

OFFICE OF THE INSPECTOR GENERAL
U.S. Nuclear Regulatory Commission

Memorandum of Interview

OIG Case No: 07-63

On September 19, 2007, John THOMA, Office of the Chairman (OCM), U.S. Nuclear Regulatory Commission (NRC) was interviewed by Special Agents (SA) (b)(7)(c) and SA (b)(7)(c) Office of the Inspector General (OIG), NRC. THOMA provided essentially the following information.

THOMA stated he was assigned to Commissioner MERRIFIELD's office during MERRIFIELD's entire tenure at the NRC, from 1998 until his departure at the end of June 2007. THOMA was initially the Technical Assistant for materials until 2004, at which time he also became MERRIFIELD's Chief of Staff (COS). As COS, THOMA was responsible for the internal operations of the office, including personnel and administrative issues. There were six employees within MERRIFIELD's office and an occasional rotational assignee, including (b)(7)(c) served on a rotation specifically to assist managing the Combined Operating License (COL) Task Force which MERRIFIELD headed.

THOMA indicated that he first learned that MERRIFIELD had made a decision to leave government service in November 2006. At that time, MERRIFIELD issued a memo to all staff members about a job search arrangement MERRIFIELD had made with a private attorney, Steve ENGELMYER. MERRIFIELD told THOMA that he had been working in the background with John SZABO, Attorney, Office of General Counsel (OGC) to set up the arrangement. THOMA indicated that the arrangement was that ENGELMYER was to handle all details and offers relating to the job search for MERRIFIELD. MERRIFIELD gave parameters to ENGELMYER regarding what he was looking for. ENGELMYER was not to discuss with MERRIFIELD the details of any offers. As the arrangement originally stood, MERRIFIELD indicated that he would learn of the details only after he left government service.

The staff was also instructed to forward all incoming letters pertaining to employment to THOMA. THOMA was to forward the letters to ENGELMYER and ensure that MERRIFIELD never saw them. THOMA stated that only one letter with a job offer came to the office. The letter was from a law firm, but THOMA could not recall the firm's name. THOMA immediately sent the letter to ENGELMYER. THOMA believed the letter was received prior to Christmas in 2006. THOMA did not recall having any direct discussions with ENGELMYER, and believed that in this instance he only spoke with ENGELMYER's secretary.

THOMA believed that despite MERRIFIELD's legal background, he did not want to work in a law firm. Rather, MERRIFIELD was interested in obtaining a management position in the nuclear field. MERRIFIELD told THOMA very little about the details of his job search. MERRIFIELD highly controlled information related to who he was interviewing with. THOMA was unsure of MERRIFIELD's rationale for this, but indicated it was MERRIFIELD's personal preference.

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In the spring of 2007, MERRIFIELD related to THOMA that he was going to begin "reaching out" more to companies about potential jobs. He told ENGELMYER he wanted details when companies reached his criteria and parameters. MERRIFIELD never told THOMA when he was receiving details from ENGELMYER. THOMA was not surprised that MERRIFIELD changed his mind about not being active in the job search until after his departure. THOMA noted that MERRIFIELD was concerned about how long he might be unemployed and without an income.

Right after the Combined Operating License (COL) Task Force report was issued MERRIFIELD verbally gave THOMA a list of companies with which he was involved related to potential employment. THOMA indicated that MERRIFIELD never provided him with a written list. THOMA wrote the companies down and kept the list in a notebook he carried with him. THOMA indicated he destroyed the list following MERRIFIELD's departure. THOMA believed there were four companies initially on the list. Eventually there were a total of seven or eight companies on the list. THOMA recalled that Westinghouse, the Shaw Group, and Holtec and a licensee were on the list, but he could not recall the others.

THOMA believed there was a difference in how NRC licensees and vendors should be considered in regards to potential conflicts of interest. THOMA thought that it was clear that NRC licensees could be directly affected by a Commissioner's actions, and that recusal in any possibly related matters was needed. However, THOMA believed that the potential conflict was not so clear with regards to vendors of items used by the nuclear industry, and that there was less need for recusal because of the more indirect nature of any potential benefits to the company.

THOMA stated that Spiros DROGITTIS, Office of Congressional Affairs, NRC knew about the companies on the list as well but he worked primarily on international issues. THOMA recalled that one potential job would have involved considerable international travel to acquire various assets for the company. THOMA could not recall the name of the company offering this position. THOMA stated that this job had nuclear aspects, but was also related to other forms of power generation. THOMA believed that DROGITTIS would have talked about issues related to that position directly with MERRIFIELD.

MERRIFIELD told THOMA he had drafted two memorandums to file which THOMA assumed were recusal type letters. MERRIFIELD did not provide copies to the office but personally kept them. THOMA indicated that he was comfortable with this arrangement, and that MERRIFIELD would have to defend any actions related to his job search.

THOMA indicated he had the standard ethics training each year provided by the NRC, which included information on post-government employment issues. He felt he knew the rules fairly well, but acknowledged he had taken no additional training specifically related to MERRIFIELD's job search.

THOMA stated that he did have a brief discussion with SZABO about MERRIFIELD's interaction with the Shaw Group. This discussion was about 5 minutes in length and occurred telephonically. THOMA also talked with (b)(7)(c) about this position. THOMA noted that Shaw had essentially created a position for MERRIFIELD, and that the senior managers within Shaw then had to go back and inform their staff about their plans and the position they had created. THOMA indicated that he knew little about Shaw prior to learning that they were a potential opportunity for MERRIFIELD. THOMA said that he

conducted a brief internet search about the company and learned of Shaw's part ownership of Westinghouse. THOMA did not do the same for other companies such as Westinghouse or Holtec, since he already was familiar with them.

THOMA stated during the employment search Westinghouse was scheduled to hold one on one hearings with the Commissioners. THOMA believed that these meetings would be reflected on the Commissioners' calendars. THOMA felt that this meeting could present the appearance of a conflict, and the meeting with MERRIFIELD was cancelled.

THOMA also recalled holding back a report on aircraft crashes because MERRIFIELD was having employment discussions with a licensee. THOMA claimed the report would affect nuclear power plant licensees across the nation and since MERRIFIELD was having employment discussions with a licensee THOMA wanted to prevent an appearance of a conflict of interest. MERRIFIELD subsequently told THOMA he was not negotiating with the licensee anymore. THOMA provided the report to him and MERRIFIELD voted on it.

THOMA indicated that MERRIFIELD essentially voted on the COL task force report through his joint sponsorship with Chairman KLEIN of the Staff Requirements Memorandum (SRM) on the issue. THOMA explained that in this case, since the Chairman and MERRIFIELD had jointly signed the SRM, that essentially counted as their two votes for the recommendations. THOMA did not believe that MERRIFIELD's interaction with Shaw as a potential employer presented a conflict of interest because Shaw would have been impacted only indirectly by any changes in the licensing application process for nuclear power plants. THOMA speculated that MERRIFIELD may have discussed the COL task force report with other Commissioners following the issuance of the SRM containing the COL task force recommendations. THOMA did state that he had told MERRIFIELD that he needed to "hold back" in conversations with the other Commissioners regarding the COL task force and aircraft crash issues. THOMA did not believe that MERRIFIELD informed the other Commissioners about which companies he was in job discussions with, and acknowledged that they would not have known which issues to avoid discussing with MERRIFIELD.

Prior to attending various meetings, MERRIFIELD would be provided talking points by the staff. (b)(7)c OCM, would collect the inputs provided by the staff members. THOMA would review the items before they went to MERRIFIELD and remove anything he thought could pose an apparent conflict based on the companies he knew MERRIFIELD to be dealing with. The talking points were not considered official records and were not maintained.

THOMA told OIG that around June 11 -13, 2007, MERRIFIELD had not made a final decision on employment. THOMA stated that about a week before the end of June 2007, MERRIFIELD first told him that he had made a job selection, but did not indicate which company he had selected to go to work for. A couple of days later at a farewell luncheon for MERRIFIELD, he told THOMA that he had decided to go with Shaw. However, MERRIFIELD asked him to keep the selection "quiet."

THOMA recalled no discussions about the implications of the Freedom of Information Act (FOIA) as it might relate MERRIFIELD's job search.

Agent's Note: In a subsequent telephonic conversation with SA (b)(7)c on September 27, 2007, THOMA indicated that MERRIFIELD had also had interaction with Progress Energy about potential employment.

Interviewed by Special Agent (b)(7)c
Special Agent (b)(7)c

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