA) (b)(7)c and SA (b)(7)c regarding MERRIFIELD's search for post-government employment. (b)(7)c provided essentially the following information:

(b)(7)c stated that (she) joined Commissioner MERRIFIELD's office sometime during October 2006, but (she) could not recall the exact date. (She) had interviewed for the position with MERRIFIELD during August or September 2006. (She) recalled that during the interview, MERRIFIELD indicated that he had not decided if he would seek a third term at that time. MERRIFIELD decided in October 2006 that he would leave at the end of his term in June 2007. (b)(7)c noted that MERRIFIELD issued a memorandum to his staff about his decision.

(b)(7)c stated that MERRIFIELD had made an arrangement with a private attorney, Steve ENGELMYER, to assist in his post-government job search. (b)(7)c stated that in October 2006, MERRIFIELD had met with John SZABO, Senior Attorney, Office of General Counsel (OGC), NRC, and George MULLEY, OIG, NRC, and discussed his job search arrangement. (b)(7)c believed that MERRIFIELD had given very broad, "high-level" criteria for ENGELMYER to use in evaluating potential job opportunities. (b)(7)c recalled that MERRIFIELD told his staff was not to forward information related to potential job opportunities to him, rather to notify either John THOMA or Spiros DROGGITIS who would forward the information to ENGELMYER. (b)(7)c stated that MERRIFIELD also related this arrangement to Jenny WEIL, a reporter who covers NRC issues, who wrote an article describing this job search arrangement.

(b)(7)c stated that (she) was aware of government ethics regulations related to conflicts of interest, but that (she) relied on the advice of SZABO, who (she) considered the agency's expert on conflict of interest issues. (She) noted that (her) job as MERRIFIELD's legal assistant was not to be an expert in every legal aspect related to the NRC, but to know who to call to get expert advice. (She) estimated (she) spoke with SZABO about once a week on ethics issues. However, many of these conversations were not related to MERRIFIELD's job search. Most were related to issues regarding MERRIFIELD's attendance at "widely attended functions" or (her) own attendance at industry hosted events in which MERRIFIELD was the keynote speaker.

(b)(7)c stated (she) never received any telephone calls or written correspondence related to job opportunities for MERRIFIELD, and therefore never had to make a referral to THOMA or DROGGITIS. (b)(7)c never had any interaction with ENGELMYER. (She) indicated (she) may have met him at a farewell function for MERRIFIELD, but could not recall for certain.

(b)(7)c stated that MERRIFIELD wanted to serve out his term as an active Commissioner, and that he did not want to generally recuse himself from NRC actions.

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(She) indicated that his rationale for meeting with SZABO and the OIG was to create an arrangement which prevented the violation of conflict of interest regulations, but allowed MERRIFIELD to remain both an active member of the NRC and still pursue post-government employment. However (b)(7)c realized there would come a point at which some recusals would be required, and (she) believed that MERRIFIELD realized this as well.

(b)(7)c recalled that there were only four companies involved in possible employment negotiations with MERRIFIELD. They were the Shaw Group, Westinghouse, Progress Energy, and a fourth which (b)(7)c believed was General Electric. (b)(7)c was not certain that the fourth had been General Electric, but recalled that it was another nuclear industry vendor, like Westinghouse. (b)(7)c believed that MERRIFIELD's involvement in the job negotiations began during April 2007. (She) was not certain about the dates and could only provide estimates from (her) recollection. (She) indicated that the negotiations with Progress Energy were for a relatively short time period, which (she) estimated was about a week or two.

(b)(7)c never received, reviewed, or otherwise became aware of any written record of MERRIFIELD's interaction with specific potential employers nor any related documented recusals. (b)(7)c saw no need for documenting the recusals in written form.

(b)(7)c acknowledged that the action of voting was not the minimum threshold for actions by MERRIFIELD which could pose a conflict of interest. However (she) felt that the end of MERRIFIELD's term was not a busy time, and that his votes had all occurred prior to his direct involvement in the job search. (b)(7)c also indicated that MERRIFIELD did not want the details of his job search public. The potential for having to release written documentation under a Freedom of Information Act (FOIA) request was a major reason for not documenting his recusal from commission actions. (b)(7)c stated that after the end of his term, MERRIFIELD told (b)(7)c that he had been advised by SZABO to document his recusals, but to keep the document to himself and to not distribute a copy to his staff. (b)(7)c said (she) had never seen a draft, sample recusal form.

(b)(7)c indicated that once (she) learned of MERRIFIELD's active involvement in his post-government job search with particular firms (she) reviewed upcoming issues to help ensure that MERRIFIELD remained isolated from potential conflicts of interest. (She) reviewed NRC documentation prior to it being provided to MERRIFIELD, as well as MERRIFIELD's calendar which outlined his scheduled appointments and meetings. Before each meeting (b)(7)c Office of Commissioner MERRIFIELD, would ask for inputs/talking points from the office staff members which were provided to MERRIFIELD for his use during the meeting. (b)(7)c would review the staff's inputs to identify possible areas of conflict. (b)(7)c stated that MERRIFIELD was a "smart man" and did not limit himself strictly to the talking points suggested by his staff. (b)(7)c noted that the Commissioners had weekly meetings with each other, which (she) also referred to as "periodics," as well as with senior staff members such as the EDO.

(b)(7)c stated that (she) considered THOMA the "gatekeeper" within the office in regards to keeping information which could pose a potential conflict of interest away from MERRIFIELD. However (b)(7)c and THOMA spoke frequently, as needed, on the subject.

(b)(7)c stated that (she) was not aware of any job search activity until April 2007. (She) knew generally that ENGELMYER was working on the job search, but (she) believed the details were unknown to MERRIFIELD. In April of 2007 (b)(7)c stated that MERRIFIELD knew a potential job offer with the Shaw Group. (b)(7)c believed that (she) first learned of the potential position with the Shaw Group through discussions with THOMA, but also believed (she) may have discussed it with MERRIFIELD directly. (b)(7)c stated that (her) only notification about this potential position was verbal.

(b)(7)c stated that Shaw Group owned approximately 20% of Westinghouse Stock. (She) also indicated that the MERRIFIELD became engaged in job discussions with Westinghouse directly. (b)(7)c stated during the time of these job discussions, Westinghouse executives were scheduled for a "drop-in" meeting, which (she) also referred to as a "periodic" meeting. (b)(7)c explained that it is a fairly common occurrence that executives from nuclear related firms met periodically with each of the Commissioners individually, as well as senior members of the NRC staff, such as the EDO. (b)(7)c recalled that a drop-in meeting was planned for April and that MERRIFIELD had SZABO come to his office to discuss whether he should participate in the meeting. SZABO told MERRIFIELD that he should not participate in such a meeting and therefore the meeting with MERRIFIELD was cancelled.

(b)(7)c felt that MERRIFIELD's involvement with the Combined Operating License (COL) Task Force was not a "big deal" as it related to his job search since MERRIFIELD's actions were not the focus of the task force's report. (b)(7)c did recall that MERRIFIELD talked about the task force frequently, especially right after the final report was completed, and that he often explained what the task force had concluded. (She) did not know if MERRIFIELD talked personally with other Commissioners about the task-force's report.

(b)(7)c indicated that most of the preparation of the task force report was essentially complete in March 2007, but took until April 2007 to be officially transmitted due to administrative issues. (She) also acknowledged that it took until June 2007 for a final decision to be made by the Commission on recommendations contained within the report. (She) noted that Commissioner McGAFFIGAN took a long time to vote on the issue, which (she) attributed in large part to his failing health. (She) noted that Commissioner LYONS decided to change his vote during the process, also delaying the finalization on the process.

(b)(7)c did believe that starting in April 2007, MERRIFIELD should not go to the other Commissioners' offices and lobby for their support on issues. But (b)(7)c stated that (she) was more concerned with MERRIFIELD's involvement with amendments to 10CFR 50.46a, which were contained in SECY 07-0082. (She) described this SECY as a rulemaking issue amending certain aspects of 10 CFR related to a loss of coolant incident. (b)(7)c stated that because of MERRIFIELD's involvement with Progress Energy (PE), and that PE might be impacted by the rulemaking, the staff did not forward any related documents to MERRIFIELD until after he had terminated job discussions with PE.

(b)(7)c indicated that (she) drew a distinction between firms such as PE and others such as Westinghouse or Shaw, explaining that PE was a current licensee and an announced applicant for a future power plants. By contrast, Westinghouse and Shaw were only

vendors and thereby only potentially indirect benefactors of any Commission actions. (She) indicated that one could suggest that all nuclear design vendors or even uranium mining companies could benefit by the increase in demand for their products with an increase in the number of nuclear power plants. (b)(7)c felt that consideration of such firms as part of the conflict of interest rules was overly broad.

(b)(7)c was asked about the SECY related to sharing the AP1000 design with China. (She) stated that despite the title, the SECY really did not involve the AP1000 design. Rather, (she) described the SECY as addressing intellectual property rights. (b)(7)c stated that (she) recalled speaking with SZABO on this issue, but that it was during April of 2007 at the same time the NRC was involved in a conference with the Chinese. (She) added that MERRIFIELD was the acting Chairman at the time, and that (she) was primarily concerned about resolving an issue involving the use of a government vehicle during the meetings with the Chinese.

(b)(7)c stated that (she) also spoke with SZABO about the ability of the staff to complete Staff Requirements Memoranda (SRM) on behalf of MERRIFIELD. (She) explained that MERRIFIELD was a very "high level" individual, who focused on broad topics and left the details to his staff. (She) added that SRMs involved coordination among all five Commissioners and frequently required numerous versions to include each Commissioner's inputs. Frequently, this involved minor administrative details which did not change the Commissioner's central input. (b)(7)c stated that there were SRMs which initially came to his office prior to any discussions by MERRIFIELD with prospective employers in which his comments were provided. However, by the time one of the final versions came around, the staff determined it would possibly be a conflict of interest to have MERRIFIELD deal with the issue directly. (b)(7)c discussed this issue with SZABO who concurred that since the remaining actions were just administrative and that the Commissioner had provided his input previously, the staff could complete the action on his behalf. (b)(7)c referred to the act of allowable delegation as "ministerial action" and stated that it was a principle that MERRIFIELD definitely agreed with. (b)(7)c recalled that this SRM may have dealt with rules regarding nuclear power plant defenses against aircraft strikes.

(b)(7)c stated that MERRIFIELD indicated that as of June 22, 2007, he would not participate in any no more votes. The establishment of this date was related to MERRIFIELD's desire to have no remaining uncompleted actions involving himself at the end of his term and was not related directly to his job search.

Additionally, (b)(7)c indicated (she) prepared no memoranda about (her) conversations with MERRIFIELD, SZABO, or anyone else regarding any other aspects of MERRIFIELD's job search. (She) stated that (her) practice was to have pads of paper on (her) desk in which (she) wrote contemporaneous handwritten notes about (her) conversations. (She) acknowledged periodically cleaning (her) desk, at which time (she) would discard the pads of paper (she) was no longer actively using. (She) stated that (she) did not retain any notes from (her) discussions or conversations about the job search.

(b)(7)c also stated had created a personal file folder for items related to MERRIFIELD's job search process. (She) recently looked at the file and noted that (she) only had the October 2006 memorandum from MERRIFIELD and a memorandum about post employment restrictions, which outlined one year prohibitions for certain positions

against lobbying the government. No notes or other memoranda were present, and (b)(7)c could not recall having placed other documents in the file.

Interviewed by (Special Agent
Special Agent

(b)(7)c

MOI Prepared on September 14, 2007

MOI Reviewed by/on: (b)(7)c

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