

JUL 30 2014

**Integrity Committee**  
Council of the Inspectors General on Integrity and Efficiency  
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Washington, D.C. 20535  
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**Personal and Confidential**

July 23, 2014


The Honorable Darrell Issa  
Chairman  
Committee on Government Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515-6143

Re: IC720

Dear Chairman Issa:

Thank you for your July 22, 2014 letter requesting the final report of investigation concerning allegations of wrongdoing at the National Archives and Records Administration by Paul Brachfeld, Inspector General, John Simms, Counsel to the Inspector General, and Matthew Elliot, Assistant Inspector General for Investigations. This report is being provided to you consistent with section 11(d)(10)(B) of the Inspector General Reform Act of 2008.

Sincerely,



Angela L. Beyers  
Acting Chairperson  
Integrity Committee

Enclosure: Report of Investigation



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Office of Inspector General

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**Report of  
Administrative Investigation**

for the

Council of the Inspectors General  
on Integrity and Efficiency

Integrity Committee

March 28, 2014

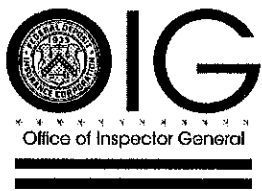
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## **Report of Administrative Investigation**

**for the  
Council of the Inspectors General on Integrity and Efficiency  
Integrity Committee**

**March 28, 2014**



## Executive Summary

### Report of Administrative Investigation

March 28, 2014

On July 30, 2013, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested that the Federal Deposit Insurance Corporation Office of Inspector General (OIG) conduct, on its behalf, an administrative investigation into allegations of misconduct on the part of the Inspector General and two senior executives of the National Archives and Records Administration (NARA) OIG. We initiated our investigation at that time and conducted our work in accordance with *Quality Standards for Investigations*.

## Background

On June 14, 2012, the Archivist of the United States made a referral to the CIGIE IC alleging a variety of complaints of inappropriate conduct by Paul Brachfeld, NARA Inspector General; John Simms, Counsel to the NARA Inspector General; and Matthew Elliott, NARA Assistant Inspector General for Investigations. The IC determined that the allegations substantially involved administrative misconduct or potentially involved conduct so serious that it might undermine the independence or integrity reasonably expected of an Inspector General or OIG senior staff member. Accordingly, the IC initiated an administrative investigation.

Independent of the referral to the IC, two NARA OIG employees filed prohibited personnel practice complaints with the Office of Special Counsel (OSC), one in August 2012 and the other in September 2012, alleging that Brachfeld, Simms, and Elliott committed prohibited personnel practices by creating a discriminatory hostile work environment that was permeated with threats, intimidation, and inappropriate comments and retaliation against employees for protected whistleblowing and related activities. OSC initiated its own investigation into these allegations.

Upon discovery of the OSC investigation, the IC closed the Archivist's complaint administratively on January 29, 2013, and notified the Archivist of his right to re-file his referral after the conclusion of the OSC investigation. OSC completed its investigation and issued a report to the Archivist, dated May 30, 2013, advising him that OSC had closed its investigation and decided to not take "further action on the prohibited personnel practice complaints." On June 7, 2013, the Archivist submitted his referral to the IC, which included the original June 14, 2012 allegations against all three parties.

## Results of Investigation

The allegations against Brachfeld, Simms, and Elliott are numerous and cover an array of alleged activity that was said to have occurred as far back as 2006. The allegations range from insensitive remarks about an individual's personal appearance to retaliation against NARA OIG employees to violations of professional standards in the conduct of NARA OIG audits and investigations.

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Some of the allegations are very precise in their language or very specific to an event, or they raise questions as to whether certain remarks made or behaviors at NARA OIG were “appropriate,” or both. Determining whether an action or statement is appropriate involves subjective judgment. As such, our report makes a determination as to whether a statement was made or an event occurred as alleged and, to the extent possible, explains the context in which comments and conversations on a particular topic occurred. We do not address the appropriateness of the behavior or comment in our determination.

Our report examines each allegation and, as requested by the IC, contains our determination as to whether the allegation was “substantiated” or “unsubstantiated” based on our investigation. If we confirmed the activity occurred, we substantiate the allegation. If not, we consider the allegation unsubstantiated. In some instances, we were unable to make that determination based on available information or because of conflicting information and lack of a third-party witness to the activity.

**Brachfeld**

The IC identified five high-level allegations against Brachfeld, each with anywhere from three to eight specific allegations, that we were asked to investigate. A full discussion of our investigation of each allegation begins on page 7 of this report.

- In the three allegations related to inappropriate comments about race and/or ethnicity, we substantiated that Brachfeld made comments about a marriage between individuals of different races but did not address the appropriateness of those comments. The other two allegations were unsubstantiated.
- In the eight allegations related to inappropriate comments related to sex, gender, and/or personal appearance, we substantiated that Brachfeld engaged in discussions about dating OIG employees and NARA contractors and commented on the weight of certain women, but we did not address the appropriateness of those comments. The remaining allegations were unsubstantiated. With respect to those that were unsubstantiated, we provide relevant information surrounding comments related to cannibalism, pregnancy and maternity leave, and gender change.
- In the four allegations involving threatening or violent statements toward the agency’s General Counsel, we substantiated that Brachfeld used words to the effect that “I’ve got him” and “I’m going to get him.” The remaining allegations were either unsubstantiated or we were unable to substantiate them.
- Seven of the eight allegations involving retaliation against staff were unsubstantiated. We were unable to substantiate the eighth allegation.
- All six of the allegations involving failure to follow appropriate professional audit and investigative standards and disclosure of non-public information were unsubstantiated.

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**Simms**

The IC identified five high-level allegations against Simms, each of which included anywhere from four to eight specific allegations that we were asked to investigate. Most of the allegations against Simms were derived from the allegations against Brachfeld. A full discussion of our investigation of each allegation begins on page 34 of this report.

- Three of the four allegations related to Simms being present when Brachfeld made inappropriate comments about race and/or ethnicity and not making an effort to stop the conduct were unsubstantiated. We were unable to substantiate the fourth allegation.
- In the eight allegations related to Simms being present when Brachfeld made inappropriate comments related to sex, gender, and/or personal appearance, we substantiated that Simms was present when Brachfeld commented on the weight of certain women. The remaining allegations were either unsubstantiated or we were unable to substantiate them.
- In the four allegations related to Simms being present when Brachfeld made threatening or violent statements toward the agency's General Counsel, we substantiated that Simms was present when Brachfeld used words to the effect that "I've got him" and "I'm going to get him." The remaining allegations were either unsubstantiated or we were unable to substantiate them.
- All four of the allegations involving retaliation against OIG staff were unsubstantiated.
- All four of the allegations involving failure to follow appropriate professional audit and investigative standards, including assertions under the high-level allegation, were unsubstantiated.

**Elliott**

The IC identified two high-level allegations against Elliott that we were asked to investigate. A full discussion of each allegation begins on page 45 of this report.

- All six of the allegations involving retaliation by Elliott against staff and/or engaging in personal vendettas were unsubstantiated.
- The single allegation that Elliott failed to follow appropriate investigative standards was unsubstantiated.

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## Abbreviations and Acronyms

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<b>Act</b>	Inspector General Act of 1978, as amended
<b>AIGA</b>	Assistant Inspector General for Audits
<b>AIGI</b>	Assistant Inspector General for Investigations
<b>AUSA</b>	Assistant United States Attorney
<b>CIGIE</b>	Council of the Inspectors General on Integrity and Efficiency
<b>DOJ</b>	Department of Justice
<b>EEOC</b>	Equal Employment Opportunity Commission
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>GAGAS or Yellow Book</b>	Generally Accepted Government Auditing Standards
<b>IC</b>	Integrity Committee
<b>IG</b>	Inspector General
<b>NARA</b>	National Archives and Records Administration
<b>OIG</b>	Office of Inspector General
<b>OSC</b>	U.S. Office of Special Counsel



## Report of Administrative Investigation

March 28, 2014

On July 30, 2013, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested that the Federal Deposit Insurance Corporation (FDIC) Office of Inspector General (OIG) conduct, on its behalf, an administrative investigation into allegations of misconduct on the part of the Inspector General (IG) and two senior executives of the National Archives and Records Administration (NARA) OIG. The source of the allegations was the Archivist of the United States. The FDIC OIG agreed to undertake the investigation and conduct it in accordance with the *Quality Standards for Investigations*, issued by CIGIE on November 15, 2011.

This report presents the results of the FDIC OIG's investigation into the allegations. We begin with a brief chronology of the Archivist's referral, followed by a discussion of the nature of the allegations against the three senior NARA OIG officials. We then explain the scope of our investigation and the steps we took to address the allegations, including our reliance on the related work of the U.S. Office of Special Counsel (OSC) as it pertained to certain of the allegations we reviewed. In the interest of understanding the context in which the alleged activity took place, we discuss the working environment at the NARA OIG and our sense of the corporate culture of that office, as that picture emerges from our interviews and analysis of documents.

Our Results of Investigation section provides our determination, to the extent possible, as to whether specific allegations are substantiated or not with regard to the three subjects. The appendices include pertinent correspondence between the subjects and the IC.

### Chronology of Archivist's Referral

On June 14, 2012, the Archivist of the United States made a referral to the CIGIE IC alleging a variety of complaints of inappropriate conduct by Paul Brachfeld, NARA IG; John Simms, Counsel to the NARA IG; and Matthew Elliott, NARA Assistant Inspector General for Investigations (AIGI). The IC determined that, pursuant to the IC's policies and procedures, the allegations substantially involved administrative misconduct (a violation of law, rule or regulation; gross mismanagement; gross waste of funds; or abuse of authority in the exercise of official duties or while acting under color of office), or potentially involved conduct so serious that it might undermine the independence or integrity reasonably expected of an IG or OIG senior staff member. As a result, the IC initiated an administrative investigation.

As called for in its policies and procedures, the IC sent a letter alleging wrongdoing, dated August 22, 2012, to each of the individuals named above and requested their response. Each of the subjects responded within one month. These letters and responses can be found in Appendix I, II, and III, respectively. On November 19, 2012, the IC approached an OIG to conduct the administrative investigation on its behalf.

Independent of the referral to the IC, two NARA OIG employees filed prohibited personnel practice complaints with the OSC,<sup>1</sup> one in August 2012 and the other in September 2012, alleging that Brachfeld, Simms, and Elliott committed prohibited personnel practices by creating a discriminatory hostile work environment that was permeated with threats, intimidation, and inappropriate comments and retaliation against employees for protected whistleblowing and related activities.

On November 30, 2012, the IC and the OIG assigned to conduct the investigation learned that OSC was conducting a parallel investigation and decided to discontinue the IC investigation. The IC closed the complaint administratively on January 29, 2013, and notified the Archivist of his right to re-file his referral after the conclusion of the OSC investigation.

OSC completed its investigation and issued a report to the Archivist, dated May 30, 2013, advising him that OSC had completed the investigation and decided to not take "further action on the prohibited personnel practice complaints." OSC's investigation did not yield evidence that OIG officials committed any prohibited personnel practices.

On June 7, 2013, the Archivist submitted his referral to the IC, which included the original June 14, 2012 allegations against all three parties. The IC then contacted the FDIC OIG to conduct an administrative investigation, and in August 2013, the IC sent notification letters citing allegations that were identical to those it had sent to Brachfeld, Simms, and Elliott on August 22, 2012, which, as noted above, are included in respective appendices. The IC did not request additional responses from the three subjects. We are conducting this investigation as #IC-720.

## **Nature of Allegations Against Senior NARA OIG Officials**

The allegations against the NARA IG, Counsel to the IG, and the AIGI are numerous and cover an array of alleged activity that was said to have occurred as far back as 2006. The allegations range from insensitive remarks about an individual's personal appearance to retaliation against NARA OIG employees to violations of professional standards in the conduct of NARA OIG audits and investigations.

In the discussion below, we provide biographical information on each of the three subjects and a high-level description of the allegations. The biographical information is based on interviews conducted by OSC. The allegations are taken directly from the August 22, 2012 notification letters.

**Brachfeld** was appointed NARA IG in January 2000. He joined the federal government in the summer of 1979 as an internal auditor with the U.S. Secret Service. He worked for the U.S. Customs Service and

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<sup>1</sup> OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices. As such, OSC has the authority to investigate and, where appropriate, prosecute claims of "prohibited personnel practices." There are thirteen prohibited personnel practices, which are defined by law at § 2302(b) of title 5 of the United States Code. A "personnel action" (defined in 5 United States Code § 2302(a)(2)(A) to include appointments, promotions, reassignments, disciplinary actions, and other personnel matters) may need to be involved for a prohibited personnel practice to occur.

then for a year at the Department of the Treasury OIG. He was selected as the Assistant Inspector General for Audits (AIGA) at the Federal Election Commission and then moved on to be the AIGA for the Federal Communications Commission, where he stated that he ran the investigative operations of the office for part of the time. Brachfeld has an accounting degree and is an auditor by profession.

The notification letters to Brachfeld included five high-level allegations against him. Three of these allegations related to: his inappropriate comments about race and/or ethnicity; inappropriate comments related to sex, gender, and/or personal appearance; and threatening, violent statements toward the agency's General Counsel. The fourth allegation involved retaliation against staff, and the fifth allegation involved failure to follow appropriate professional audit and investigative standards and disclosure of non-public information.

**Simms** joined the OIG as Counsel to the IG in October 2007. Prior to joining the OIG, Simms was an active duty Judge Advocate General for the United States Air Force for 5 years. Simms replaced the former Counsel to the IG, who was dual-hatted—serving as the Counsel and AIGI, when the former Counsel became the full-time AIGI in 2006.

The letters to Simms included five high-level allegations against him. Specifically, the allegations suggest that Simms was present and did not act when Brachfeld allegedly made inappropriate remarks based on race and/or ethnicity; was present when Brachfeld allegedly made inappropriate comments regarding sex, gender, and/or personal appearance; was present when he made threatening, violent statements concerning NARA's General Counsel; permitted retaliation against OIG staff; and enabled the OIG to fail to follow appropriate professional standards.

**Elliott** came on board as AIGI in 2011. Elliott, who spent 6½ years of active duty in the United States Army, started his federal career at the NARA OIG as a special agent in January 2006. He left NARA OIG for a promotion at the Government Printing Office OIG around October 2008. Elliott was promoted to be AIGI at the Government Printing Office OIG in 2010 and then returned to the NARA OIG to be the AIGI in September 2011. Elliott replaced the AIGI (and former Counsel to the IG) who left NARA OIG.

The letters to Elliott included two high-level allegations suggesting that he retaliated against staff and/or engaged in personal vendettas, and that he failed to follow appropriate investigative standards.

## Scope and Investigative Approach

Complaints within the IC's purview are those complaints that allege any wrongdoing on the part of an IG that is a member of CIGIE, and include complaints involving designated OIG staff members when an internal investigation may not be objective. As noted above, we accepted the request from the IC to conduct this administrative investigation.

We met with IC representatives to discuss the IC's roles and responsibilities and received a binder of information containing correspondence and reports related to the investigation. At that time, we were advised by IC representatives that the Federal Bureau of Investigation had not identified anything in this referral that appeared to be a violation of Title 18 of the United States Code, and that the issues to be investigated were administrative in nature.

We formulated our Investigative Plan and then filed and discussed it with the IC. Our agreed-upon scope was to review the allegations contained in the letters to Brachfeld, Simms, and Elliott, and to the extent possible determine whether the underlying events described in each of the allegations occurred. In that regard, our scope differed from OSC's review of potential prohibited personnel practices.

Given OSC's earlier investigation of some of these same matters, we examined the OSC report, met with OCS representatives, and compared the allegations sent to the IC with the allegations that OSC had investigated. We determined that some of the allegations investigated by OSC in its efforts to determine whether prohibited personnel practices had occurred, from a factual standpoint, were identical in form and substance to those that the IC asked us to investigate. As it relates specifically to the harassment and retaliation allegations, we relied on OSC's investigation and results.

The more than 20 witnesses interviewed by OSC included most of the individuals that we determined should be interviewed for purposes of our investigation. The OSC interviews were conducted by OSC staff members experienced in administrative investigations of allegations similar to those in the IC referral. The interviews conducted by OSC were recorded, and OSC made unredacted recordings of the interviews available to us. We transcribed the tape-recorded interviews and analyzed the information and evidence collected. We found the interviews conducted by OSC to be credible. Further, they afforded the individuals interviewed the opportunity to provide full and timely information regarding the facts alleged, as well as to provide additional information that might have been pertinent to the allegations. We determined that we could rely on these interviews and the additional documents to establish the facts surrounding many of the allegations against all three subjects. However, we did not rule out conducting additional interviews, if necessary, and collecting additional information.

Because our scope was broader than OSC's, we supplemented our analysis of OSC material with independent interviews and analysis. Specifically, we interviewed 15 individuals, including the 3 subjects of the investigation, and were assisted by the FDIC OIG Planning and Operations Manager, who provided an independent assessment of NARA OIG's handling of audit reports, and an FDIC Deputy Assistant IG, who provided an independent review of the selection of the NARA AIGI.

With respect to its interviews, OSC expressed concern about the protection of the privacy of individuals who provided information during its investigation. Accordingly, in reporting our results, we limit disclosure of certain witness names and identities by referring to those witnesses as Employee 1 through Employee 17. As for the subjects of the investigation, we use their names in this report. For those senior officials holding Executive-level policy positions, we refer to them by title.

Some of the allegations are very precise in their language or very specific to an event, or they raise questions as to whether certain remarks made or behaviors at NARA OIG were "appropriate," or both. Determining what constitutes appropriateness involves subjective judgment. As such, our report makes a determination as to whether a statement was made or an event occurred as alleged and, to the extent possible, explains the context in which comments and conversations on a particular topic occurred. We do not address the appropriateness of the behavior or comment in our determination.

We analyzed all pertinent interviews and documents to better understand the working environment in which the alleged activities occurred during the timeframes covered by our investigation. Before providing the results of our investigation, we present our observations on the NARA OIG workplace and the events that became the basis for the allegations, as a means of providing useful context and perspective.

### **Observations on the NARA OIG Workplace**

The NARA OIG was a small, close-knit office of no more than 20 people. A number of interviewees indicated that in addition to professional working relationships, many in the office (i.e., the IG, senior executives, employees, and their families) shared personal events and recognized special life events, such as weddings and births of children.

Over a period of many years, ongoing and almost daily banter, salty language, and comments made jokingly, such as, "you're fired," appeared to be accepted as part of the office culture, especially on the investigative side of the office, and particularly during the relaxed setting of lunchtime or time spent in the NARA fitness center. Interviews noted that some employees were more engaged than others in this type of office conversation and interaction, and other employees did not care for the office culture but tolerated it to get along. The former AIGI acknowledged that the joking and off-color comments could be "just right on the line" and suggested that outside of a law enforcement office, such comments could have and probably would have been perceived differently. However, he continued that within the law enforcement office, the banter was "positive" and helped investigative staff deal with the stress and emotion involved in their work.

Audit staff members were separated from the investigative staff by a hallway, and their workdays and interactions seemed different from those of the investigative staff. The Acting IG, who had served as AIGA, commented that apart from working on occasional joint audits or investigations, the auditors and investigators functioned independent of one another. He suggested that his group of auditors was generally not as social as the investigators were. For example, they did not routinely have lunch together or socialize after work. With respect to conversations and joking in the office, it appeared that an atmosphere involving banter and off-color comments was more prevalent on the investigative side than on the audit side.

A confluence of events seemed to significantly alter the Office of Investigations' dynamics sometime in the fall of 2011. The former AIGI, who had worked in the NARA OIG for about 7 years, departed, and an agent who had left 3 years earlier returned as the AIGI. The new AIGI began to establish more formal and structured systems for investigations, in anticipation that the NARA OIG would be granted statutory law enforcement authority.<sup>2</sup> Around the same time, the OIG was attaining increased prominence as a result of a long investigative effort that attracted media attention from such outlets as *60 Minutes*.

May 3, 2012 was a pivotal date for the NARA OIG as it relates to the allegations that subsequently surfaced. Earlier that day, an OIG special agent contacted the Deputy Archivist to make a formal report against Brachfeld. According to the Deputy Archivist, the special agent expressed concern about what the special agent characterized as Brachfeld's "increasingly erratic and unstable behavior." The special agent claimed to be voicing concerns held by other OIG employees as well. The Deputy Archivist<sup>3</sup> after listening to the details of the special agent's formal report, questioned why these allegations had not been reported before. The special agent indicated the concerned agents feared retaliation. According to her interview, the Deputy Archivist concluded that OIG employees wanted the Archivist to make the complaint and then the employees would be asked and could tell the truth.

Later that same day, according to the Deputy Archivist, Brachfeld burst into her office in a rage about an unrelated issue. This incident is further discussed on page 18 of this report, where the Deputy Archivist and Brachfeld have differing accounts. The Archivist and his staff, based on the accounts from the Deputy Archivist and follow-on documents sent to the Archivist from the special agent, subsequently began the process to file a complaint with CIGIE's IC.

It appears that most of the allegations that the Archivist referred to the IC originated from the one OIG special agent and the Deputy Archivist. Several of the events alleged in the referral to the IC were recent (i.e., 2012) while, based on our analysis, others had occurred as far back as 2006. This special agent and another special agent were the complainants in August and September 2012 to OSC, citing a hostile work environment and retaliation. In its report, OSC indicated that it found little evidence that any rank and file employee had complained about the IG prior to receiving these 2012 complaints.

Against this backdrop, the following sections of our report examine each allegation and, as requested by the IC, contain our determination as to whether the allegation, as precisely written, was "substantiated" or "unsubstantiated" based on our investigation. If we confirmed the activity occurred, we substantiate the allegation. If not, we consider the allegation unsubstantiated. In some instances, we were unable to make that determination based on available information or because of conflicting information and lack of a third-party witness to the activity.

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<sup>2</sup> This authority was granted by the Attorney General in February 2012.

<sup>3</sup> The Deputy Archivist has worked at NARA for 20 years, starting out as an archivist trainee and advancing steadily in her career. About 7 years ago, she moved into the Archivist's office as a special assistant. After a few years, she became the Chief of Staff, and then in July 2011 became the Deputy Archivist. The Deputy Archivist worked closely with the IG and, given her tenure, knew many of the OIG employees.

## Results of Investigation

### Allegations Against Brachfeld

This section of our report outlines each allegation against Brachfeld and indicates whether the allegation was substantiated or unsubstantiated based on our investigation. To the extent possible, we provide relevant context for each allegation we reviewed.

#### **1 Inappropriate Comments Based on Race and/or Ethnicity**

We investigated the allegations related to inappropriate comments based on race and/or ethnicity as they applied to Brachfeld. Specifically, for the three allegations below, we reviewed OSC documents and interview transcripts, examined the results of OSC's investigative report, and discussed the allegations with OSC representatives, as appropriate. Based on our analysis and review, we concluded that additional interviews with regard to these allegations would be unnecessary and duplicative.

Assessing the appropriateness of the alleged comments is a subjective exercise. What is considered funny by one reasonable individual could be considered offensive to another reasonable individual. As noted above, ongoing banter, jokes, and off-color language was the norm in the NARA OIG office, especially in the investigative side of the office, for many years. Given this environment, we determined whether the alleged comments were made and, if so, the context under which they were made and how OIG employees reacted to the comments.

#### **Inappropriate Comments About Marriages Between Individuals of Different Races**

The allegation that Brachfeld made comments regarding marriages between individuals of different races was substantiated. As noted earlier, we did not address the appropriateness or inappropriateness of the comments, given the office environment. This allegation related principally to the interracial marriage of a NARA OIG employee. We received no additional examples of race-related comments.

In the fall of 2010, Employee 13, who is white, married a Jamaican man. According to Employee 13, Brachfeld openly teased her, commented that she went "dark" and questioned whether she would become a pot smoker, sell marijuana, and listen to Reggae music. Employee 13 said that in 2011, Brachfeld had made a comment about her newborn son's skin color.

Of the 15 interviews we reviewed that discussed this allegation, six of the employees interviewed (Employees 2, 11, 12, 14, 15, and 16) said that they had heard Brachfeld make comments related to Employee 13's marriage to a Jamaican man. Employee 15 said he heard Brachfeld say to Employee 13, "Oh, you went dark." The other five employees could not pinpoint a particular event or situation when these comments were made but viewed these remarks as jokes or "making fun." Employee 16 described these comments as "engag[ing] in banter" about Employee 13's dating life, which "was a regular topic of conversation at the lunch table and around the office because it was always interesting



and she was more than willing to share." Employee 16 continued that he did not believe that at the time the conversations took place that Employee 13 found them "offensive in any way." Employee 16 also offered that to his knowledge, no one was offended by the conversation and banter, and stated that nobody reported anything to him about being bothered by the conversations.

Nine of the individuals (Employees 1, 3, 4, 5, 6, 7, 10, and 17 and Simms) noted in their interviews that they had not heard Brachfeld make these comments. Three of these individuals (Employees 1, 7, and 17) noted that they had been told of the comments by Employee 13.

In his interview, Brachfeld said that he would never hurt or insult Employee 13, and denied making the "you went dark" comment and any comments related to marijuana. He continued that he was happy for Employee 13's wedding, had given her a wedding present, and had received a small gift from Jamaica from Employee 13. In his written response, Brachfeld wrote, "I am unaware of any inappropriate comments that would call into question my views as it relates to marriage between *any* persons."

#### **Harassment of a Female Employee Married to a Male of Jamaican Origin**

The allegation that Brachfeld harassed a female employee married to a male of Jamaican origin was unsubstantiated. This allegation relates to the allegation discussed above. We relied on OSC's investigation to make that determination.

As previously noted, two NARA OIG employees filed complaints with OSC alleging prohibited personnel practices on the part of Brachfeld. The complainants alleged that Brachfeld committed prohibited personnel practices by creating a discriminatory hostile work environment. Under the lens of prohibited personnel practices, harassment can create a hostile work environment constituting a change in working condition that is a personnel action.

According to OSC representatives, OSC thoroughly investigated this complaint, but OSC's investigation did not yield evidence that Brachfeld committed any prohibited personnel practices. In its letter, dated May 30, 2013, transmitting its report of investigation, OSC advised the Archivist that it had completed the investigation and decided to not take "further action on the prohibited personnel practice complaints." OSC did not find evidence of discriminatory conduct that was so "severe or pervasive" that it altered the terms and conditions of one's employment. While occasionally insensitive, Brachfeld's remarks were indiscriminate and did not create a hostile work environment.

#### **Efforts to Fire NARA Security Contractors Because of Their Ethnicity**

The allegation that Brachfeld made efforts to fire NARA security contractors because of their ethnicity was unsubstantiated. As noted in his written response, Brachfeld wrote that no security contractors work for the NARA OIG and, as such, there was no security contractor under his purview that he could request a vendor to remove from a contract.

Employee 13, in correspondence to the Archivist, stated that Brachfeld made inappropriate comments about NARA contractor security personnel based on their African origin, knowledge of English, and physical abilities. This allegation was discussed in four transcripts. Employee 1, Employee 10, and Employee 14 stated that Brachfeld did not make any disparaging remarks related to race or ethnicity of security personnel. The Deputy Archivist described a conversation she had with another management team member after another unrelated meeting where they both thought that Brachfeld's feelings about the security contractors had a "racial tinge" to them. The Deputy Archivist stated that she had not heard Brachfeld make any other comments with a "racial tinge."

We found that Brachfeld did comment on the guards' fitness for duty in the context of the audit work that his office performed related to the security guards' performance under contractual standards. Employee 10 and Employee 14, both in the audit unit, said that Brachfeld questioned the guards' fitness for duty.

In his written response, Simms indicated that he had not heard nor did he have any reason to believe that Brachfeld was doing anything at all based on the contractors' ethnicity. Simms wrote that the OIG had been reviewing and auditing the contractor security guards at the Archives facility in College Park, MD for quite some time (i.e., Audit Report 11-05 and Management Report 10-18). He continued that one point of contention had been whether NARA accepted security guards who were capable of the physical demands of the contractual requirements. Brachfeld raised that point at a senior staff meeting, and the head of the agency, the Archivist of the United States, asked for a name of a guard who did not appear to meet these demands. Brachfeld provided a name, that as far as Simms knows, was based "solely on the appearance of not being able to meet contractual requirements." Simms continued that Brachfeld reported that Brachfeld was told this guard passed his physical fitness evaluation. Later on, Simms wrote that this particular guard accidentally let tourists into the Archives facility on Pennsylvania Avenue on a day when the facility was closed, and that the Archivist himself found these tourists wandering the building unescorted. Simms believes that the guard was ultimately removed from the contract based on this event.

In his written response, Brachfeld noted that an OIG audit did identify to management that a NARA security contractor failed to meet contractual performance standards (fitness, proficiency with firearms, etc.), and that this information was conveyed to appropriate NARA officials in the form of an OIG audit report.

**2****Inappropriate Comments About Individuals' Sex, Gender, and/or Personal Appearance**

We investigated the allegations related to inappropriate comments about individuals' sex, gender, and/or personal appearance as they applied to Brachfeld. Specifically, for the eight allegations below, we reviewed OSC documents and interview transcripts, supplemented this information with additional interviews, and discussed the allegations with OSC representatives, as appropriate.

As discussed above, assessing the appropriateness of these comments is fairly subjective. What is considered funny by one individual could be considered offensive to another. Ongoing banter, jokes, and off-color language was the norm in the NARA OIG office, especially on the investigative side of the office, for many years. Given this environment, we determined whether the comments were made, and if so, the context under which they were made and how OIG employees reacted to the comments.

**Telling a Male OIG Staff Member in a Locker Room That, "If I Were a Cannibal, I Would Eat You"**

The allegation that Brachfeld told a male OIG staff member in a locker room that, "If I were a cannibal, I would eat you" was unsubstantiated.

Through our investigation, we confirmed that a discussion related to cannibalism did occur in the locker room among Brachfeld and two other male OIG staff members. Simms was also in the locker room but was not a party to the conversation.

Employee 12 was the individual to whom Brachfeld allegedly addressed the statement. In his interview, Employee 12 described that on one occasion, when he was getting dressed in the locker room and at a time when there were news reports related to cannibalism, Brachfeld participated in a conversation on cannibalism. Employee 12 stated, "I don't know the exact sentence but basically [Brachfeld] said if I were a cannibal I would eat you." Employee 12 said that Brachfeld would often times comment to Employee 12 that he stayed in shape, so the cannibalism comment was, in Employee 12's opinion, "weird to say the least."

According to Brachfeld, Employee 3 began a discussion in the men's locker room on a movie related to cannibalism, and the conversation expanded into the Chilean miners and the Donner party. According to Brachfeld, Employee 3 started to get graphic and asked Brachfeld "would he do it?" Brachfeld said, directing his comments to Employee 3, "[S]tanding in a locker room, no way. But you know what, who's to say in a situation that those people were in, and the Donner party has—has been written, and the Chilean miner has been alleged, who's to say?" In Brachfeld's written response, he wrote, "I am not a cannibal and never made the statement ascribed to me in this complaint."

In Simms' written response, he stated that he vaguely remembered a conversation in the NARA locker room one day that did reference the book/movie *Alive* and cannibalism. He continued that he did "not remember the exact statement above, but distinctly have absolutely no recollection of this conversation involving any threats or anyone being seriously proposed for cannibalism." He noted that he did not remember there being any raised voices or anything other than locker room conversation and joking.

**Instructing Your Female Employees Not to Become Pregnant or to Take Maternity Leave**

The allegation that Brachfeld instructed female employees not to become pregnant or to take maternity leave was unsubstantiated. Employee 13 alleged that Brachfeld questioned her as to whether she was

pregnant, and when she denied it, he said, "You better not be pregnant or take more maternity leave." Employee 13 offered that Employee 12 may have overheard this comment, but according to Employee 12's interview, Employee 12 had heard about the comment from Employee 13.

Brachfeld provided the following in his written response: "I simply never have nor would I ever *instruct* a female employee not to become pregnant or take maternity leave. Over the years a number of OIG employees have become pregnant and been placed on maternity leave. In all cases these employees were afforded *maximum* courtesy and support as allowed by the Office of Personnel Management."

While we did not uncover any evidence to suggest that Brachfeld instructed any female OIG employees not to get pregnant or take maternity leave, we did find through our investigation that Brachfeld made comments related to pregnancy and the impact of employees taking maternity leave on the operations of his office.

The Deputy Archivist stated that on two occasions Brachfeld made comments related to pregnant women and the impact of maternity leave on his operations. First, waiting for a meeting with the Archivist, the Deputy Archivist stated that Brachfeld commented that there had been a spate of pregnancies on his staff and said, "Oh, I've got to stop hiring young women." Second, as part of a senior staff meeting with the Archivist and his staff, the Deputy Archivist stated that Brachfeld, in briefing on the activities of his office, said something similar to, "Oh, I'm down because all these young women are having babies."

In his response to the IC correspondence regarding this allegation, Simms recalled Brachfeld making a comment during a staff meeting about female employees becoming pregnant (presumably the same one that the Deputy Archivist referenced above) and offered the following perspective:

At that point either one or two employees had announced they were pregnant, or either they were already pregnant and were about to go out on maternity leave. [Brachfeld] made a comment about the office not being able to get by without these workers and maybe they should not take leave for long or employees should not become pregnant. The manner in which it was presented was certain to convey it was not a serious comment. To any reasonable listener in the room, this was obviously designed to be a [compliment] to the affected employees, and clearly emphasized how much their contributions would be missed while they were out. [Brachfeld] is exceptionally family oriented, and has never to my knowledge ever been anything but very accommodating to family needs and conveniences to all of the employees at the OIG.

Eight (Employees 1, 4, 5, 6, 7, 9, 11, and 14) of the 11 individuals interviewed who addressed this allegation stated that they were not aware of Brachfeld making comments about pregnancy or maternity leave. Employee 3 said that he did not remember a specific example but remembered "kind

of a general sense that he [Brachfeld] made some of those jokes or whatever, ... or comments, or commentary" on this issue. Employee 12 said he had heard from other individuals, including Employee 13, that Brachfeld had made pregnancy-related comments. Employee 17 stated that he heard "through the grapevine" that Brachfeld made a comment about an auditor who was pregnant.

**Refusing to Hire a Female Employee on the Grounds That the Individual Was "Too Emotional"**

The allegation that Brachfeld refused to hire a female employee on the grounds that she was "too emotional" was unsubstantiated. Employee 13 reported this allegation to the Archivist, which relates to hiring for the AIGI position in August/September 2011. The female employee Brachfeld allegedly refused to hire was Employee 13. We determined that Brachfeld did not "refuse" to hire anyone but instead decided to hire Elliott to be the AIGI.

The FDIC Deputy Assistant IG for Management, who has a 35-year career in federal human resources, reviewed the announcement package related to the AIGI hiring and confirmed that the required process was followed. She explained that the announcement package contained two separate candidate referral certificate lists. The first list contained the non-competitive candidates who were qualified and rated equally eligible. These candidates were either currently GS-15 1811 criminal investigators or had held that grade level or equivalent. Selection to this position would not represent a promotion for any of these individuals. Elliott on was this certificate list.

The second certificate list contained the Merit Promotion eligible candidates, representing individuals who did not presently hold (or had not previously held) a GS-15 1811 criminal investigator position or equivalent. This list included 14 individuals who had scored at least a 95 rating, the "cut-off" score, for this announcement, based on their responses given to the on-line employment screening announcement questions. According to the FDIC Deputy Assistant IG for Management, these candidates' applications were scored electronically as they applied, and anyone selected from this list would receive a promotion to the higher grade level (GS-15). On this certificate list, the scores ranged from 100 to the "cut-off" score of 95, with four applicants receiving a score of 100, nine applicants with a score of 96 to 99, and one applicant receiving a score of 95. Employee 13 was the candidate with the score of 95.

Based on her examination of the announcement package, the FDIC Deputy Assistant IG for Management advised that it appeared that Brachfeld, as the selecting official, only referred to the non-competitive certificate list when making his selection. She explained that a selecting official can choose to use any or all of the certificate lists when making a selection and that the practice of referring to only one certificate list is a normal practice.

**Making Derisive Comments and Mocking an Employee About a Gender Change Operation**

The allegation that Brachfeld made derisive comments and mocked an employee about a gender change operation was unsubstantiated. We found no evidence that a NARA employee had undergone a gender change operation or that comments were directed at any particular employee. However, during our investigation, we found that Brachfeld made comments about a NARA employee or contractor whose gender appeared to be uncertain.

Twelve individuals provided information regarding this allegation. Seven employees either provided examples, as follows below, or concurred in general that Brachfeld made comments related to a NARA employee or contractor whose gender was uncertain.

Employee 13, who provided this allegation to the Archivist, stated that Brachfeld on several occasions discussed a NARA employee that Brachfeld believed had undergone a gender change operation. Employee 13 stated that Brachfeld "referred to the employee as 'it,' stating that he didn't know 'its' name but he frequently saw 'it' walking down the hall, and despite hearing 'it' got a sex change was unable to determine 'its sex.'" Employee 15 said that he remembered Brachfeld, at the investigators' lunch table, referring to a NARA employee or contractor as an "it" because Brachfeld could not determine the person's gender. Employee 16 said that he was present during one of the conversations about the gender of the person not being clear, so Employee 16 said that the reference "probably took place."

The Deputy Archivist recalled an incident when an employee who appears to be transgender walked by while she and Brachfeld were conversing in front of Brachfeld's office. The Deputy Archivist continued that after she said hello to the employee and the employee passed, Brachfeld said, "That 'thing' scares me." The Deputy Archivist said she told Brachfeld that his comment was inappropriate, but Brachfeld dismissed her admonition with a laugh.

Employee 11 recalled a conversation in a hall where Brachfeld commented that he "wasn't sure whether that's a man or a woman."

Employee 6 and Employee 10 mentioned conversations where Brachfeld would question which bathroom a person who may have had a gender change operation would use or "would jokingly talk about" the bathroom question. Employee 6 stated that Brachfeld never made remarks when in the hall or when the person passed by but did talk jokingly about a person of whom he [Brachfeld] did not know the gender.

Employee 3 stated that the conversations sounded familiar, but he could not recall any specifics. Employee 7, Employee 14, Simms, and Elliott stated that they did not hear and were not aware of Brachfeld making any comments about a NARA employee or contractor whose gender was uncertain.

In his interview, Brachfeld advised the he noticed a NARA employee that he did not know, who regularly came to work at approximately 6:00 a.m., and that he did not know if the employee was male or female. According to Brachfeld, he asked Employee 3 if he knew the employee. Brachfeld added he does not know if the employee is transgender and he did not refer to the employee as "it."

**Making Sexual Advances to Female OIG Employees and NARA Contractors, Including Discussions About Dating OIG Employees and NARA Contractors**

This was a 2-part allegation and we investigated it accordingly. The allegation that Brachfeld made sexual advances to female OIG employees and NARA contractors was unsubstantiated. The allegation that Brachfeld made comments about dating OIG employees and NARA contractors was substantiated.

Based on our investigation and review of 14 interviews related to the first part of the allegation, no one stated that Brachfeld made a sexual advance toward any particular employee or contractor. Employee 16 said, "No. That's laughable," when asked whether anyone in the OIG reported that Brachfeld had made sexual advances toward female staffers.

In his response, Brachfeld wrote that he had made no sexual advances toward any employee or contractor, nor conducted himself to the best of his knowledge in any manner that could be construed as such. He continued that, in an abundance of caution, he would take all measures possible to ensure that his office door was **never** closed while he was alone with any female employee. Likewise, this caution extended to ensuring the door remained open when he entered the office of any female employee. He noted that the NARA OIG Administrative Officer would readily attest that he was unwavering in this regard. Furthermore, Brachfeld wrote that with the exception of a handful of public events, he had had no contact with any NARA employee outside of the office, "not even a phone call, email, cup of coffee, etc."

Regarding the second part of the allegation, 13 individuals offered information as to whether Brachfeld discussed dating of female OIG employees or NARA contractors. Six of the 13 individuals noted that Brachfeld had made comments that were "off-handed" about dating or were sexual in nature. Employee 1, Employee 3, Employee 4, and Employee 9 stated that Brachfeld would make such comments in the fitness center toward fitness center staff. All four employees viewed the comments as a part of a running joke or friendly banter, while Employee 9 noted that some of the comments resulted in "uncomfortable" or "awkward" moments. Employee 12 said that he heard from more than one coworker, but did not hear directly, that Brachfeld expressed that he would not mind dating a female OIG staff member. Employee 12 continued that in general, Brachfeld's "off-handed comments ... would be sexual in nature" and Brachfeld "didn't have boundaries." Employee 13 reported to the Archivist that Brachfeld approached female OIG staff and NARA contractors and advised them that he had thought about what it would be like if they "dated." The remaining seven individuals (Employees 5, 6, 7, 11, 12, 14, and 16) stated that they had never heard Brachfeld discuss dating female OIG employees or NARA contractors.

Brachfeld was asked whether he ever talked to his female colleagues about what it would be like to date them. Brachfeld responded, "No, I've never talked to my female colleagues about anything like that."

**Using Vulgar and Otherwise Inappropriate Language to Female Staff, Including Your Desire to Have Sexual Relations with an  
OIG Auditor**

The allegation that Brachfeld used vulgar language to female staff and commented on his desire to have sexual relations with an OIG auditor was unsubstantiated. From our investigation, the vulgar language that Brachfeld allegedly used to describe "sexual relations" was the basis of this allegation. We did not uncover any evidence to substantiate this allegation.

Employee 13 alleged to the Archivist that Brachfeld was vulgar in his tone when he told an OIG auditor that he would like to have sexual relations with her. Employee 13 advised that Employee 6 and Employee 14 would likely be able to talk about how Brachfeld made this comment. Based on our review of the transcripts, neither employee corroborated that Brachfeld made such a comment.

In addition to Employee 6 and Employee 14, five other individuals were asked about this allegation. Employee 3, Simms, and Elliott did not hear Brachfeld use vulgar language or make such a comment. Employee 9 and the Deputy Archivist said they did not directly hear Brachfeld make the comment but heard that he had made the comment from Employee 13.

Brachfeld offered in his written response that he has not had nor does he desire to have relations with any other person besides his wife of 32 years. He continued that he certainly could not remember nor would he deliberately make vulgar statements around any employee male or female.

**Telling a Female Employee That She Was "Fat" and  
Recommending That the Same Individual Use Face Cream  
Because She Was Starting to Look "Old"**

The allegation that Brachfeld told a female employee that she was "fat" and recommended that she use face cream because she was starting to look "old" was unsubstantiated. The female employee referenced in the allegation was the Deputy Archivist. This was a 2-part allegation and we investigated it accordingly.

During our investigation, we did not find evidence that Brachfeld specifically called the Deputy Archivist "fat" but did determine that both Brachfeld and the Deputy Archivist discussed weight-related issues. According to the Deputy Archivist, Brachfeld would often comment about her weight, say that she was overweight and should go to the gym, or say things like, "Should you be eating that?" She noted that the "weight" comments, which started in early 2007, were quite frequent and usually made when they were alone. She said that the comments stopped when she became the Deputy in the summer of 2011, and that Brachfeld, at that time, had remarked, "I guess I have to stop making fun of you now."



In his interview, Brachfeld stated that he never told the Deputy Archivist that she “was fat.” Brachfeld noted that the Deputy Archivist would come into his office “all the time” and make unsolicited comments about her weight, such as “I feel fat today.”

In his interview, Simms recalled one of these exchanges. Simms stated that the Deputy Archivist “said something about either being fat or she didn’t like the way she looked” and Brachfeld said something along the lines of, if you feel that way go to the gym. Simms continued that when he first joined the OIG in 2007, he viewed Brachfeld and the Deputy Archivist as “old friends,” given how they acted around each other and conversations that they had.

During our investigation, we did not find evidence that Brachfeld recommended to the Deputy Archivist that she should use face cream because she was starting to look “old.” According to the Deputy Archivist, this allegation was “one of the allegations from the staff member” and Brachfeld “didn’t say that to me directly.” The Deputy Archivist continued that Brachfeld’s wife is a make-up artist and Brachfeld “once said to me ‘oh, you need a makeover, I’ll have her get you a makeover,’ but I didn’t actually hear the face cream comment.”

Brachfeld, in his interview, stated that the Deputy Archivist precipitated every such discussion. He noted that she would come down from the lectern and say, “How did I look, ... was my make-up good?” In his response to the IC correspondence, Brachfeld wrote related to this allegation that the only thing he could possibly think of was that an employee who knows that his wife is a professional make-up artist may have asked him to convey a question or concern to his wife for professional advice. Brachfeld stated that he certainly never would have made any remark either solicited or unsolicited in that regard.

#### **Making Inappropriate Comments About the Weight of Certain Women**

The allegation that Brachfeld made comments about the weight of certain women was substantiated. Our investigation established that Brachfeld appeared interested in weight and fitness and made comments consistent with this apparent interest. As previously noted, we did not address the appropriateness or inappropriateness of the comments, given the office environment.

Based on our investigation, the weight-related comments fell into two categories: general weight and fitness comments and weight gain associated with pregnancy. Overall, 12 individuals provided information or perspective as it relates to such comments.

Seven employees (Employees 2, 3, 6, 11, 12, 15, and 16) commented that weight, fitness, food choices, and appearance were topics of conversation within the office and that Brachfeld participated in the conversations and would often make comments. Our investigation found that these comments were general in nature, some joking or in jest, and were not necessarily directed at women. Employee 3 offered that Brachfeld, when he mentioned weight, would often be critical of his own weight. Employee

11 offered that the OIG was known for being physically fit and that Brachfeld would make sure that the employees had time to go to the gym.

Three employees recalled specific weight-related comments that Brachfeld made about individuals outside of the OIG. Employee 14 recalled a female applicant for an auditor position who came in for an interview and Brachfeld commented to Employee 14 that the applicant was "fat" and Brachfeld "wasn't sure how she would fit into the environment." Employee 6 advised that he recalled someone who was overweight coming in for an interview, and Brachfeld referred to the person as "overweight and slovenly." We were unable to determine if these examples involved the same or different applicants. Employee 12 stated that Brachfeld would refer to some NARA managers who oversee the programs that the OIG investigates as "fat," but in a joking manner, and usually during the lunch table conversations.

In his interview, Brachfeld stated that he had no recollection of calling anybody fat. He continued that he encourages his staff to go to the gym and to work out and eat healthy, and he tries to be a model for such behavior. He noted that he may make playful comments and kid someone by saying something like "The wife's feeding you too well."

Regarding weight gain associated with pregnancy, six employees provided information. During the interview, Employee 13 stated that in the May 2011 time period, Brachfeld started making comments about her being fat while she was pregnant. She cited an example, where at a group lunch, Brachfeld said to Employee 13, "[W]ow, you're huge. Can you fit through that door?" While no one specifically confirmed that statement, Employee 7, Employee 11, and Employee 12 stated that Employee 13's weight and/or weight gain during her pregnancy was joked about. Employee 7 sensed that the jokes were delivered and taken in jest. In his interview, Brachfeld said he cannot remember, but that he was "kidding her" and said "I'm gonna have trouble gettin' through" the door. He continued that they were "kidding around" and that he would never "do anything malicious."

During our investigation, we understood that Brachfeld allegedly said that he was taking bets on an employee's pregnancy weight gain. Employee 1, who was the employee that this allegation was about, considered Brachfeld's comment that he was taking bets on how much weight she was going to gain or something similar to that as a joke. Brachfeld said in his interview that he never told a pregnant employee that he was taking weight-gain bets. During another interview, Employee 9 recalled that Brachfeld commented that one of the auditors had put on a little weight and questioned whether she was pregnant.

### **3 Threatening, Violent, and Otherwise Inappropriate Statements Concerning NARA's General Counsel**

We investigated the allegations related to threatening, violent, and inappropriate statements concerning NARA's General Counsel as they applied to Brachfeld. Specifically, for the four allegations

below, we reviewed OSC documents and interview transcripts, examined the results of OSC's investigative report, and discussed the allegations with OSC representatives, as appropriate.

### **You Said You Would Kill Him and/or That He Should Be Killed**

This was a 2-part allegation and we investigated it accordingly. The allegation that Brachfeld specifically said he [Brachfeld] would kill the NARA General Counsel was unsubstantiated. We were unable to substantiate the allegation that Brachfeld said that the General Counsel should be killed. The primary incident related to this allegation involved statements attributed to Brachfeld by the Deputy Archivist in the May 3, 2012<sup>4</sup> encounter in the Deputy Archivist's office.

Regarding the first part of the allegation, in the Deputy Archivist's memorandum to the Archivist describing the incident, the Deputy Archivist wrote that Brachfeld "did not say, 'I want to kill him' or 'I am going to kill him'" when referring to the General Counsel. According to his interview, Brachfeld said "I'm not gonna kill – [the General Counsel's] my friend. I'd never hurt—I'd never threaten anybody. ...[I]t wouldn't seem like language that I would use." Brachfeld also noted in his interview that "no one came to talk to" him, like the Federal Protective Service, and if it was "constituted as a threat, nobody acted on it."

Regarding the second part of the allegation that Brachfeld stated that the General Counsel should be killed, both Brachfeld and the Deputy Archivist have their own recollections of the incident, as described below. The NARA General Counsel was not present, and there were no other witnesses to the incident.

Based our investigation, Brachfeld was upset with a decision made by the General Counsel as it related to the Archivist attending a sentencing hearing. According to the Deputy Archivist, Brachfeld, in the few days that this decision was being made, was very upset and angry and at some point decided that the General Counsel was lying about the decision. As noted in the Deputy Archivist's interview, Brachfeld "just bursts into my office screaming, ranting, raving; I would characterize it as very out of control, very angry going on about [the NARA General Counsel]: He's a liar. I've had it with him. I'm going to get him. I'm done with him." According to the Deputy Archivist, "He should be killed" was a phrase used during the incident, and Brachfeld's use of "He should be killed" was a "not uncommon phrase."

The Deputy Archivist noted that she tried to explain the circumstances of the decision and that Brachfeld got angrier and said, "Would you just shut up for once in your life? I've got him now, stop trying to protect him." The Deputy Archivist stated that she got angry back and told Brachfeld to get out of her office and that it was totally inappropriate for him to talk like that. The Deputy Archivist continued that Brachfeld "seemed even angrier, and then he seemed a little sort of startled, and then immediately apologized." According to the Deputy Archivist, Brachfeld said that "he needed to go to the beach for a few days and calm down" and that she was "still one of the good ones" and "still wasn't his

<sup>4</sup> According to the transcript, the Deputy Archivist referred to May 2, 2012 as the date of the encounter with Brachfeld in the Deputy Archivist's office. Memoranda from the Deputy Archivist referring to the events of that day state May 3, 2012 as being the date.

enemy.” The Deputy Archivist responded, saying to Brachfeld, “[S]omeone can disagree with you without being the enemy, and you need to remember that.” According to the Deputy Archivist, Brachfeld was “clearly very shaken, very rattled, and he got up and hugged me and kept saying you know, ‘We’re still friends. We’re still friends.’”

As written in the OSC report, Brachfeld recalled the conversation with the Deputy Archivist differently. Brachfeld conceded in his testimony that he was unhappy to learn at the last minute that the Archivist would not attend a sentencing. Prior to this, he had expected the Archivist to accompany him to the hearing referred to above. When Brachfeld went to see the Deputy Archivist about the change in plans, he believed that the General Counsel had lied in his recommendation to the Archivist—although Brachfeld was not privy to that recommendation. Brachfeld advised that he was “engaged” during the conversation, but stated that he never raised his voice. “I wasn’t so angry I was pounding the table,” he added. He recalled further that he and the Deputy Archivist disagreed about the matter. At some point, according to Brachfeld, the Deputy Archivist commented that there were employees she would like to “string up.” At the end of their conversation, he said, they hugged. When specifically asked whether he said that the General Counsel “should be killed,” Brachfeld replied that he did “not in any way shape or form remember threatening the safety, health, welfare, well-being of [the General Counsel].”

Simms did not witness this incident. In Simms’ response to the allegation, he wrote that Brachfeld “has had a professionally contentious relationship” with the General Counsel since at least 2007 when Simms started working at the OIG. Simms continued, “I have heard [Brachfeld] express his frustration with General Counsel, ... but I have no recollection of any time where [Brachfeld] was actually threatening or could reasonably be seen as proposing actual violence towards the General Counsel.” Simms noted that he has seen Brachfeld and the General Counsel have respectful and collegial interactions as well.

#### **You Used Words to the Effect That “I’ve Got Him” and “I’m Going to Get Him”**

The allegation that Brachfeld used words to the effect that “I’ve got him” and “I’m going to get him” when referring to the General Counsel was substantiated.

In his interview, Brachfeld explained that he might have used the phrases “I’m going to get him” or “I got him” in reference to the NARA General Counsel. Brachfeld said while he might have used those words within his office as well as other phrases such as “I outflanked him” and “I beat his position like a drum,” he was talking about beating the General Counsel’s legal arguments on particular matters. Brachfeld said that he never threatened the General Counsel or used the phrases as a threat of violence.

Simms stated that he does remember Brachfeld saying “I’ve got him” or “I’ll get him.” He continued that Brachfeld “sometimes talks in hyperbole” and “uses flowery language.”

**You Made Statements to the Effect That “I’m Going to Get Him Fired” and “He Should Be in Jail”**

We were unable to substantiate the allegation that Brachfeld made statements to the effect that he was going to get the General Counsel fired or the General Counsel should be in jail.

In a May 2012 memorandum to the Archivist, the Deputy Archivist stated that Brachfeld had spoken about the General Counsel in what she considered to be “unprofessional, inflammatory, and even borderline violent language.” The Deputy Archivist continued that in the past, Brachfeld had said to the Deputy Archivist that the General Counsel “should be in jail” and “I’m going to get [the General Counsel] fired.”

In Simms’ response to the allegation, he wrote that while he does not remember Brachfeld specifically saying “I’m going to get him fired,” Simms noted that he believes that Brachfeld made some sort of comment about the General Counsel losing his job when discussing an incident where the General Counsel allegedly misled the Archivist about what an Assistant U.S. Attorney wanted from the Archivist in a criminal case. Simms continued that he generally does not remember a particular time when Brachfeld said that the General Counsel “should be in jail” but noted that it was possible Brachfeld has made statements like this when discussing what Brachfeld believed to be the General Counsel impeding an investigation.

In response to the allegations, Brachfeld wrote that he is “not a program official and cannot get NARA’s General Counsel fired.” He continued that in one case (occurring about 7-8 years ago), OIG staff had reason to believe that the General Counsel had contacted the subject of an investigation and that in so doing might have violated the Federal criminal code. Brachfeld remembers that the AIGI and NARA OIG Counsel advised him that a formal referral to the Department of Justice was not warranted.

**You Made a Statement That He “Is Evil”**

We were unable to substantiate whether Brachfeld made a statement saying that the General Counsel was “evil.” According to the Deputy Archivist’s May 7, 2012 memorandum to the Archivist, Brachfeld said to the Deputy Archivist that the General Counsel was “evil.” Simms wrote in his response to the IC correspondence, “I generally do not remember a particular time when Brachfeld said that the General Counsel ‘is evil.’” We did not uncover any information relevant to this allegation in our investigation.

**4 Retaliated Against Staff and/or Engaged in Personal Vendettas**

We investigated the allegations related to retaliating against staff and/or engaging in personal vendettas as they applied to Brachfeld. Specifically, for the eight allegations below, we reviewed OSC documents and interview transcripts, supplemented this information with additional interviews, and discussed the allegations with OSC representatives, as appropriate. For four of the eight allegations, we relied on the results of the OSC investigation. For the remaining four allegations not specifically addressed by the OSC investigation, we conducted work to determine whether the alleged incident occurred.

As previously noted, two NARA OIG employees filed complaints with OSC alleging prohibited personnel practices and retaliation on the part of Brachfeld. As it relates to the IC allegation, the complainants alleged that Brachfeld committed prohibited personnel practices<sup>5</sup> by retaliating against employees for protected whistleblowing and related activities. According to OSC representatives, OSC thoroughly investigated the complaints it received, but OSC's investigation did not yield evidence that Brachfeld retaliated against the complainants. As such, in its May 30, 2013, letter, OSC advised the Archivist that it had completed the investigation and decided to not take "further action on the prohibited personnel practice complaints."

#### **Retaliating Against OIG Staff for Making Complaints About Your Conduct or the Conduct of Your Senior Staff**

The allegation that Brachfeld retaliated against OIG staff for making complaints about Brachfeld's conduct or the conduct of his senior staff was unsubstantiated. We relied on OSC's investigation, which did not yield evidence that Brachfeld retaliated against OIG staff for protected disclosures or activity, to make that determination.

#### **Denying OIG Employees Access to the NARA Human Capital/Human Resources and the Equal Employment Opportunity Commission (EEOC) Office**

The allegation that Brachfeld denied OIG employee access to the NARA Human Capital/Human Resources and EEOC office was unsubstantiated. We understand that the OSC investigation could not confirm that Brachfeld denied OIG staff access to human resources or equal employment opportunity services. We also understand that the interviews conducted did not support the allegation, and no evidence was provided. We relied, in part, on OSC's investigation to make our determination.

There was nothing in the records we obtained and reviewed that supported the allegation that OIG employees were denied access to NARA human resources and equal employment opportunity services. We believe that this allegation stems from the letter of reprimand that Elliott was preparing to file against an OIG special agent, and the special agent's appeal rights. During his interview, Brachfeld stated that because he would be the deciding official on any appeal of a letter of reprimand that his AIGI would file, he was purposely staying out of the process. He continued that he was aware that Simms was working with NARA offices and the General Counsel to establish a grievance process for OIG

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<sup>5</sup> A Federal employee who has authority over personnel decisions may not ... (8) engage in reprisal for whistleblowing – generally, a person with personnel authority cannot take or fail to take a personnel action with respect to an employee or applicant because of a disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. The prohibition does not apply, however, if the disclosure is barred by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, except when such a disclosure is made to the Special Counsel, the Inspector General, or a comparable agency official; (9) take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law.

employees to use for personnel matters and was supportive of Simms' efforts. Our document review identified an extensive effort to establish an appeal process for OIG employees that would be parallel to the process for other NARA employees.

#### **Retaliating Against OIG Staff Who Have Expressed Disagreements with You**

The allegation that Brachfeld retaliated against OIG staff who disagreed with him was unsubstantiated. We relied on OSC's investigation, which did not yield evidence that Brachfeld retaliated against OIG staff, to make that determination.

#### **Threatening Staff with Adverse Consequences If Stories for the Media Are Affected**

The allegation that Brachfeld threatened staff with adverse consequences if stories for the media are affected was unsubstantiated. There were two incidents, discussed below, involving Employee 3 and/or Employee 17 where the employees stated that they felt that their jobs were being threatened. The individuals cited as witnesses to the threats either did not recall the comments or did not view directions given by Brachfeld as a threat. Brachfeld offered his own view on the responsibilities of employees associated with the Archival Recovery Team as it relates to the media.

The first incident involved having a film crew from *60 Minutes* accompany Employee 3 and Employee 17 to a Gettysburg trade show in late June 2012. Employee 3 was concerned about interacting with *60 Minutes* at the trade show given that the high-profile investigation related to stolen historic documents and artifacts was still ongoing. Employee 3 said that, during a meeting in early June, he told Brachfeld that he was uncomfortable with *60 Minutes* attending the trade show. After expressing his concerns, Employee 3 said that he felt that he was being ordered to cooperate, and that he and Employee 17 "had no choice. ... We had to do it." Employee 3 said he was afraid for his career if he was unwilling to talk to the reporters.

Employee 17 was also concerned about *60 Minutes* attending the trade show, but these concerns involved the impact the presence of *60 Minutes* might have on the relationships that the OIG Archival Recovery Team had forged with the dealers over the years. According to Employee 17, during the same meeting that Employee 3 described, he told Brachfeld that he did not want to take *60 Minutes* to the Gettysburg dealer show, and Brachfeld told Employee 17 that *60 Minutes* had promised that NARA would be shown in a positive light. Employee 17 further stated that Brachfeld had informed Employee 17, "I made you" and that he must go to the show. Employee 3 corroborated that Brachfeld directed the "made you" comment to Employee 17. Employee 17 stated that he believed that his disobedience could be a potential threat to his position.

According to email documents, Brachfeld contacted the *60 Minutes* producer and advised her that members of his staff had concerns about participating in the *60 Minutes* piece. In the email, Brachfeld outlined those concerns, that is, the OIG would be cast in an adverse light and the dealer relationships

could be impacted. Fifty minutes later the *60 Minutes* producer wrote back with her assurances that the OIG would be viewed as the “good guys” and the intention of the piece was to highlight the “good work” that the OIG does.

Later that day, Brachfeld read the email he received from the *60 Minutes* producer to Employee 3 and Employee 17 and advised them that he expected them to represent the OIG and support its traditional mission at the Gettysburg trade show. Employee 11, who was involved in both discussions, said that she did not hear Brachfeld threaten either employee’s job. Brachfeld followed up his verbal instruction to participate in the trade show with an email, and advised Employee 3 and Employee 17 that “as in past shows, you will likely have interaction with media, in this case *60 Minutes*.” In the email, Brachfeld continued, “in the highly unlikely event that you are asked a question that you feel uncomfortable in addressing for any reason, by all means please trust your instinct and judgment.” Employee 3 and Employee 17 attended the trade show and Employee 17 participated in on-camera interviews.

A second incident occurred in late June 2012 when Employee 3 said he would not agree to taping background footage with *60 Minutes*. According to Employee 3, Brachfeld implied that Employee 3 had no choice but to participate in the taping because “the economy was bad” and jobs were hard to find. According to Employee 3, Employee 11 was present when this threat occurred, and Employee 3 went to Employee 11’s office after the exchange to confirm that his job was threatened. According to Employee 3, Employee 11 said that she did not know what Brachfeld meant by the comment. Employee 11 offered a different take on the incident and suggested that Employee 3 had walked into a conversation related to the OIG’s travel budget and not related to Employee 3 or *60 Minutes*.

Simms also got involved in this incident after the fact. According to Simms, he was asked to advise Employee 3 that he did not need to participate in the “mock meeting” for non-speaking background footage for *60 Minutes*. When Simms went to convey this information to Employee 3, Simms stated that Employee 3 was very upset because he felt that Brachfeld had threatened his job. Simms said he reassured Employee 3 that there was “absolutely no way declining to be an extra in the filming would affect his employment status” and proceeded to talk to the individuals who might have heard the comment. After speaking with Employee 11, the AIGA, and Brachfeld, Simms went back to Employee 3 and advised him that “none of the other people who heard the conversation had any recollection about any sort of comment on the economy or anything which could have been taken as threatening.” Employee 3 maintained that he still felt that his job was threatened.

In his written response to the IC correspondence, Brachfeld wrote that he has never made a “threat” to any staff within his office about anything they have or have not done specific to the media. He continued that the vast preponderance of media coverage (i.e., magazines, newspapers, books, TV, and radio) that his office received was associated with the Archival Recovery Team and has and continues to be universally favorable. Brachfeld noted that OIG employees assigned to the team had routinely been made available to the media, as this is the established norm, and “the wish of any employee opting not to ‘entertain’ the media has been respected in all cases without recourse.”



**Seeking to Identify OIG Employees Who Made Negative Comments in an Employee Viewpoint Survey**

The allegation that Brachfeld sought to identify OIG employees who made negative comments in an employee viewpoint survey was unsubstantiated.

According to Employee 13, Brachfeld approached Employee 5 and asked her the identity of OIG personnel who had rated Brachfeld less than satisfactory in a particular category in the Employee Viewpoint Survey. We interviewed Employee 5, who stated that Brachfeld never approached her to ask the identity of anyone from the survey. She added that while she was the OIG point of contact regarding this survey, she did not have the necessary access that would have allowed her to identify anyone's responses to the survey questions.

In Brachfeld's written response to the IC, he advised that he had been the recipient of one Employee Viewpoint Survey at NARA. He recalled that NARA OIG had a high, if not the highest, favorable rating of any NARA office and was unaware that the IG was the recipient of any "negative" comments. That being said, if that was the case in the future, Brachfeld wrote that he would accept the feedback and attempt to address the concerns registered not the messenger.

**Pressuring a Special Agent to Get Your Daughter a Job and to Get You Media Appearances with Entities, Including CNN**

We were unable to substantiate the claims that Brachfeld pressured a special agent to get his daughter a job or provide him with media appearances. This is a 2-part allegation and we investigated it accordingly. We determined that conversations between Brachfeld and Employee 15 occurred related to both issues, but each of them viewed the conversations differently.

According to Employee 15, Brachfeld knew that Employee 15's wife was an attorney and managing director of a major firm. On several occasions, Brachfeld suggested to Employee 15 that Employee 15 could probably get Brachfeld's daughter, who was unhappily working for a non-profit organization, an interview with his wife's firm. While Employee 15 said he was uncomfortable with Brachfeld's comments and felt them inappropriate, he eventually told Brachfeld he would talk with his wife. After conversing with his wife, Employee 15 learned that Brachfeld's daughter did not have the right background, and his wife's firm did not have a position for her. Employee 15 informed Brachfeld of this result. According to Employee 15, Brachfeld persisted and so Employee 15's wife agreed to meet with the daughter informally and then again in a more formal interview setting. After conversing with his wife, Employee 15 again informed Brachfeld that her firm did not have a position for his daughter at that time.

Employee 15 added that Brachfeld "hounded him" two or three times over the next month about the position, and Employee 15 told Brachfeld that the decision was in the firm's hands. According to Employee 15, he told Brachfeld he did not feel comfortable talking with him about a job for his daughter

and that "it put him in a weird spot." According to Employee 15, Brachfeld told him, "Don't discuss this with John Simms."

In Brachfeld's written response to the IC, he explained that a special agent offered to have his wife meet his daughter to "mentor" her. They met once that Brachfeld was aware of while the special agent's wife was setting up an event at a hotel. Brachfeld wrote that, after that he was unaware they ever met again. Brachfeld stated that his daughter accepted an outstanding job offer from a major company where she is currently gainfully employed.

As for the second part of this allegation, according to Employee 15, a CNN reporter is a good friend of Employee 15's wife, and Brachfeld asked to be introduced to the reporter or to the reporter's agent, as Brachfeld often talked about his desire to be a news correspondent after he retired from federal service. Although he said he advised Brachfeld that the agent did not accept calls from outsiders, Employee 15 said Brachfeld "hounded" him 15-20 times over a period of about a year stating he was "still looking for an agent." Employee 15 stated that the requests made him uncomfortable, he thought they were inappropriate, and he told Brachfeld these requests made him uncomfortable. Employee 15 said the requests eventually stopped.

In his response, Brachfeld wrote that he believed that the special agent touted once that he knew people and could get Brachfeld some form of exposure on a network such as CNN. Brachfeld continued in his response that he never took that employee up on this offer and no action was or would be taken in this regard.

#### **Seeking to Remove the NARA's Head of Public Media and Communications Without a Basis to Do So**

The allegation that Brachfeld sought to remove NARA's head of Public Media and Communications was unsubstantiated. Employee 13 alleged that during staff meetings, Brachfeld told staff that he was going to meet with the Archivist to get the NARA head of Public Media and Communications fired and made unprofessional comments about her intellect. The Deputy Archivist recalled Brachfeld making comments, such as "I'm going to get her fired, she's stupid; she's an idiot," referring to the former head of Public Media and Communications, who has since retired. We did not find any evidence to suggest that Brachfeld did anything more than make comments. Brachfeld wrote in his response to the IC correspondence that he was not a program official within NARA and had no capacity to get anyone hired or fired in NARA much less an official that reported directly to the Archivist of the United States.

#### **Directing Punitive Actions Against the Special Agent in Charge of a High-Profile Investigation in Retaliation for a Disagreement About Access to the Evidence in the Case**

The allegation that Brachfeld directed punitive actions against the special agent in charge of a high-profile investigation in retaliation for a disagreement about access to evidence in the case was

unsubstantiated. We relied on OSC's investigation of this allegation, which did not yield evidence that Brachfeld retaliated against the special agent in charge, to make that determination.

## **5 Failure to Follow Appropriate Investigative and Audit Standards**

We investigated the allegations that Brachfeld failed to follow appropriate investigative and audit standards. Specifically, for the six allegations below, in addition to reviewing OSC documents and interview transcripts, we conducted interviews specific to these allegations. We were also assisted by the FDIC OIG Planning and Operations Manager who provided an independent assessment of NARA OIG's handling of audit reports.

### **Manipulating Investigative and Audit Reports**

The allegation that Brachfeld manipulated investigative and audit reports was unsubstantiated. This is a two-part allegation and we investigated it accordingly.

With regard to manipulating investigative reports, we did not receive or uncover any examples or incidents of Brachfeld's manipulation of investigative reports or work products during our investigation.

With respect to audit reports, we received and investigated evidence that three employees provided related to two reports. The standards against which we assessed this evidence are the authorities that govern the NARA OIG as a federal audit organization.

The Inspector General Act of 1978, as amended (Act), states that each IG has a duty and responsibility to provide policy direction for and to conduct, supervise, and coordinate audits relating to the programs and operations of their agency. In carrying out these responsibilities, the Act requires the IG to comply with standards established by the Comptroller General of the United States for audits of federal establishments, organizations, programs, activities, and functions. *Government Auditing Standards*, often referred to as *Generally Accepted Government Auditing Standards* (GAGAS) or the Yellow Book, set forth the standards that an IG must follow related to performing audits and issuing audit reports.

We interviewed the NARA AIGA regarding the audit-related allegations. When asked if he was aware of any instance when Brachfeld or any other OIG employee manipulated audit reports, the AIGA stated that he was not aware of any such instances.

The AIGA provided an explanation of the process his office follows to conduct audits and comply with the Yellow Book. He stated that his office's audit process begins with a scoping meeting, in which Brachfeld is typically involved, and assignment of the auditors who conduct the audit work. The AIGA said that he manages the auditors and provides Brachfeld with interim updates to keep him advised as to the audit's progress and any upcoming issues. After completing the work, the AIGA holds an exit conference with NARA management to discuss the audit findings and provide management a chance to

comment. While Brachfeld usually attended exit conferences, the AIGA stated that he and the auditor who did the work run the meeting.

Following the exit conference, the auditor drafts a report and sends it to the AIGA for review. The AIGA noted that he often makes changes to the report to add/delete language, to clarify issues, or in some cases, request that additional audit work be performed. Once he is satisfied with the report, the AIGA forwards it to Brachfeld and Simms for their review. The AIGA added that Brachfeld reviews draft reports because he is ultimately going to sign them.

The AIGA stated that he and the auditor typically would meet with Brachfeld and possibly Simms to discuss the draft reports. According to the AIGA, it would not be unusual for Brachfeld to ask clarifying questions when he reviewed a report, such as "Can we be more specific here?" or "What did management say about our conclusions?" or want some of the conclusions to be stated more definitively. If Brachfeld wanted additional work to be performed that the AIGA believed was beyond the scope of the audit, they would discuss it, and if Brachfeld persisted, the AIGA would agree to expand the scope of the audit and perform additional work. The AIGA stated that he insisted that any changes to the reports be changes that could be referenced. After these discussions, the audit reports would be finalized and issued. The AIGA further indicated that his office uses TeamMate software, which allows his office to keep all drafts of audit reports and their work papers so they can track changes made to a particular report.

During our investigation, Employee 2, Employee 3, and Employee 6 cited two audit assignments as examples that they believed violated auditing standards, whereby auditors were required to change the report, use inaccurate statements, or omit findings. These employees provided what they believed to be clear evidence of audit reports being manipulated.

#### ***Audit 06-11 – Audit of NARA's System Administrator Rights and Controls***

The first assignment was Audit 06-11 – *Audit of NARA's System Administrator Rights and Controls*. Employee 2 cited that inappropriate changes were made to this 2006 OIG audit report and provided working papers to serve as evidence. Employee 2 stated that he disagreed with changes being made to the report and that, as the independent referencer, was overruled and told to defer to the AIGA. According to Employee 2, Brachfeld wanted changes to the report that were not consistent with Yellow Book standards. There is no evidence that Brachfeld overruled any decision of the AIGA or was involved in the report changes alleged to be unsupported. Further, the changes appear to have been made consistent with audit standards and common practices within the NARA audit group, as discussed in detail below.

The FDIC OIG Planning and Operations Manager reviewed the workpapers along with the referencing review sheet provided by Employee 2 and found that the referencing review sheet documents that consideration was given to the points raised by Employee 2. While referencing is not "required" by

standards, it is identified as an example of a quality control process to help ensure that audit organizations prepare accurate reports and, as the AIGA noted above, is part of the NARA OIG process.

In reviewing the referencing review sheet, the FDIC OIG manager focused on the 18 out of 109 comments that were deferred to the AIGA for disposition. The 18 comments deferred to the AIGA, from our perspective, involved the application of professional judgment in terms of the extent of support provided for various statements or conclusions made in the report. In our view, it is appropriate that the AIGA would make the final call where there is a difference of opinion between the referencer and audit team. To that end, the Yellow Book standards state that professional judgment represents the application of the collective knowledge, skills, and experiences of the personnel involved with an audit, as well as the professional judgment of individual auditors. In our experience, referencing procedures typically provide for elevating points to more senior OIG management in cases when agreement on a referencing point cannot be reached.

***Audit 10-04 – NARA’s Oversight of Electronic Records Management in the Federal Government***

The second assignment where a violation of audit standards was alleged to have occurred involved Audit 10-04 – *NARA’s Oversight of Electronic Records Management in the Federal Government*, where a similar allegation was made that inappropriate changes were made to the report. This audit was included in the peer review sample and was reviewed as part of the peer review covering the 3-year period ending September 30, 2010.<sup>6</sup> Based on this and three other reports of audits performed by NARA OIG, the OIG conducting the peer review concluded that NARA OIG’s system of quality control for the audit organization of NARA OIG had been suitably designed and complied with to provide NARA OIG with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. NARA OIG received a peer review rating of pass.

As was done with the Audit 06-11, the FDIC OIG Planning and Operations Manager reviewed the workpapers of the 2010 audit provided by Employee 6, who believed that the documents presented clear evidence of auditors being directed to make changes they believed to be inaccurate to an audit report. The FDIC OIG manager stated that she reviewed the documents, including the report review chronology and attachments labeled A – M, and offered, based on her experience, that an IG is typically more involved in higher risk assignments or assignments with significant findings. She continued that Audit 10-04 involved reporting a material weakness, so having the IG directly involved in the message design and report review processes did not strike her as being extraordinary, especially since a report review process often involves multiple layers of review. She offered that “[a]n audit team is often put in the position of having to reconcile comments and in doing so certainly has a responsibility to ensure that findings and conclusions are supported by sufficient and appropriate evidence.” Although the

<sup>6</sup> The Yellow Book requires that audit organizations performing audits in accordance with GAGAS must have an external peer review performed by reviewers independent of the audit organization being reviewed at least once every 3 years.

documents provided by Employee 6 did not include the cross-indexed report or referencer review sheet, the FDIC OIG manager concluded that the fact that the assignment was subject to review by an external peer review team provides some level of assurance that the assignment was done in accordance with NARA's audit policies and procedures and GAGAS and complied with applicable GAGAS general, field work, and reporting standards.

**Directing Auditors to Change Findings in Their Reports and/or to Make Statements They Believe to Be Inaccurate**

The allegation that Brachfeld directed auditors to change report findings and include inaccurate statements in OIG audit reports was unsubstantiated. Further, other than Employee 2, the independent referencer who was not part of the team performing the audit and writing the report, we did not identify any auditor who stated that they were directed to change findings or make inaccurate statements.

In addition to the process and analysis described above, we directly asked the AIGA if he was aware of any instance where the IG was directing auditors to change the findings in their reports and/or make statements the auditors believed to be inaccurate, and he replied no. The AIGA said that he feels any audit reports his office issues are representative of what the auditors found and added that with respect to audit reports, the "buck stopped" with him.

The AIGA offered that he and Brachfeld clashed over their individual writing styles, with the AIGA describing himself as a technical writer and Brachfeld as a narrative writer. The AIGA stated that, on occasion, Brachfeld asked that analogies be added to their conclusions. The AIGA felt that these analogies might anger NARA management, and he recalled one instance when Brachfeld wanted to say that failure by management to follow a particular OIG recommendation would cause NARA to revert to a steel warehouse.

**Directing That Certain Findings Be Omitted from Audit Reports Because Those Findings Disagreed With the Results You Wanted to Publish**

The allegation that Brachfeld directed that certain findings be omitted from audit reports because findings disagreed with results he wanted to publish was unsubstantiated. As noted above, we asked for but did not receive evidence that would confirm that Brachfeld directed that certain findings be omitted from audit reports because he disagreed with the desired results.

In addition to the information provided above, the AIGA stated that he could not recall an instance when Brachfeld pulled information from a report or told him not to include certain information in a report. The AIGA has been in this position since 2000.

### **Making Unauthorized Disclosures of Non-Public Information Regarding Ongoing OIG Investigations**

The allegation that Brachfeld made unauthorized disclosures of non-public information regarding ongoing OIG investigations was unsubstantiated. Four employees provided two examples that they believed to be inappropriate or unauthorized disclosures of non-public information regarding an ongoing OIG investigation.

#### **Media Relations**

The first example regarding unauthorized disclosure of non-public information involved coordination with the Assistant United States Attorney (AUSA) as it relates to media contacts and sharing information with the press regarding an active investigation. Employee 3, Employee 13, Employee 15, and Employee 17 believed that Brachfeld failed to follow the *Attorney General Guidelines for Offices of Inspector General with Statutory Law Enforcement Authority* (Attorney General Guidelines) as the Guidelines relate to relations with the news media.

According to the Attorney General Guidelines, OIG personnel must familiarize themselves with and follow guidelines that the Department of Justice (DOJ) issued that prescribe the policy and instruction concerning the release of information by DOJ employees relating to criminal and civil proceedings (28 C.F.R. § 50.2).<sup>7</sup> The Attorney General Guidelines further require that, in the course of joint investigations between an OIG and the Federal Bureau of Investigation, wherever a “news release” would be permitted, pursuant to the aforementioned DOJ guidelines, the OIG must coordinate the release with the Federal Bureau of Investigation and DOJ.

Employee 15 pointed to a March 7, 2012 *Baltimore Sun* article related to a high-profile NARA OIG investigation as evidence that Brachfeld made a disclosure not authorized by the Attorney General Guidelines. Our investigation found that on February 7, 2012, the subject of the high-profile investigation pled guilty in U.S. District Court to two criminal counts involving theft of artwork. Because the disclosures at issue occurred after the subject’s guilty plea, the DOJ guidelines, narrowly construed, no longer applied, and thus the Attorney General Guidelines did not apply in this instance.

We note that while not technically required by Attorney General Guidelines, many OIGs continue to coordinate with DOJ regarding media relations up to and including sentencing on their investigations. Based on our investigation, it appears that NARA OIG follows that practice. During our investigation, we discovered various pieces of correspondence between Brachfeld and his investigative staff that illustrate that Brachfeld sought guidance and advice on how to coordinate press inquiries with the U.S. Attorney’s Office related to this and other investigations as far back as 2011.

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<sup>7</sup> Section 50.2(b)(1) provides: These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

Given Employee 15's allegation, we investigated Brachfeld's actions with respect to coordinating with the U.S. Attorney's Office on the March 7, 2012 *Baltimore Sun* article. The reporter wrote that the NARA IG said that his investigators had uncovered new evidence, but the article did not quote Brachfeld directly. The reporter then wrote that members of NARA's Archival Recovery Team were targeting historic document dealers who illegally, if unknowingly, bought pieces from the subject of this high-profile investigation for \$500 to \$6,000 apiece, based on the subject's own sales records, which were found during a Federal Bureau of Investigation search of the subject's Manhattan apartment. The article quotes several individuals, including Brachfeld, the United States Attorney, and a NARA Special Agent. The article also made statements regarding the ongoing investigation and attributes these facts by citing court records as the source.

As part of our investigation, we determined that Brachfeld did speak with a reporter from the *Baltimore Sun* prior to the March 7 article, but we were unable to attribute specific statements related to the high-profile investigation to Brachfeld or anyone else who was quoted in the article. In the article, Brachfeld discussed general information regarding the NARA OIG's Archival Recovery Team and its Sentinel initiative, which encourages historical document dealers to contact the OIG if they come across a document that might have been stolen. In referring to the article during our interview, Brachfeld stated that while he did not have access to the records seized in the case and certain data relating to this high-profile investigation, he would not divulge that information if he did have it. Brachfeld advised that he did not feel he had to coordinate this contact with the U.S. Attorney's Office as he was speaking in general terms regarding his office's programs. He further noted that the information he provided for the *Baltimore Sun* article was consistent with what he regularly shared with the media.

The AUSA who was leading the prosecution of the investigation referenced in the above article stated that he was upset when saw the March 7 article and suggested to the OIG employees who had conducted the investigation that he would reconsider pursuing a second phase of this investigation involving targeting historic document dealers. The AUSA also told us that after the *Baltimore Sun* article ran, Employee 15 and Employee 17 became increasingly concerned that Brachfeld wanted to share information about this high-profile investigation with the media, specifically, the CBS News program, *60 Minutes*. The employees advised the AUSA that Brachfeld wanted to provide *60 Minutes* with a behind-the-scenes look at the documents seized during the investigation and allow the *60 Minutes* crew to attend field interviews. According to the AUSA, he told Employee 15 and Employee 17 that such media access "was not going to happen on his watch."

In response to these concerns, on or about April 18, 2012, the AUSA emailed Elliott and told him that "we have an issue and a continuing problem" with respect to talking to the press. The AUSA reiterated that the OIG had to contact the U.S. Attorney's Office before speaking to the press and added that this was "not negotiable." According to the AUSA, Elliott must have forwarded the email to Brachfeld.

According to documents we obtained during our investigation, Brachfeld responded to the email that Elliott had forwarded to him and specifically asked the AUSA what allegations were being made against



him regarding his statutory duties related to media contacts. Brachfeld wrote, "I run this office and never would I consider, or even contemplate, providing the media with 'inappropriate access' to evidence that would endanger the successful conduct of a case." Brachfeld further wrote that he had discussed the *60 Minutes*' interest with the U.S. Attorney.

In response to Brachfeld's email, the AUSA wrote that he "made no allegations against you..." and was responding to concerns raised within the AUSA's office that the Attorney General guidelines were not being followed. The AUSA's response appeared to end this particular email exchange. During his interview, the AUSA commented that the press relations were cumbersome on this investigation because there were three different press offices involved (i.e., the U.S. Attorney's Office, NARA, and NARA OIG) that did not necessarily agree on all issues. That said, he noted that, in the end, the investigation received a tremendous amount of positive press and culminated in a special report by *60 Minutes*, which featured Brachfeld and the U.S. Attorney for the District of Maryland.

#### **Simultaneous Review and Investigation**

The second example that Employee 3 provided regarding unauthorized disclosure of non-public information was Brachfeld's insistence to issue an OIG management letter while an active investigation had not yet been completed. During our investigation, we found that Brachfeld simultaneously initiated both an administrative review and a criminal investigation in response to an issue that was brought to the OIG's attention involving the discovery of sensitive military and personnel records that were found to be inappropriately disposed of by NARA personnel at a records center in St. Louis, Missouri. After an initial NARA OIG review at the site and interviews with NARA personnel, Brachfeld decided, because of the seriousness of the issue, to send the management letter to the agency before the investigation had been completed.

Employee 3 felt the wording in the management letter was biased and misleading; however, in interviews with Employee 8 and Employee 11, who performed the audit field work, each felt that the management letter properly conveyed what they had found during their on-site visit. NARA management received the management letter, and provided a written response, acknowledging problems at the records center and requesting an audit by NARA OIG in the near future.

#### **Directing OIG Staff Members to Be Interviewed on Camera by *60 Minutes* Against Their Wishes**

The allegation that Brachfeld directed OIG employees to be interviewed on camera by *60 Minutes* against their wishes was unsubstantiated. During our investigation, we heard from Employee 3 and Employee 17 that Brachfeld was requesting and putting tremendous pressure on individuals to participate in the *60 Minutes* program. Based on our interviews, we learned that the individuals who participated and/or appeared on the *60 Minutes* program did so willingly. This matter is more fully discussed on page 22 of this report under the allegation that Brachfeld threatened staff with adverse consequences if stories for the media were affected.

**Seeking Access to Non-Public Information in OIG Investigations for the Purpose of Disclosing That Information to the Media**

The allegation that Brachfeld sought access to non-public information in OIG investigations for the purpose of disclosing that information to the media was unsubstantiated. Based on our investigation and as discussed above, we did not find that Brachfeld disclosed any non-public data to the media. While we did confirm that Brachfeld wanted access to information related to an ongoing investigation that his office was conducting, we note that Brachfeld repeatedly sought guidance as to what information he could provide to the media.

The *60 Minutes* segment is the primary example related to this allegation. Employee 3, Employee 13, Employee 15, and Employee 17 cited Brachfeld's efforts to obtain information from the investigative staff related to the high-profile investigation for the purpose of giving it to *60 Minutes*. We focused on two events as it relates to providing information to *60 Minutes*.

First, in March 2012, Brachfeld sent an email to Simms, Elliott, and the investigative staff (Employees 2, 3, 11, 12, 15, and 17) providing general instructions as to how to work with *60 Minutes* related to providing information and what Brachfeld viewed as the possible outcomes of this media exposure. Brachfeld writes, in part:

What we can suggest to *60 Minutes* we can do with cameras running we'll do. What we can show or tell them we do behind the scenes we'll do as well. The key is to reel them in now and frame the story in a manner that it is about the threat institutions face and how with our small band of merry men/women we're trying to help them. The Archival Recovery Team is a successful and proven model that needs to be amplified and reinforced upon.

Second, in late May 2012, while Brachfeld was preparing for his interview with *60 Minutes*, he asked for, during a meeting with investigative staff, "sexy" information that he could disclose during that interview. In advance of the meeting, staff had provided him with a briefing book with all of the publicly available information related to the high-profile investigation to be featured in the *60 Minutes* piece. According to Brachfeld, while his word choice of "sexy" was not a great choice of words, he was looking for "material that would solicit" continued interest in the story by *60 Minutes*. Based on an email to Brachfeld from Employee 15, Brachfeld received no additional information from the staff.

The next day, Brachfeld sent an email to the *60 Minutes* producer advising her that "based on ongoing dialogue with the AUSA and members of my staff, I am simply constrained in providing information specific to" the high profile investigation. He continued that he could "discuss the work of the Archival Recovery Team and what we do, and aspire to do." In this email, Brachfeld explained that he could talk about information in the public domain but not talk about "additional facts specific to this case or proposed or planned targets we may work" after sentencing.

## Results of Investigation

### Allegations Against Simms

In the following section, we discuss the results of our investigation of the Simms allegations. The first three broad allegations deal with inappropriate comments that Brachfeld allegedly made and whether Simms was present to witness them, and in the first allegation, made efforts to stop Brachfeld's alleged conduct. The fourth allegation deals with permitting retaliation against OIG staff, and the fifth allegation involves Simms enabling the OIG's failure to follow professional standards.

For some of the specific allegations contained in the first three broad allegations, we have collected information related to whether Simms was present and made efforts to stop the behavior. However, for most of these allegations, we do not have such evidence related to a specific comment or event. For the most part, the interviews do not describe Simms' reaction to a specific comment but talk, in general terms, about how Simms would interact with Brachfeld.

Some employees stated that, unrelated to a specific event, they had witnessed Simms advising, or informally counseling Brachfeld in a joking manner. For example, Employee 3 said that he remembered Simms, on at least two or three occasions jokingly saying out loud to Brachfeld, "I'm asking you to shut up now," and then looking around, appealing to people as if to say, "What can I do? He won't shut up." Employee 17 said that there were times when they were sitting around and Simms was there, and Simms would have to interrupt and advise Brachfeld by saying, "[Y]ou don't want to go there." Employee 16 advised that Simms was often in the investigators' area and would participate in the conversations.

In his interview, Brachfeld recalled that Simms, over the past 5-6 year period that Simms has been serving as Counsel, advised Brachfeld once or twice to make sure that something Brachfeld said did not get misconstrued. Brachfeld stated that he could not recall circumstances or specific comments. According to Brachfeld, Simms never counseled him that something was inappropriate nor told him that anyone felt offended or hurt by something that Brachfeld had said. According to Brachfeld, Simms "knew that I was an affable person and very close with my staff" and so he would "caution" Brachfeld sometimes. Brachfeld noted that Simms would say to Brachfeld, "Remember, you're the boss," as a way of reminding him and Brachfeld would respond, "Thank you."

During his interview, Simms stated that he had no recollection of an employee coming to him and advising him that the employee was upset by Brachfeld's comments. He continued that, as it relates to some of the office banter and joking back and forth, he never observed anything where he would conclude that employees were upset by a comment that Brachfeld made. Simms did recall finding himself in a situation where an employee alleged that Brachfeld threatened his job. According to Simms, he contacted the individuals involved to understand the perceived threat. This matter as it relates to Simms is more fully discussed on page 23 in the Brachfeld section.

**1****Present When Brachfeld Has Made Inappropriate Comments Based on the Race and/or Ethnicity of an Individual and Made No Efforts to Stop This Inappropriate Conduct**

We investigated the allegations that Simms was present when Brachfeld made comments based on the race and/or ethnicity of an individual and made no effort to stop the conduct. There are four allegations under this high-level allegation. We relied on the results of the Brachfeld investigation for three of the allegations and conducted additional work on the fourth allegation to determine whether Brachfeld made the alleged comment in Simms' presence. For each allegation where we determined that the comment was made, we reviewed OSC documents and interview transcripts and conducted supplemental interviews to look for evidence as to whether Simms witnessed the comments and made efforts to stop Brachfeld's conduct.

**Inappropriate Comments About Marriages Between Individuals of Different Races**

We were unable to substantiate the allegation that Simms was present and did not act on the inappropriate comments that Brachfeld made regarding marriages between individuals of different races. As previously noted, the allegation that Brachfeld made comments regarding marriages between individuals of different races was substantiated, but we did not address the inappropriateness of these comments, given the office environment. Our investigation was unable to confirm that Simms was present when Brachfeld made these comments, in particular related to Employee 13's interracial marriage.

According to Employee 13, Simms was often present when Brachfeld made inappropriate and unprofessional comments to OIG staff. Employee 13 continued that Simms "often mocks his role as Counsel" during these incidents by "jokingly telling OIG staff that 'he should be advising [Brachfeld] to stop' or 'You know how [Brachfeld] is?'"

During his interview, Simms specifically addressed some of the comments Brachfeld allegedly made to Employee 13, such as she went "dark," and questioning whether she would become a pot smoker and sell marijuana. Simms said that he did not remember hearing Brachfeld make such comments. In particular to the "went dark" comment, Simms said that he would have remembered such a comment because he would consider it to be "absolutely inappropriate" and would have told Brachfeld to stop. Simms continued that he would have considered the "went dark" comment to be well outside the "off-hand, off-color sexual ... innuendo-based jokes." In his words, "That ... would be well outside of that realm."

**Comments About Efforts to Fire NARA Security Contractors Because of Their Ethnicity**

The allegation that Simms was present and did not act when Brachfeld allegedly made efforts to fire NARA security contractors because of their ethnicity was unsubstantiated. As noted in the Brachfeld section, this allegation against Brachfeld was unsubstantiated.

**Harassed a Female Employee Married to a Male of Jamaican Origin**

The allegation that Simms was present and did not act when Brachfeld allegedly harassed a female employee because of her marriage to a male of Jamaican origin was unsubstantiated. Based on the results of the OSC investigation, the allegation of harassment against Brachfeld was unsubstantiated.

**Asked a Female African American Employee If Her Hair Was "Real or a Hair Weave"**

The allegation that Simms was present and did not act when Brachfeld allegedly questioned a female African American about her hair weave was unsubstantiated.

Employee 13 wrote to the Archivist that during a recent meeting with Brachfeld, Simms, Elliott, and OIG staff present, Brachfeld walked over to an African American female employee as she was sitting in a chair and inspected her hair in an inappropriate and unprofessional manner and embarrassed her in front of staff by asking, "Is that real or is that a hair weave?" and she replied, "This is real." Employee 13 noted that Brachfeld made the comment to Simms and Simms did not counsel Brachfeld on his statement.

When interviewed, Employee 11 recalled this event and advised that she was present at the meeting that she believes was the impetus for this allegation. Employee 11 explained that as Brachfeld entered a conference room before a staff meeting, he commented to one of the employees present, an African American female, on her new hair style. Employee 11 noted that the hair style was much different than how the employee normally styled her hair. According to Employee 11, she did not recall that the employee was upset nor did Employee 11 believe it was offensive. Employee 11 further stated that she did not believe that Simms had joined the meeting yet. Employee 11 explained that over time this comment was taken out of context as other employees retold the story.

In his transcript, Simms stated, "I think I can remember there being a discussion among employees about hair weaves in general. I can't remember that [Brachfeld] was there or not." In his written response, Simms stated the he has no recollection of Brachfeld making such a statement to an OIG employee.

**2****Present When Brachfeld Has Made Inappropriate Comments About Individuals' Sex, Gender, and/or Personal Appearance**

We investigated the allegations that Simms was present when Brachfeld made comments about individuals' sex, gender, and/or personal appearance. There are eight allegations under this high-level allegation. We relied on the results of the Brachfeld investigation for all eight allegations as it relates to Simms. If we determined that the alleged comment was made, we reviewed OSC documents and interview transcripts and conducted supplemental interviews to look for evidence as to whether Simms was present when the comments were made. As previously noted, given this environment, we determined whether the comments were made, and if so, the context under which they were made and how OIG employees reacted to the comments.

**Telling a Male OIG Staff Member in a Locker Room That, "If I Were a Cannibal, I Would Eat You"**

The allegation that Simms was present when Brachfeld allegedly told a male OIG staff member in a locker room, "If I were a cannibal, I would eat you" was unsubstantiated. As noted in the Brachfeld section of the report, the allegation against Brachfeld was unsubstantiated.

Through our investigation, we confirmed that a discussion related to cannibalism did occur in the locker room among Brachfeld and two other male OIG employees. We also confirmed that Simms did not participate in the cannibalism discussion in the locker room but was within earshot. Employee 12 noted that Simms was in the locker room, and the conversation was loud enough for Simms to hear Brachfeld's comments. Employee 12 continued that Simms was only separated by lockers and the locker room was not very big.

In his written response, Simms stated that he vaguely remembered a conversation in the NARA locker room one day that did reference the book/movie *Alive* and cannibalism. He continued, "I do not remember the exact statement above, but distinctly have absolutely no recollection of this conversation involving any threats or anyone being seriously proposed for cannibalism." He noted that he did not remember there being any raised voices or anything other than locker room conversation and joking.

**Instructing OIG Female Employees Not to Become Pregnant or to Take Maternity Leave**

The allegation that Simms was present when Brachfeld allegedly instructed women not to become pregnant or take maternity leave was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

**Refusing to Hire a Female Employee on the Grounds That the Individual Was "Too Emotional"**

The allegation that Simms was present when Brachfeld allegedly refused to hire a female employee on the grounds that she was "too emotional" was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

**Making Derisive Comments and Mocking an Employee About a Gender Change Operation**

The allegation that Simms was present when Brachfeld allegedly made derisive comments and mocked an employee about a gender change operation was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

During our investigation, we found that Brachfeld made comments about a NARA employee or contractor whose gender appeared to be unclear. According to Simms, he did not hear and was not aware of Brachfeld making any comments about a NARA employee or contractor whose gender was uncertain. In his interview, he then recalled that he did hear second-hand from Employee 10 that Brachfeld had made comments about what bathroom an employee whose gender was uncertain would use. Simms said that the comments were not viewed in a "mocking sense."

**Making Sexual Advances to Female OIG Employees and NARA Contractors, Including Discussions About Dating OIG Employees and NARA Contractors**

This was a two-part allegation, and we investigated it accordingly. The allegation that Simms was present when Brachfeld allegedly made sexual advances toward female OIG employees and NARA contractors was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

With respect to discussing dating female OIG employees or NARA contractors, we were unable to substantiate that Simms was present for any comments made by Brachfeld. In our investigation, we did substantiate that Brachfeld made "off-handed" comments about dating or that were sexual in nature.

**Using Vulgar and Otherwise Inappropriate Language to Female Staff, Including Comments on His Desire to Have Sexual Relations with an OIG Auditor**

The allegation that Simms was present when Brachfeld allegedly used vulgar language or otherwise inappropriate language and made comments about his desire to have sexual relations with an OIG auditor was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

In his interview, Simms said that he had never heard Brachfeld be vulgar or crude, as such language would have stood out and Simms would have remembered it.

**Telling a Female Employee That She Was "Fat" and Recommending That the Same Individual Use Face Cream Because She Was Starting to Look "Old"**

The allegation that Simms was present when Brachfeld allegedly called a female employee "fat" and told this same employee that she should use face cream because she was "looking old" was unsubstantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was unsubstantiated.

**Making Inappropriate Comments About the Weight of Certain Women**

The allegation that Simms was present when Brachfeld made comments about the weight of certain women was substantiated. As noted in the Brachfeld section of the report, this allegation against Brachfeld was substantiated, as we established that Brachfeld appeared interested in weight and fitness and would make comments consistent with this apparent interest. As further noted, we did not address the appropriateness or inappropriateness of the comments, given the office environment.

During his interview, Simms described some of the exchanges that he had observed between Brachfeld and the Deputy Archivist related to weight, fitness, and appearance. He described them as comments that he would probably not say to a woman, but he viewed the banter between them as an accepted part of their professional relationship. Simms said that Brachfeld is "a little socially awkward."

Simms also commented during his interview that he had heard Brachfeld jokingly converse with one of the auditors who was pregnant about how big she was getting and how her back hurt. Simms heard the conversations as they would take place outside his door.

**3****Present When Brachfeld Has Made Threatening, Violent, and Otherwise Inappropriate Statements Concerning NARA's General Counsel**

We investigated the allegations that Simms was present when Brachfeld made threatening, violent, and inappropriate statements concerning NARA's General Counsel. There are four allegations under this high-level allegation, and we relied on the results of the Brachfeld investigation to make our determination as it relates to Simms.

**That He Would Kill Him and/or That He Should Be Killed**

The allegation that Simms was present when Brachfeld allegedly made statements about killing the General Counsel was unsubstantiated. As discussed in the Brachfeld section of the report, we were unable to substantiate the allegation against Brachfeld. The primary incident related to this allegation involved the Deputy Archivist and Brachfeld in the Deputy Archivist's office, and there were no other witnesses to the conversation.

**Words to the Effect That "I've Got Him" and "I'm Going to Get Him"**

The allegation that Simms was present when Brachfeld used words to the effect, when referring to the General Counsel, "I've got him" and "I'm going to get him" was substantiated. This allegation against



Brachfeld was substantiated. Simms specifically stated that he does remember Brachfeld saying "I've got him" or "I'll get him," regarding the General Counsel and interpreted it to mean, "I've got evidence that he's lying to the Archivist."

**Statements to the Effect That "I'm Going to Get Him Fired" and "He Should Be in Jail"**

The allegation that Simms was present when Brachfeld allegedly made statements to the effect that he was going to get the General Counsel fired or the General Counsel should be in jail was unsubstantiated. We were unable to substantiate whether Brachfeld made such statements regarding the General Counsel.

**Statement That He "Is Evil"**

The allegation that Simms was present when Brachfeld allegedly made statements that the General Counsel was "evil" was unsubstantiated. We were unable to substantiate whether Brachfeld made such a statement regarding the General Counsel.

Simms wrote in his response to the IC correspondence that he generally did not remember a particular time when Brachfeld said that the General Counsel "was evil."

#### **4 Permitted Retaliation Against OIG Staff**

We investigated the allegations that Simms permitted retaliation against OIG staff. There are four allegations under this high-level allegation. We relied on the results of the OSC investigation when examining the allegations that Simms permitted retaliation against OIG staff.

As previously noted, two NARA OIG employees filed complaints with OSC alleging prohibited personnel practices and retaliation on the part of Simms and other senior OIG officials. As it relates to the IC allegation, the complainants alleged that these individuals committed prohibited personnel practices by retaliating against employees for protected whistleblowing and related activities. The prohibited personnel practices that the allegations covered related to reprisal for whistleblowing and retaliation.<sup>8</sup>

According to its representatives, OSC thoroughly investigated the complaints they received, but their investigation did not yield evidence that Simms committed any prohibited personnel practices against

<sup>8</sup> A Federal employee who has authority over personnel decisions may *not* ... (8) engage in reprisal for whistleblowing – generally, a person with personnel authority cannot take or fail to take a personnel action with respect to an employee or applicant because of a disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. The prohibition does not apply, however, if the disclosure is barred by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, *except* when such a disclosure is made to the Special Counsel, the Inspector General, or a comparable agency official; (9) take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law.

the complainants. In its letter, dated May 30, 2013, transmitting the report of investigation, OSC advised the Archivist that it had completed the investigation and decided to not take "further action on the prohibited personnel practice complaints."

**Retaliating Against OIG Staff for Making Complaints About Brachfeld's Conduct and/or the Conduct of OIG Senior Staff**

The allegation that Simms permitted retaliation against OIG staff for making complaints about Brachfeld's conduct and/or the conduct of OIG senior staff was unsubstantiated. We relied on OSC's investigation, which did not yield evidence of retaliation by Simms against OIG staff, to make this determination.

**Denying OIG Employees Access to the NARA Human Capital/Human Resources and EEOC Office in Order to Prevent OIG Staff from Accessing NARA Resources for Their Complaints of Misconduct Concerning You and Other Senior OIG Staff Members**

The allegation that Simms permitted the denial of OIG employee access to the NARA Human Capital/Human Resources and EEOC office was unsubstantiated. We understand that the OSC investigation could not confirm that Simms denied OIG staff access to human resources or equal employment opportunity services. We also understand that the interviews conducted did not support the allegation, and no evidence was provided. We relied, in part, on OSC's investigation of this allegation to make this determination.

There was nothing in the records we obtained and reviewed that supported the allegation that OIG employees were denied access to NARA human resources and equal employment opportunity services. We believe that this allegation stems from the letter of reprimand that Elliott was preparing to file against an OIG special agent and the special agent's appeal rights. Based on our review of various documents, we identified an extensive effort on Simms' part to establish a grievance process for OIG employees to use for personnel matters. Documents show that Simms was actively working with NARA offices and the General Counsel to establish such a process. In Simms' response to the IC, he wrote, "In no circumstance did I ever tell any employee or supervisor that they could not use any NARA office such as [Human Resources] or EEOC to make any complaints." Simms continued that he was aware of one time when a supervisor issued a letter of reprimand to an employee. Simms noted that the employee who was given the letter of reprimand was given free access to and used the Human Resources office for this issue.

**Retaliating Against OIG Staff Who Have Expressed Disagreements with Brachfeld and/or OIG Senior Staff**

The allegation that Simms permitted retaliation against OIG staff who disagreed with Brachfeld and/or OIG senior staff was unsubstantiated. We relied on OSC's investigation, which did not yield evidence of retaliation against OIG staff for protected disclosures or activity, to make this determination.

**Directing Punitive Actions Against the Special Agent in Charge of a High-Profile Investigation in Retaliation for a Disagreement About Access to the Evidence in the Case**

The allegation that Simms directed punitive actions against the special agent in charge of a high-profile investigation in retaliation for a disagreement about access to evidence in the case was unsubstantiated. We relied on OSC's investigation of this allegation to make this determination.

**5 Enabling the OIG to Fail to Follow Appropriate Investigative and Audit Standards**

We investigated the allegations that Simms enabled the OIG to fail to follow appropriate investigative and audit standards. There are four allegations under this high-level allegation. We relied on the results of the Brachfeld investigation for all four allegations as it relates to Simms. In addition, we received other assertions that Simms failed to follow appropriate investigative standards, and we pursued those claims. We conducted interviews related to these allegations and assertions, and supplemented our understanding with OSC documents and interview transcripts, as appropriate.

**Manipulating Investigative and Audit Reports**

The allegation that Simms enabled the OIG to manipulate investigative and audit reports was unsubstantiated. As discussed more fully in the Brachfeld section of the report, the allegation that investigative and audit reports were manipulated was unsubstantiated.

**Permitting Auditors to Be Directed to Change Findings in Their Reports and/or to Make Statements They Believe to Be Inaccurate**

The allegation that Simms enabled or permitted auditors to be directed to change findings in their reports and/or make statements they believed to be inaccurate was unsubstantiated. As discussed more fully in the Brachfeld section of the report, the allegation that auditors were directed to change findings in their reports and/or make statements that they believed to be inaccurate was unsubstantiated.

**Permitting Certain Findings to Be Omitted from Audit Reports Because Those Findings Disagreed with the Results You Wanted to Publish**

The allegation that Simms enabled or permitted certain findings to be omitted from audit reports because the findings disagreed with the results Simms wanted to publish was unsubstantiated. As discussed more fully in the Brachfeld section of the report, the allegation that findings were omitted from audit reports because those findings disagreed with the results Brachfeld wanted to publish was unsubstantiated.

**Failing to Prevent Unauthorized Disclosures of Non-Public Information Regarding Ongoing OIG Investigations**

The allegation that Simms failed to prevent unauthorized disclosures of non-public information regarding ongoing OIG investigations was unsubstantiated. As discussed more fully in the Brachfeld section of the report, the allegation that there were unauthorized disclosures of non-public information related to ongoing OIG investigations was unsubstantiated.

**Enabling the OIG to Fail to Follow Appropriate Investigative Standards**

The allegation that Simms enabled the OIG to fail to follow appropriate investigative standards was unsubstantiated. As mentioned above, we received assertions related to three examples where Simms failed to follow appropriate investigative standards. The examples involve Simms seeking inappropriate access to an investigative work product; misrepresenting himself as a special agent; and attempting to destroy evidence. We investigated each of the examples, and concluded, as follows, that they were unsubstantiated.

First, Employee 13, Employee 15, and Employee 17 asserted that Simms was seeking to gain inappropriate access to the database cataloging the over 10,000 historical items that were seized during the search related to the high-profile investigation. Specifically the employees alleged that Simms was seeking access to the database to give to Brachfeld so that Brachfeld could provide it to the media. NARA OIG, working with the Federal Bureau of Investigation, took possession of the material and provided a chain of custody and safe, secure storage. The database served several purposes, including maintaining information on the victims of the stolen items once they were identified.

Simms stated Brachfeld did not ask him to pull any specific data from the spreadsheet and that Simms did not give any information to Brachfeld concerning the victims. According to Simms, after the case was prosecuted, the DOJ and NARA OIG were planning to ask NARA to take custody of the evidence and return the items to their owners. In discussing this matter with the NARA General Counsel, Simms' purpose for seeking access to the database was to tie the items to the people or associations from whom they were stolen. Simms stated he made a working copy of the database as he did not want to compromise the original and password protected it. Simms stated that soon after he made his copy, the DOJ decided not to transfer the evidence to NARA, so his access to the database was no longer needed.

Second, according to Employee 13, Simms violated investigative standards by misrepresenting himself as a special agent when he looked into a potential NARA employee misconduct issue at Brachfeld's request. We were advised that Simms, when interviewing a NARA employee involving allegations that the employee was abusing his position, inappropriately completed NARA OIG's Garrity Warning form by signing the pre-printed form in a spot designated "Office of Inspector General Special Agent." We were also advised that Simms conducted the interview by himself and wrote his name on the "Witness" line.

As a result of our investigation, because Simms was directed by Brachfeld to conduct the investigation, we believe that Simms was a representative agent of the OIG and it was acceptable for Simms to conduct the interview as the NARA OIG policy does not prohibit the OIG Counsel from conducting employee interviews or administering a Garrity warning. Further, Simms represented himself as Counsel, as shown in his memorandum of interview, and while we believe he should have drawn a line through "Special" in the signature line of the pre-printed form, he was a representative, or agent, of the OIG. Finally, while it is not ideal, it is not a violation of NARA OIG policy to conduct solo interviews.

Third, Employee 3 and Employee 13 alleged that Simms offered to "destroy" evidence related to an OIG investigation involving the discovery of sensitive military personnel and medical records that were found to be inappropriately disposed of by NARA personnel in St. Louis, Missouri. The OIG issued the management letter to the agency and Simms provided a copy of the letter to the congressional staff. According to Employee 3, Simms advised an AUSA that he could have a congressional staff member, who was sent a copy of the management letter related to this same issue, "destroy" his copy of the letter. According to Simms, he offered to contact the congressional staff member who had been given a copy and ask that the staff member return the letter. He continued that he did not offer to ask the staff member to "destroy their copy of the letter as if it never existed." Our investigation concluded that there was no attempt to destroy evidence.

## Results of Investigation

### Allegations Against Elliott

This section of our report outlines each allegation against Elliott and indicates whether the allegation was substantiated or unsubstantiated based on our investigation. To the extent possible, we provide relevant context for each allegation we reviewed.

#### **1 Retaliated Against Staff and/or Engaged in Personal Vendettas**

We investigated the allegations that Elliott retaliated against staff and/or engaged in personal vendettas. There are six allegations under this high-level allegation. We relied on the results of the OSC investigation when examining these allegations against Elliott.

As previously noted, two NARA OIG employees filed complaints with OSC alleging prohibited personnel practices and retaliation on the part of Elliott and other senior OIG officials. As it relates to the IC allegation, the complainants alleged that these individuals committed prohibited personnel practices<sup>9</sup> by retaliating against employees for protected whistleblowing and related activities.

According to its representatives, OSC thoroughly investigated the complaints they received, but their investigation did not yield evidence that Elliott committed any prohibited personnel practices against the complainants. In its letter, dated May 30, 2013, transmitting the report of investigation, OSC advised the Archivist that it had completed the investigation and decided to not take "further action on the prohibited personnel practice complaints."

#### **Retaliating Against OIG Staff for Making Complaints About Your Conduct**

The allegation that Elliott retaliated against OIG staff for making complaints about Elliott's conduct was unsubstantiated. We relied on OSC's investigation, which did not yield evidence that Elliott retaliated against OIG staff, to make this determination.

<sup>9</sup> A Federal employee who has authority over personnel decisions may not... (8) engage in reprisal for whistleblowing – generally, a person with personnel authority cannot take or fail to take a personnel action with respect to an employee or applicant because of a disclosure of information by the employee or applicant that he or she reasonably believes evidences a violation of a law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. The prohibition does not apply, however, if the disclosure is barred by law or is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs, except when such a disclosure is made to the Special Counsel, the Inspector General, or a comparable agency official; (9) take or fail to take a personnel action against an employee or applicant for exercising an appeal, complaint, or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing information to the Special Counsel or to an Inspector General; or refusing to obey an order that would require the individual to violate a law.

**Denying OIG Employees Access to the NARA Human Capital/Human Resources and EEOC Office**

The allegation that Elliott denied OIG employees access to the NARA Human Capital/Human Resources and EEOC office was unsubstantiated. We understand that the OSC investigation could not confirm that Elliott denied OIG staff access to human resources or equal employment opportunity services. We also understand that the interviews conducted did not support the allegation and no evidence was provided. We relied, in part, on OSC's investigation of this allegation to make this determination.

There was nothing in the records we obtained and reviewed that supported the allegation that OIG employees were denied access to NARA human resources and equal employment opportunity services. We believe that this allegation stems from the letter of reprimand that Elliott was preparing to file against an OIG special agent, and the special agent's appeal rights. According to Elliott's response to the IC, he and Simms had initiated discussions with the NARA Office of Human Capital and the Office of General Counsel to define an administrative grievance process for NARA OIG employees. He continued that the existing NARA directive did not provide NARA OIG employees the same level of due process conferred to all other NARA employees. In particular, there was no grievance process beyond the IG, and, given the small size of the OIG, he contended it could be reasonably argued that there might be circumstances when the apparent objectivity of the IG could legitimately be questioned. We did not uncover any evidence to suggest that Elliott was trying to prevent OIG employees from accessing these offices. Our document review identified an extensive effort to establish an appeal process for OIG employees that would be parallel to the process for other NARA employees.

**Retaliating Against OIG Staff Who Have Expressed Disagreements with You**

The allegation that Elliott retaliated against OIG staff who disagreed with him was unsubstantiated. We relied on OSC's investigation, which did not yield evidence that Elliott retaliated against OIG staff for protected disclosures or activity, to make this determination.

**Filing an Official Letter of Reprimand Against a Special Agent in Retaliation for a Complaint He Filed Against You**

The allegation that Elliott filed an official letter of reprimand against a special agent in retaliation for a complaint the special agent filed against Elliott was unsubstantiated. We relied on OSC's investigation of this allegation to make this determination.

OSC confirmed the special agent's conduct, related to his involvement in a heated discussion with Elliott during an investigations meeting and the special agent's refusal to give management the password to a database he was maintaining on a high-profile investigation that management had a likely right to request. Based on this conduct, OSC concluded that the OIG would have reprimanded the special agent for his conduct in the absence of the special agent's protected activity (i.e., contacting OSC).

**Instituting Inappropriate Supervisory Restrictions on a Special Agent, Including That He Provide You Notice Within 24 Hours of Receiving Any Phone Calls, Email, or Written Correspondence from Anyone Outside NARA, or from NARA Employees at Grades GS-13 and Above**

The allegation that Elliott instituted inappropriate supervisory restriction on a special agent, including that he provide Elliott notice within 24 hours of receiving any phone calls, email, or written correspondence from anyone outside NARA, or from NARA employees at grades GS-13 and above, was unsubstantiated. We relied on OSC's investigation as it relates to this allegation to make this determination.

Elliott provided a memorandum to the special agent, dated April 19, 2012, detailing changes to the special agent's work assignments and responsibilities. This memorandum established the special agent's supervisory chain of command and communication protocols related to certain emails, phone calls, written correspondence, in-person meetings, and teleconferences. According to Elliott, the purpose of this memorandum was to address an immediate need involving the "breakdown in communication, and, ... a breakdown in the general supervision" of this special agent while the letter of reprimand process was ongoing. Elliott continued that, given the special agent's caseload, the restrictions primarily involved the high-profile case where the communications issues would be most prevalent. Elliott viewed the "impact on [the special agent's] ability to do meaningful work was de minimus," and noted that the memorandum would "come off the table" immediately after the letter of reprimand was issued.

As discussed above, OSC confirmed that the special agent's conduct would have warranted the letter of reprimand. Given that his memorandum was a supervisory tool that Elliott used to address the communications issues he was encountering until the letter of reprimand was processed, we do not consider them to be outside his supervisory authority.

**Removing a Special Agent in Charge from Her Position Because of Her Support for the Special Agent You Put on Restrictions**

The allegation that Elliott removed a special agent in charge from her position because of her support for another special agent whom Elliott had put on restrictions was unsubstantiated. We relied on OSC's investigation of this allegation to make this determination.

In its investigation, OSC learned that while the special agent in charge's initial placement in a supervisory role was in response to anticipated growth in the investigations unit, the opposite, in fact, occurred. So many investigative staff departed the OIG that, at the time the supervisory duties were removed, the special agent in charge was supervising only one agent. The sharp decrease in line staff undercut the special agent in charge's claim that the decision to remove her supervisory duties was in retaliation for protected activities (i.e., complaint to OSC) rather than in response to a changed environment.



## **2 Failure to Follow Appropriate Investigative Standards**

We investigated the allegation that Elliott failed to follow appropriate investigative standards. In addition to reviewing the OSC documents and interview transcripts, we conducted additional interviews specific to the allegations below.

### **Failed to Follow Appropriate Investigative Standards**

The allegation that Elliott failed to follow appropriate investigative standards was unsubstantiated.

We received assertions from Employee 13 and Employee 15 regarding Elliott's supervisory direction to gain knowledge of and information from an investigative database that was the work product of an active, high-profile investigation. These employees asserted that Elliott directed Employee 15 to provide Simms with access to the database so that Simms could provide it to Brachfeld who wanted to give information from the database to the media.

During our investigation, we found that Elliott had a general supervisory need to look at the database and understand what material was on it and how it was being handled. Elliott asked Employee 11 to instruct Employee 15 to post the database to the investigative shared drive for Elliott's review. While Employee 15 posted the database to the shared drive, he password-protected it and refused to give Elliott the password without the approval of the AUSA, who was prosecuting the case. The AUSA subsequently told Employee 15 that OIG management could have access to the database. We found that Elliott's insistence on reviewing the investigative database was within his responsibilities as the AIGI and in accordance with investigative standards.

### **Manipulation of Investigative Reports to Support the Results That You and/or Brachfeld Want to Obtain**

The allegation that Elliott manipulated investigative reports to support a desired result was unsubstantiated. No evidence was developed or specific examples provided during our interviews to support this allegation.

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**Integrity Committee****Council of the Inspectors General on Integrity and Efficiency**935 Pennsylvania Ave., NW, Room 3973  
Washington, D.C. 20535-0061

August 22, 2012

Paul Brachfeld  
Inspector General  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

Dear Mr. Brachfeld:

The Integrity Committee (IC) of the Council of Inspectors General on Integrity and Efficiency is charged with receiving, reviewing, and investigating, where appropriate, allegations of administrative misconduct made against Inspectors General (IGs) and designated members of an IG's staff.

In June 2012, the IC received a confidential complaint forwarded from the National Archives and Records Administration (NARA) making a number of allegations against you for administrative misconduct, abuse of authority in the exercise of your official duties, and for conduct so serious it may undermine the integrity reasonably expected of an IG. Under the IC's policies and procedures, a customary first step may be to request a response from the subject to assist the IC in resolving the allegations raised in the complaint. In keeping with this practice, the IC requests a response and any additional information you wish to provide to address the following allegations in the complaint:

- 1) That you made inappropriate comments based on the race and/or ethnicity of an individual, including:
  - a. inappropriate comments about marriages between individuals of different races,
  - b. harassment of a female employee married to a male of Jamaican origin, and
  - c. efforts to fire NARA security contractors because of their ethnicity.
- 2) That you made inappropriate comments about individuals' sex, gender, and/or personal appearance including:
  - a. telling a male OIG staff member in a locker room that, "if I were a cannibal, I would eat you."

1 - Mr. Hanza  
1 - Mr. Frenkel  
MKC:mko

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Mr. Paul Brachfeld

- b. instructing your female employees not to become pregnant or to take maternity leave,
  - c. refusing to hire a female employee on the grounds that the individual "was too emotional,"
  - d. making derisive comments and mocking an employee about a gender change operation,
  - e. making sexual advances to female OIG employees and NARA contractors, including discussions about dating OIG employees and NARA contractors,
  - f. using vulgar and otherwise inappropriate language to female staff, including comments about your desire to have sexual relations with an OIG auditor,
  - g. telling a female employee that she was "fat" and recommending that the same individual use face cream because she was starting to look "old", and
  - h. making inappropriate comments about the weight of certain women.
- 3) That you made threatening, violent, and otherwise inappropriate statements concerning NARA's General Counsel, including:
- a. you said you would kill him and/or that he should be killed,
  - b. you used words to the effect that "I've got him" and "I'm going to get him,"
  - c. you made statements to the effect that "I'm going to get him fired" and "He should be in jail," and
  - d. you made a statement that he "is evil."
- 4) That you retaliated against staff and/or engaged in personal vendettas, including:
- a. retaliating against OIG staff for making complaints about your conduct or the conduct of your senior staff,
  - b. denying OIG employees access to the NARA Human Capital/Human Resources and EEOC office,
  - c. retaliating against OIG staff who have expressed disagreements with you,
  - d. threatening staff with adverse consequences if stories for the media are affected,
  - e. seeking to identify OIG employees who made negative comments in an employee viewpoint survey,
  - f. pressuring a Special Agent to get your daughter a job and to get you media appearances with entities, including CNN,
  - g. seeking to remove NARA's head of Public Media and Communications without a basis to do so, and
  - h. directing punitive actions against the Special Agent in Charge of the Landau investigation in retaliation for a disagreement about access to the evidence in the case.
- 5) That you fail to follow appropriate investigative and audit standards, including:
- a. manipulating investigative and audit reports,
  - b. directing auditors to change findings in their reports and/or to make statements they believe to be inaccurate,

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Mr. Paul Brachfeld

- c. directing that certain findings be omitted from audit reports because those findings disagreed with the results you wanted to publish,
- d. making unauthorized disclosures of non-public information regarding ongoing OIG investigations,
- e. directing OIG staff members to be interviewed on camera by "60 Minutes" against their wishes, and
- f. seeking access to non-public information in OIG investigations for the purpose of disclosing that information to the media.

The IC requests your response to these allegations within 30 days of receipt of this letter. Please address your response to the Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535. You may contact Supervisory Special Agent David Hanzal, IC Program Manager, at (202) 324-3851 with any questions regarding the IC's request.

Sincerely,

Valerie Parlave  
Acting Chair  
Integrity Committee



NATIONAL  
ARCHIVES

OFFICE of  
INSPECTOR GENERAL

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September 11, 2012

Valerie Parlave  
Acting Chair, CIGIE Integrity Committee  
935 Pennsylvania Ave., NW, Room 3973  
Washington, D.C. 20535-0001

Dear Ms. Parlave,

I am writing in response to the Integrity Committee correspondence transmitted to me under your signature dated August 22, 2012. In the letter, I am informed that a confidential complainant(s) alleges that I have personally or been party to actions that arise to administrative misconduct, abuse of authority in the exercise of my official duties, and for conduct so serious that it undermines the integrity expected of an Inspector General. I categorically deny all allegations contained within this document, both wordily and in totality of scope.

For thirteen years I have had the honor of serving as the Inspector General of the National Archives and Records Administration (NARA). I have acted in a professional, ethical and discreet manner throughout my tenure and to my knowledge up until this time, there has never been a hint much less an allegation that I and my senior staff have ever acted in anything other than an exemplary manner. The allegations to which I am called to respond are vague, erroneous in content and context or simply appear manufactured.

One example of the nebulous, unspecified and ultimately false allegations levied against me is that I have manipulated reports, compelled auditors to make inaccurate statements and omitted findings for some unexplained personal reason. Not only do I deny these statements, but I don't even know which reports or statements the complainant could possibly be referencing. The NARA OIG has been recipient of "clean" independent audit peer reviews each and every cycle during my tenure. Our audit activity from start to finish meets all applicable GAO Audit Standards. I would invite the Integrity Committee to contact the CIGIE Audit Committee to obtain copies of our peer review reports or to contact AIGA James Springs of this office to obtain any and all information you might require. I can assure you he will be fully cooperative.

Another allegation offered by the complainant(s) is that I disclosed non-public information relating to OIG investigations. To whom and what was the content of this alleged disclosure? Is

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3601 ADELPHI ROAD, ROOM 1301

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Integrity Committee Meeting 11-10-12

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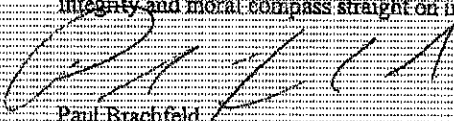
the allegation related to an interview I did for "60 Minutes" about the NARA OIG Archival Recovery Team (ART) and our work specific to the theft of thousands of historical documents and artifacts by a collector? I simply don't know but assume it to be the case due to the timing of this allegation.

For the record, the interview was done *after* the subject plead guilty and was sentenced, *after* the US Attorney who prosecuted the case was himself interviewed by "60 Minutes" and *after* receiving the US Attorney's written consent for me to do the interview. I was alone during the interview with the "60 Minutes" crew in a sealed room and the story has not yet aired. Logic therefore dictates that no capacity exists for the complainant(s) to have "witnessed" any component of the interview. Had the complainant(s) actually attended the interview they would have had direct knowledge that I did not disclose non-public information. I will state unequivocally that no "non-public information" was disclosed to the media in this or any other case during my tenure at NARA or for that matter at any point in my career beginning in 1979 with my appointment to the U.S. Secret Service.

There are a multitude of other allegations contained in this document that would define that I have suffered from ethical lapses or exercised poor judgment. As previously defined these allegations are vague, erroneous in content and context and I surmise in most if not all cases manufactured or altered in some manner by a person(s) seeking to damage my reputation or garner revenge. Allegations that fall within this category are based upon falsehood and distortion and ultimately will not stand up to independent scrutiny should they be exposed to sunlight.

In summary, should the Integrity Committee opt to exercise their authority to pursue this matter further or refer it to another entity, I will fully and vigorously respond to these and any other allegations that may wait in the wings. In the attachment to this letter I have offered the Committee a brief response to each component of the complaint.

I respect my staff, colleagues and co-workers and most importantly the sanctity of my marriage of thirty two years. I look forward to aggressively meeting the challenge to my character, integrity and moral compass straight on in an unwavering and confident manner.

  
Paul Brachfeld  
Inspector General  
National Archives and Records Administration

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**ATTACHMENT****Allegation 1. I made inappropriate comments based on the race and/or ethnicity of an individual including:**

- a. inappropriate comments about marriages between individuals of different races
- b. harassment of a female employee married to a male of Jamaican origin, and
- c. efforts to fire NARA security contractors because of their ethnicity

**Response to Allegation 1:**

- a. I am unaware of any inappropriate comments that would call into question my views as relates to marriage between any persons.
- b. A senior OIG Special Agent defined to me that she planned and ultimately married an individual of Jamaican origin. I took no measures to "harass" that employee based upon that or any other factor nor would I have any reason to do so. I have never "harassed" any employee that I have had the opportunity to supervise. Any personnel actions initiated against a NARA OIG employee have been taken in the context of, and in concert with, OPM and NARA's Office of Human Capital guidance and guidelines. For the record, no personnel or administrative action has been taken to my knowledge against the employee singled out in this complaint.
- c. No security contractors work for the NARA OIG and as such there was no security contractor I could request a vendor to remove from a contract under my purview. An OIG audit did identify to management that a NARA security contractor failed to meet contractual performance standards (fitness, proficiency with firearms etc). This information was conveyed to appropriate NARA officials in the form of an OIG Audit Report.

**Allegation 2. I made inappropriate comments about individuals sex, gender or personal appearance.**

- a. telling a male OIG staff member in a locker room that, "if I were a cannibal, I would eat you"
- b. instructing female employees not to become pregnant or to take maternity leave
- c. refusing to hire a female employee on the grounds the individual was too emotional
- d. making derisive comments and mocking an employee about a gender change operation
- e. making sexual advances to female OIG employees and NARA contractors
- f. using vulgar and otherwise inappropriate language to female staff, including comments about your desire to have sexual relations with an OIG auditor.
- g. telling a female employee that she was "fat" and recommending that the same individual use face cream because she was starting to look "old"

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h. making inappropriate comments about the weight of certain women.

**Response to Allegation 2:**

a. I am not a cannibal and never made the statement ascribed to me in this complaint.

b. I simply never have nor would I ever *instruct* a female employee not to become pregnant or take maternity leave. Over the years a number of OIG employees have become pregnant and been placed on maternity leave. In all cases these employees were afforded *maximum* courtesy and support as allowed by the Office of Personnel Management.

c. I comply with all applicable provisions in hiring staff to work within this office. Most hiring decisions are based upon candidate rankings performed by NARA's Office of Human Capital, reviews of resumes, panel interviews, feedback from supervisors and other relevant factors. Ultimately successful candidates are selected in concert with the input of the respective Assistant Inspector General for Audits/Investigations. Given the lack of information, I have no idea who this person might have been, what position this alleged applicant was seeking, and how they would have compared to other applicants.

d. I am unaware of any NARA employee, OIG employee or contractor that has had a gender change operation.

e. I have made no sexual advances on any employee or contractor, nor conducted myself to the best of my knowledge in any manner that could be construed as such. In fact, in an abundance of caution I take all measures possible to ensure that my office door is never closed while I am alone with any female employee. Likewise, this caution extends to ensuring the door remains open when I enter the office of any female employee. NARA OIG Administrative Officer Regina Campbell will readily attest that I am unwavering in this regard. Furthermore, with the exception of a handful of public events I have had no contact with any NARA employee outside of the office, not even a phone call, email, cup of coffee etc. This is simply a malicious lie, nothing more and nothing less.

f. I have not had nor do I desire to have relations with any other person besides my wife of 32 years. I certainly cannot remember nor would I deliberately make vulgar statements around any employee male or female.

g. I have no knowledge of telling any human being, much less an employee of mine, that she was fat as that would be a hurtful and inappropriate comment. As for anything about face cream, the only thing I can possibly think of is that an employee who knows that my wife is a professional make-up artist may have asked me to convey a question or concern to my wife for professional advice. I certainly never would have made any remark either solicited nor unsolicited in that regard.

h. I cannot recall anything I would have said specific to the weight of "certain women".

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**Allegation 3. That I made threatening, violent, and otherwise inappropriate statements concerning NARA's General Counsel, including:**

- a. that I would kill him or that he should be killed
- b. that I used words to effect that "I've got him" and "I'm going to get him"
- c. I made statements to the effect that "I'm going to get him fired" and "He should be in jail"
- d. I made a statement that he is evil

**Response to Allegation 3:**

- a. Gary Stern has been NARA's Chief Counsel for the thirteen years that I have served as IG. While we have had professional disagreements that become animated, he is a colleague and I dare say someone that on a personal level I respect and actually like. I would never seek to hurt him in a physical sense.
- b. Due to our positions in the agency, the General Counsel and I have had points of disagreement. In that vein I and my staff have worked in a professional manner to substantiate our legal position vice his. No personal animosity exist, in fact to the contrary I like Gary Stern as a person.
- c. I am not a program official and cannot get NARA's General Counsel fired. In one case OIG staff had reason to believe that the General Counsel had contacted the subject of an investigation and that in so doing might have violated Federal criminal code. This matter occurred 7-8 years ago. My memory is that the AIGI and NARA OIG Counsel advised me that that a formal referral to DOJ was not warranted.
- d. Please refer to previous responses.

**Allegation 4. That I retaliated against staff and/or engaged in personal vendettas**

- a. Retaliated against OIG staff for making complaints about your conduct or the conduct of your senior staff.
- b. Denied OIG employee access to the NARA Human Capital/Human Resources and EEOC Offices.
- c. Retaliated against OIG staff who have expressed disagreements with you.
- d. Threatened staff with adverse consequences if stories from the media are affected.
- e. Seeking to identify OIG employees who made negative comments in the employee viewpoint survey.

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f. Pressured a Special Agent to get daughter a job and to get you media appearances with entities including CNN.

g. Seeking to remove NARA's head of Public Media and Communications without basis to do so.

h. Directing punitive actions against Special Agent in Charge of the Landau investigation in retaliation for a disagreement about access to evidence in the case.

**Response to Allegation 4:**

a. I have not initiated or taken any retaliation or adverse action against any employee currently on my staff. The AIGI working through the Office of Human Capital, has issued a Letter of Reprimand against one employee. As the potential party to whom an appeal might be directed I did not formally participate in this action.

b. I have never denied any employee access to anyone or any programmatic office within NARA to include Human Capital or EEOC. There can be no evidence of this as it has never happened.

c. I am unaware of any means or measures by which I have retaliated against anyone within the OIG. This allegation is unsupported by any knowledge that I possess and invalid and again there can be no evidence of this as it has never happened.

d. I have never made a "threat" to any staff within this office about anything they have or have not done specific to the media. The vast preponderance of media coverage this office receives is associated with the Archival Recovery Team (ART) and has and continues to be universally favorable. ART is a program by which the public are educated to the threat that exists to our holdings. A core component of ART is that of public outreach (pamphlets, speeches, social media and interviews) through which we attract "sentinels" to help us identify and recover alienated Federal records. This program has obtained national coverage in magazines, newspapers and books as well as on TV and radio. OIG employees assigned to ART have routinely been made available to the media, this is the established norm. The wish of any employee opting not to "entertain" the media has been respected in all cases without recourse.

e. To date, I have been the recipient, of one Employee Viewpoint Survey here at NARA. It is my recollection that we had a high if not the highest favorable rating of any NARA office and I am unaware that I was the recipient of any of "negative" comments. That being said, if that be the case in the future, I would accept the feedback and attempt to address the concerns registered not the "messenger".

f. A Special Agent offered to have his wife meet my daughter to "mentor" her. They met once that I am aware of while his wife was setting up an event at a hotel. After that I am unaware they ever met again. My daughter accepted an outstanding job offer from a major company where she is currently gainfully employed.

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The second allegation in this element is that I "pressured" the same Special Agent to get me media appearances on CNN. I believe that employee touted once that he knew people and could get me some form of exposure on a network such as CNN. I never took him up on this offer and no action was or will be taken in this regard.

g. I am not a Program Official within NARA and have no capacity to get anyone hired or fired in NARA much less an official that reported directly to the Archivist of the United States.

h. I have not "punished" anyone and am unfamiliar with that term as applies to a Federal office in general and more specifically within the NARA OIG. The AIGI has taken appropriate action with regard to this employee with the support and involvement of the Human Capital Office which is a protected personnel matter. If there are any questions about my role in this matter I would invite the recipient of this document to contact the Director of NARA's Human Capital Office, Analisa Archer.

#### Allegation 5: I fail to follow appropriate investigative and audit standards

- a. Manipulating investigative and audit reports.
- b. Directing auditors to change findings in their reports and/or make statements they believe to be inaccurate.
- c. Directing that certain findings be omitted from audit reports because those findings disagreed with the results you want to publish.
- d. Making unauthorized disclosures of non-public information regarding ongoing OIG investigations.
- e. Directing OIG staff members to be interviewed on camera by "60 Minutes" against their wishes.
- f. Seeking access to non-public information in OIG investigations for the purpose of disclosing that information to the media.

#### Response to Allegation 5:

a. No examples are provided by the complainant(s) and I categorically deny that I or any member of my staff has "manipulated" any aspects of their work while under my employ. On the audit side the NARA OIG has received clean opinions based upon all peer reviews accomplished to date. Simply put, our audits are conducted from start to finish in conformity with GAO Audit Standards. On the investigative side I am unfamiliar with the basis for any allegation that I have "manipulated" any reports. For the record, I have not.

b. All audit reports are issued under my signature after having undergone a vigorous and documented independent internal quality review process as required under standards promulgated by the GAO. No information is provided by the person(s) putting forth this

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allegation which would provide contrary evidence and I have no reason to believe that our standards have been violated and the results of the independent CIGIE peer review are in error.

c. All audit reports are issued under my signature after having undergone a vigorous and documented independent internal quality review process as required under standards promulgated by the GAO. No information is provided by the person(s) putting forth this allegation which would provide contrary evidence and I have no reason to believe that our standards have been violated and the results of the independent CIGIE peer review are in error.

d. I have made no unauthorized disclosures of non-public information regarding any on-going investigation. An investigator shared concerns specific to one case with me. This prompted me to contact the US Attorney whose office was prosecuting the case. Below are two redacted excerpt from that email I sent to the US Attorney *before* I agreed to the interview (see Excerpt 1) and *before* I agreed to have the Special Agent in Charge of the Archival Recovery Team (ART) be interviewed/filmed on location in Gettysburg (see Excerpt 2).

I requested the US Attorney's support before I would:

*Excerpt 1: be interviewed by Rob Simon of 60 Minutes on 6/29 specific to the work of the Office of Inspector General's Archival Recovery Team (ART). I will only address the XXXXXXXX case in context of the work ART routinely performs. My intent is to educate the public specific to ART in support of the mission. No case sensitive information will be shared.*

Likewise, I requested the US Attorney's support to:

*Excerpt 2: allow 60 Minutes to accompany (and interview) SA XXXXXXXX, who heads the ART unit, to a collector show in Gettysburg on 6/30. SA XXXXXXXX has been instructed to only address questions which focus on the traditional ART mission. She will not respond to any questions that could result in any information being disclosed specific to the XXXXXXXX case beyond that already in the public domain.*

As documentation I maintain supports, the US Attorney took no issue with my requests and the interviews were accomplished. For the record, the US Attorney himself was interviewed by "60 Minutes" the day before me. The story has yet to run and no information has to date been aired specific to these interviews. Thus, for anyone to allege that I made unauthorized disclosures could not be based upon any known facts. For the record, in that unaired interview, no information was shared other than what was in the public domain post conviction and sentencing of the primary subject.

It should again be emphasized that ART is a program by which the public are educated to the threat that exists to our holdings and by which we look for leads from our "sentinels" to help us identify and recover alienated Federal records. This program has obtained national coverage in magazines, newspapers and books as well as on TV and radio. Thus granting an interview with "60 Minutes" was fully consistent with established practice of this office.

e. I agreed to be interviewed as did the Special Agent in Charge (SAIC) of the Archival Recovery Team. Two other NARA OIG employees that were going to be at the Collectors Show

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in Gettysburg were reticent about being interviewed in this specific case. Thus I defined the SAJC (see bolded content) as the sole Point of Contact to the "60 Minutes" Producer in the redacted email below:

*Katherine, have you had any recent conversations with USA Rosenstein (or his staff) to affirm that he is still a go for being interviewed post XXXXXX sentencing on the 28th? Per my email the other day, my participation (and that of SA XXXXXX at Gettysburg) is predicated upon his agreeing to be interviewed on the 28th. Best like always, Paul*

Per the 60 Minutes Producer, as defined in her email below, one other member of the ART unit (defined below as "Mitch") agreed to be interviewed on site in Gettysburg (see bolded content). I was not present that day to make him participate in an interview if indeed it was "against his wishes."

*I wanted to thank you again for doing the interview with Bob Simon. He really enjoyed meeting you and getting a look at NARA II. I also wanted to thank Kelly, Mitch and Dave for letting us tag along with them in Gettysburg at the civil war show. Kelly and Mitch also did great interviews and we appreciate their participation.*

f. I have not nor would I ever disclose non-public information to the media and the unfounded allegation does not specify any such content. I should note that the "60 Minutes" story has yet to air and as I was alone with the "60 Minutes" film crew there is no one in NARA that has the capacity to make an allegation, whether founded or unfounded, that I disclosed anything that was of a non-public nature. The actual interview was conducted *AT* the conviction and sentencing of the defendant and *AFTER* the US Attorney sat for an interview with "60 Minutes".

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**Integrity Committee****Council of the Inspectors General on Integrity and Efficiency**

535 Pennsylvania Ave., NW, Room 3973

Washington, D.C. 20535-4801

August 22, 2012

John Simms  
 Counsel to the Inspector General  
 National Archives and Records Administration  
 Office of Inspector General  
 8601 Adelphi Road  
 College Park, MD 20740-6001

Dear Mr. Simms:

The Integrity Committee (IC) of the Council of Inspectors General on Integrity and Efficiency is charged with receiving, reviewing, and investigating, where appropriate, allegations of administrative misconduct made against Inspectors General (IGs) and designated members of an IG's staff. As Counsel to the Inspector, you are a designated member of the NARA OIG staff for purposes of the IC's jurisdiction.

In June 2012, the IC received a confidential complaint forwarded from the National Archives and Records Administration (NARA) making a number of allegations against you for administrative misconduct, abuse of authority in the exercise of your official duties, and for conduct so serious it may undermine the integrity reasonably expected of an OIG senior staff member. Under the IC's policies and procedures, a customary first step may be to request a response from the subject to assist the IC in resolving the allegations raised in the complaint. In keeping with this practice, the IC requests a response and any additional information you wish to provide to address the following allegations in the complaint:

- 1) That you have been present when the IG has made inappropriate comments based on the race and/or ethnicity of an individual, and made no efforts to stop this inappropriate conduct. It is alleged that you were present for statements in which the IG made:
  - a. inappropriate comments about marriages between individuals of different races,
  - b. comments about efforts to fire NARA security contractors because of their ethnicity,
  - c. harassed a female employee married to a male of Jamaican origin, and
  - d. asked a female African American employee if her hair was "real or a hair weave."

I - Mr. Hanzal  
 I - Mr. Frenkel  
 MKC:mkc (4)

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John Simms

- 2) That you have been present when the IG has made inappropriate comments about individuals' sex, gender, and/or personal appearance including:
- a. telling a male OIG staff member in a locker room that, "if I were a cannibal, I would eat you,"
  - b. instructing OIG female employees not to become pregnant or to take maternity leave,
  - c. refusing to hire a female employee on the grounds that the individual "was too emotional,"
  - d. making derisive comments and mocking an employee about a gender change operation,
  - e. making sexual advances to female OIG employees and NARA contractors, including discussions about dating OIG employees and NARA contractors,
  - f. using vulgar and otherwise inappropriate language to female staff, including comments about his desire to have sexual relations with an OIG auditor,
  - g. telling a female employee that she was "fat" and recommending that the same individual use face cream because she was starting to look "old", and
  - h. making inappropriate comments about the weight of certain women.
- 3) That you were present when the IG has made threatening, violent, and otherwise inappropriate statements concerning NARA's General Counsel, including:
- a. that he would kill him and/or that he should be killed,
  - b. words to the effect that "I've got him" and "I'm going to get him,"
  - c. statements to the effect that "I'm going to get him fired" and "He should be in jail," and
  - d. a statement that he "is evil."
- 4) That you permitted retaliation against OIG staff, including:
- a. retaliating against OIG staff for making complaints about the conduct of the IG and/or OIG senior staff,
  - b. denying OIG employees access to the NARA Human Capital/Human Resources and EEOC office in order to prevent OIG staff from accessing NARA resources for their complaints of misconduct concerning you and other senior OIG staff members,
  - c. retaliating against OIG staff who have expressed disagreements with the IG, B and/or OIG senior staff, and
  - d. punitive actions against the Special Agent in Charge of the Landau investigation in retaliation for a disagreement about access to the evidence in the case.
- 5) That you enable the OIG to fail to follow appropriate investigative and audit standards, including:
- a. manipulating investigative and audit reports,
  - b. permitting auditors to be directed to change findings in their reports and/or to make statements they believe to be inaccurate,

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John Simms

- c. permitting certain findings to be omitted from audit reports because those findings disagreed with the results you wanted to publish,
- d. failing to prevent unauthorized disclosures of non-public information regarding ongoing OIG investigations.

The IC requests your response to these allegations within 30 days of receipt of this letter. Please address your response to the Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535. You may contact Supervisory Special Agent David Hanzal, IC Program Manager, at (202) 324-3851 with any questions regarding the IC's request.

Sincerely,

Valarie Parlave  
Acting Chair  
Integrity Committee



September 20, 2012

John Simms  
Counsel to the Inspector General  
National Archives and Records Administration  
Office of Inspector General  
8601 Adelphi Road, Suite 1300  
College Park, MD 20740-6001

Valarie Parlave  
Acting Chair  
Integrity Committee  
Council of the Inspectors General on Integrity and Efficiency  
935 Pennsylvania Ave., NW, Room 3973  
Washington, D.C. 20535-0001

Ms. Parlave:

I have received your letter dated August 22, 2012 making several allegations against me in my capacity as the Counsel to the Inspector General at the National Archives and Records Administration (NARA). I received the letter on August 27, 2012, upon my return to the office from training. I apologize it has taken this long to respond to you, but prior to giving any response I had to research what my obligations were for client confidences. I reached out to my state's ethics hotline, the Council of Counsels to the Inspectors General, the Integrity Committee, and the Department of Justice Office of Professional Responsibility. I believe I may now fully respond, and will address each section in turn using the numbers from your letter.

Allegation 1 – That I was present when the IG made inappropriate comments based on the race and/or ethnicity of an individual, and made no efforts to stop this inappropriate conduct. Including:

a. Inappropriate comments about marriages between individuals of different races.

I have no recollection of any such comments, and do not know what this allegation is in reference to.

b. Comments about efforts to fire NARA security contractors because of their ethnicity.

The OIG has been reviewing and auditing the contract security guards at the Archives facility in College Park, MD for quite some time. Please see Audit Report 11-05 and Management Report 10-18. Both are available at <http://www.archives.gov/oig/reports/> with 11-05 under the FY 2011 Audit Reports and 10-18 under the FY 2010 Audit Reports. One point of contention has been whether or not NARA is accepting security guards which are capable of the physical demands of the contractual requirements. The IG reported that at a senior staff meeting the head of the agency, the Archivist of the United States (the Archivist) asked for a name of a guard who did not appear able to meet these demands. The IG provided a name as

far as I know based solely on the appearance of not being able to meet contractual requirements. The IG reported he was told this guard passed his physical fitness evaluation. Later on this particular guard accidentally let tourists into the Archives facility on Pennsylvania Ave on a day the facility was closed. The Archivist himself found these tourists wandering the building unescorted. I believe the guard was ultimately removed from the contract based on this reason. I had not heard nor have any reason to believe that the IG was doing anything at all based on the contractor's ethnicity.

c. Harassed a female employee married to a male of Jamaican origin.

I know of one employee who married a male of Jamaican origin, because she discussed it frequently at the office and I also attended a party to celebrate the marriage. I am not aware of the IG ever harassing this individual.

d. Asked a female African American employee if her hair was "real or a hair weave."

I have no recollection of such a statement.

Allegation 2 - That I was present when the IG made inappropriate comments about individuals' sex, gender, and/or personal appearance including:

a. Telling a male OIG staff member in a locker room that, "If I were a cannibal, I would eat you."

I vaguely remember a conversation in the NARA locker room one day that did reference the book/movie "Alive" and cannibalism. I do not remember the exact statement above, but distinctly have absolutely no recollection of this conversation involving any threats or anyone being seriously proposed for cannibalism. I do not remember there being any raised voices or anything other than locker room conversation and joking. The particular employee involved in this conversation is physically much larger than the IG (and me), and I do remember other locker room conversations with the employee where he mocked my body hair.

b. Instructing OIG female employees not to become pregnant or to take maternity leave.

I do remember the IG, during a staff meeting making a comment about female employees becoming pregnant. At that point either one or two employees had announced they were pregnant, or either they were already pregnant and were about to go out on maternity leave. The IG made a comment about the office not being able to get by without these workers and maybe either they should not take leave for long or employees should not become pregnant. The manner in which it was presented was certain to convey it was not a serious comment. To any reasonable listener in the room this was obviously designed to be a complement to the affected employees, and clearly emphasized how much their contributions would be missed while they were out. The IG is exceptionally family oriented, and has never to my knowledge ever been anything but very accommodating to family needs and conveniences to all of the employees at the OIG.

- c. Refusing to hire a female employee on the grounds that the individual "was too emotional."

I have no recollection of such an event, and do not know what this allegation is in reference to.

- d. Making derisive comments and mocking an employee about a gender change operation.

I have no recollection of such an event, nor am I aware of any employee who has undergone such a procedure.

- e. Making sexual advances to female OIG employees or NARA contractors, including discussions about dating OIG employees and NARA contractors.

I have no recollection of any such events, and do not know what this allegation is in reference to. As stated above the IG is exceptionally family oriented and frequently talks about his wife.

- f. Using vulgar and otherwise inappropriate language to female staff, including comments about his desire to have sexual relations with an OIG auditor.

Addressing first the "comments about his desire to have sexual relations with an OIG auditor" I have absolutely no recollection about any such comments. As stated above the IG is exceptionally family oriented and frequently talks about his wife. He calls her almost every morning to wake her up.

I have no recollection of the IG ever being "vulgar." Since the word may mean different things to different people, I have never heard him make reference to wanting to have intercourse with any woman, I have never heard him reference body parts or functions, and I have never heard him make obscene or graphic comments. However, half of the office is an office of investigations staffed by criminal investigators, and they have at times had a rowdy office dynamic. One investigator is known for using the middle finger when she disagrees with someone. However, this has always been done in a collegial manner and is no different than any other law enforcement office I have worked with in the past. In fact in our 2008 Office of Investigations peer review we were lauded for our "very high level of camaraderie." I am sure the IG has made small off hand, innuendo based jokes as is common in that office. I have counseled the IG that he should not even make those types of comments due to his position. When I first arrived in 2007 I remember it was much more rowdy, but has significantly tapered off in later years.

There have been times during staff meetings where sexual innuendos have been brought up. By this I do not mean anything explicit or vulgar per se, but mainly staff making double entendres. I cannot think of any particular examples, but I can remember at times telling everyone, including audit and investigative staff at meetings to calm down and stop joking.

- g. Telling a female employee that she was "fat" and recommending that the same individual use face cream because she was starting to look "old."

I do not remember the IG telling any female employee that she was "fat." I have heard the IG joke about age with a senior special agent whom he has worked with for much longer than I have been here and who, like him is approaching retirement. I cannot remember the exact verbiage, but it was just the three of us in his office and I did tell the IG he should not joke about age with a woman. When I brought this up the agent was dismissive of me and did not appear offended at all.

- h. Making inappropriate comment about the weight of certain women.

I do not remember the IG making inappropriate comments about the weight of any employees or contractors. I do remember several years ago he said his wife felt she was gaining weight and was going on Weight Watchers, and that he was going to be doing the program with her. I have also heard him state one of his daughters felt she was gaining weight and I believe he did use the word "fat." I did tell him that even when talking about his own family he should not use such language as somebody may take offense. However, just last month NARA posted an article in the agency's newsletter about an archives technician who lost a lot of weight titled: "From Fat to Fit."

**Allegation 3 – That I was present when the IG made threatening, violent, and otherwise inappropriate statements concerning NARA's General Counsel, including:**

- a. That he would kill him and/or that he should be killed.

The IG has had a professionally contentious relationship with the General Counsel since I have worked here starting in 2007. My understanding is that it stems from the Sandy Berger investigation where the General Counsel, upon learning that Mr. Berger was removing classified records from the archives, opted to call Mr. Berger himself and ask about it instead of reporting the crime to the IG. Again, I do not have first-hand knowledge, but I believe the General Counsel also actively worked to block the IG from seeing some information in that case. Since I have worked here I have heard of and seen several instances where it appears the General Counsel acted in an arguably obstructive manner towards the OIG. I have heard the IG express his frustration with General Counsel (see below), but I have no recollection of any time where the IG was actually threatening or could reasonably be seen as proposing actual violence towards the General Counsel. I have seen the IG and General Counsel have respectful and collegial interactions as well.

- b. Words to the effect that "I've got him" and "I'm going to get him."

I do remember the IG saying "I've got him" at a meeting while discussing the General Counsel. The IG had been given information that the General Counsel miss-informed the Archivist about the recommendation the Assistant US Attorney had made for a criminal case. Any reasonable listener would have interpreted this as a statement that the IG was going to



show the Archivist that the General Counsel was misleading, and not anything about physical harm.

c. Statements to the effect that "I'm going to get him fired" and "he should be in jail."

While I do not remember the IG specifically saying "I'm going to get him fired," I do believe the IG made some sort of comment about the General Counsel losing his job when discussing the above referenced instance of misleading the Archivist about what an Assistant US Attorney wanted from the Archivist in a criminal case.

I generally do not remember a particular time when the IG said "he should be in jail" but it is possible he has made statements like this when discussing what the IG believes to be the General Counsel's impeding of the Sandy Berger investigation.

d. A statement that he "is evil."

I generally do not remember a particular time when the IG said the General Counsel "is evil."

**Allegation 4 -- That I permitted retaliation against OIG staff, including:**

a. Retaliating against OIG staff for making complaints about the conduct of the IG and/or OIG senior staff.

I am unaware of any retaliation in the office and do not know what this allegation is in reference to.

b. Denying OIG employees access to the NARA Human Capital/Human Resources and EEOC office in order to prevent OIG staff from accessing NARA resources for their complaints of misconduct concerning you and other senior OIG staff members.

I have never denied OIG employees access to any NARA resource or office. At one point I was made aware that Office of Investigations staff were asking the NARA HR office questions about internal OIG business, I do not remember the exact topic, but it was something such as whether or not an auditor position could be reclassified into a general investigator position. Also, I learned Office of Investigations staff were asking fiscal law questions (specifically whether they could start using appropriated funds to purchase advertising for the Archival Recovery Team) to the agency General Counsel's office without ever bringing these topics to OIG senior staff first. In both instances I let the employee's supervisor know that those type of OIG operating questions need to come to me first, we may ultimately refer them to the NARA agency office, but as an independent office the senior staff need to review such internal operating issues first.

In no circumstance did I ever tell any employee or supervisor that they could not use any NARA office such as HR or EEOC to make any complaints. To my knowledge Office of Investigations staff have freely used the NARA HR office for such actions. Since I have worked at the OIG I am aware of one time where a supervisor issued a Letter of Reprimand

(LOR) to an employee. The supervisor, the Assistant IG for Investigations (AIGI), came to me, and since I am not an expert in employment law and procedures I told him to use the NARA HR office to process and vet the LOR just as any other NARA office would. The employee who was to be given the LOR was given free access to and used the HR office for this issue.

In fact, NARA has an internal directive which allows employees to administratively appeal LOR's and lays out a procedure. Prior to this LOR being issued, the NARA HR office at first told me their interpretation of the directive would actually preclude OIG employees from being able to make any administrative appeal. My position was that any OIG employee who read that directive would reasonably expect to be able to make an administrative appeal. Through several meetings with the HR office and NARA's General Counsel office I worked with them to devise a plan they were comfortable with that would allow an OIG employee to make an administrative appeal. This involved actually waiving some OIG independence to allow the Archivist to hear the appeal if the appeal involved any claim or grievance against the IG himself, or if it should not be done for any other reason within the office.

I also informed the HR office that anyone, at anytime, with a complaint against the IG or OIG senior staff can take that complaint to the CIGIE Integrity Committee. My understanding is that right was also conveyed in the LOR. I was informed by the AIGI that when he contacted HR to see if the employee did file an administrative appeal, the AIGI was told HR was given a sealed envelope and asked to forward it un-opened to the Integrity Committee, which they did. I have recently been informed the HR office has decided to treat that Integrity Committee complaint as an administrative appeal and is holding completing processing of the LOR until they are notified by the Integrity Committee of the disposition of the complaint.

c. Retaliating against OIG staff who have expressed disagreements with the IG and/or OIG senior staff.

I am unaware of any retaliation against any OIG staff, and do not know what this allegation is in reference to. As stated above, I know of one LOR given to an OIG employee. That LOR was given for insubordinate conduct and you can get more information on that from the AIGI. Further, as stated above, that LOR and it's basis was vetted and processed by the NARA HR office, not me.

d. Punitive actions against a special agent in retaliation for a disagreement about access to the evidence in a case.

There has never been a dispute about access to actual evidence, as explained below, a Special Agent disagreed with having senior OIG staff access his work products related to evidence. While OIG counsel's authority to administratively review any evidence is clearly stated in Chapter 11 of the Office of Investigations' Operating Manual, I never attempted, nor was there was ever any dispute about accessing actual evidence, only over accessing the Special Agent's work product concerning evidence.

Our office was involved in a joint investigation with the FBI, involving the theft of a significant number of historical records from multiple institutions including NARA. All of the evidence seized was transferred to the OIG's custody and employees from the OIG spent several months cataloging and documenting the approximately 10,000 documents seized. During the investigation a Special Agent and an investigative archivist had been building an Excel spreadsheet identifying all the documents and recording all of the information known about them, including their possible ownership. I was told this included whether there were ownership markings on the documents, whether any subject had discussed where those particular documents had come from, whether the documents characteristics matched those of any documents with a known owner, etc. A copy of this spreadsheet was kept on a share-drive available to all of the office of investigations and senior staff.

I am aware the Special Agent did not initially want to put this spreadsheet on the share-drive. When directed to do so by the AIGI the Special Agent initially balked and then did so, but put a password protection on it. The Special Agent would not tell the AIGI what the password was unless the AIGI wrote the Special Agent a memo outlaying the AIGI's basis for needing to view the Special Agent's work product. The Special Agent would allegedly then take the memo to the Assistant US Attorney (AUSA) for either approving or rejecting whether the AIGI could view the spreadsheet. Apparently the Special Agent was leaving soon for a meeting with the AUSA. My understanding is that the AIGI did not consent to this procedure and directed the Special Agent to remain at the office until the AIGI contacted the AUSA. My understanding is that the Special Agent ignored this direction, made a comment about how he should "jack up" the AIGI for impeding his investigation or something to that effect, and then left the office to attend his meeting with the AUSA. My understanding is the AIGI did contact the AUSA and learned there the AUSA had given no prohibition on OIG staff from viewing the spreadsheet. I do know the AIGI had included the Special Agent's conduct regarding his comments to the AIGI and refusal to obey direction to stay at the office in a proposed LOR to the Special Agent. This was not the only basis for the LOR as there were other incidents, but this particular incident was included in the LOR. However, as stated above, the NARA HR office vetted, reviewed and processed the LOR.

As sentencing approached for one of the subjects, the OIG learned the plan was for all of the seized documents to be forfeited to NARA. Then NARA (not the OIG) would make a determination of who the rightful owners were and whether to keep or dispose of any documents whose owner could not be determined. I met with NARA's General Counsel and the Special Agent in Charge of the Archival Recovery Team (not the Special Agent referred to above) to generally lay out what would happen with the evidence once it was forfeited to NARA as it would no longer be "controlled" by the OIG - where it would be held, how much assistance our staff could give to NARA in determining rightful owners, etc. The NARA General Counsel also asked for a copy of the spreadsheet discussed above.

Sometime after this there was an OIG meeting where questions were asked of the Special Agent and investigative archivist about the numbers of known victims, the numbers of documents where the owners had been positively identified, the numbers of documents where an owner was "suspected" based on document characteristics/subject interviews/etc. The answers were vague, and I decided to review the excel spreadsheet where all of the

documents and information about the potential ownership of the documents had been cataloged. Since I knew the file was password protected and there were previous issues with it, I asked for the password and if there was any issue in giving the file to NARA's General Counsel. I received the password and was told it could be given to the General Counsel but the version on the shared drive was not up to date. (I have since been informed that the NARA Holdings Protection Team (not a part of the OIG) had already been given a copy of this spreadsheet.)

Later, in my office, I decided to review the spreadsheet with the Special Agent in Charge of the Archival Recovery Team. Another issue we were working on was possibly photographing the evidence and linking the photos to the information on the documents in the spreadsheet, so I wanted to see how everything was set up. Knowing it was an Excel spreadsheet, which could have all of its informative value easily destroyed if rows were accidentally shifted or the like, I made a working copy of the file first. The copy was made and stored in the same folder on the share drive as the original, and was protected by the same password. We reviewed the file briefly. Either later that same day or the next I was discussing the spreadsheet with the Special Agent. I suggested we maybe should migrate the spreadsheet to an actual database so that the information could be more easily digested and pulled into various reports. Also, that would potentially provide more protection from having the information accidentally corrupted by such things as having a column sorted without linking all rows to the sort, etc.

After this meeting I received an email from the Special Agent that they did not "feel comfortable" with me "data mining" the spreadsheet and was "concerned" that I had "made an unauthorized copy by creating a separate database in Microsoft Access" without "first consulting the Case Agent." The Special Agent also stated "I don't feel that your limited access needs to be reported to the FBI or US Attorneys Office, however I am asking you to stop." In some back and forth emails I reiterated I had not made an Access file, but had copied the Excel file, password protected in the same folder as the original. I also repeatedly asked if the DoJ or FBI had actually banned OIG personnel from looking at this Excel file or placed limits on it. The Special Agent never answered this question, but kept insisting that I give my reasons for wanting to view the spreadsheet. Eventually I forwarded the emails to the AIGI and requested a meeting. The Special Agent then called me on the phone, and in raised and agitated voice stated among other things that they would not meet about this because they were done discussing it and hung up the phone. I notified the AIGI. Shortly after this I was informed the plan had changed so that all of the documents would be forfeited to the FBI as opposed to NARA. At this point I decided not to pursue this any further since it was causing issues and our interest in the documents was about to be significantly decreased.

I have been informed that the Special Agent did give a copy of the spreadsheet to NARA's General Counsel. To my knowledge no disciplinary actions or "retaliation" was ever taken against the Special Agent for this issue with me about access to OIG work products.



Allegation 5 -- That I enable the OIG to fail to follow appropriate investigative and audit standards, including:

a. Manipulating investigative and audit reports,

I am unaware of any manipulation of investigative and audit reports, and do not know what this allegation is in reference to. I would note both the Office of Audits and the Office of Investigations have passed their peer reviews.

I have seen the IG and the Assistant IG for Audits (AIGA) disagree about audit reports. However, these disagreements have always been as a part of the normal audit drafting process. The IG may feel a certain finding needs more support, or is more important and should be highlighted more in the report. This is part of the generic audit review process. These discussions between the IG and AIGA typically happen and are worked out before the report is forwarded to me for review. I have never had an auditor say or tell me they have had their report changed or "manipulated" in a way inconsistent with Yellow Book standards. Further the AIGA has never stated such a thing. All audits are supported by workpapers which are indexed and kept for review.

I had very limited work with investigative reports under the previous AIGI. He had been the Counsel to the IG prior to taking the AIGI position and quite frankly was generally opposed to having others review investigative reports. Under the current AIGI I do review all investigative reports and none of them have been "manipulated." I have seen draft investigative reports which had to be edited before issuing. These reports may not contain enough information for a reader to comprehend what happened on an investigation, or contain conflicting information, or fail to answer obvious questions. These are typically sent back for editing and supplementing before being issued in final.

b. Permitting auditors to be directed to change findings in their reports and/or to make statements they believe to be inaccurate,

I am unaware of any auditor being directed to make a statement they believe to be inaccurate, and do not know what this allegation is in reference to. Please see my response to a. above. While I cannot remember any specifics, I believe the IG has asked for findings to be changed before if he believes the finding is addressed to the wrong party at the agency, the workpapers do not support the finding, or if the finding does not accurately address the condition. This is part of the normal drafting process and would be contained in the audit workpapers. Per Yellow Book standards all audits are reviewed by the AIGA before issuing, and the AIGA has never brought this up as a concern.

c. Permitting certain findings to be omitted from audit reports because those findings disagreed with the results you wanted to publish,

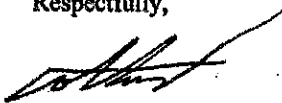
I am unaware of any findings being omitted from audit reports because they disagreed with the results I wanted to publish, and do not know what this allegation is in reference to. Please see my responses to a. and b. above.

- d. Failing to prevent unauthorized disclosure of non-public information regarding ongoing OIG investigations.

I am unaware of unauthorized disclosures of non-public information regarding ongoing OIG investigations, and do not know what this allegation is in reference to.

I hope this answers any questions you may have about these allegations. Please feel free to contact me at 301-837-1966 or [john.simms@nara.gov](mailto:john.simms@nara.gov).

Respectfully,



John Simms

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**Integrity Committee****Council of the Inspectors General on Integrity and Efficiency**935 Pennsylvania Ave., NW, Room 3973  
Washington, D.C. 20522-1002

August 22, 2012

Matthew Elliott  
 Assistant Inspector General for Investigations  
 National Archives and Records Administration  
 Office of Inspector General  
 8601 Adelphi Road  
 College Park, MD 20740-6001

Dear Mr. Elliott:

The Integrity Committee (IC) of the Council of Inspectors General on Integrity and Efficiency is charged with receiving, reviewing, and investigating, where appropriate, allegations of administrative misconduct made against Inspectors General (IGs) and designated members of an IG's staff. As the Assistant Inspector General for Investigations (AIGI), you are a designated member of the NARA OIG staff for purposes of the IC's jurisdiction.

In June 2012, the IC received a confidential complaint forwarded from the National Archives and Records Administration (NARA) making a number of allegations against you for administrative misconduct, abuse of authority in the exercise of your official duties, and for conduct so serious it may undermine the integrity reasonably expected of an OIG senior staff member. Under the IC's policies and procedures, a customary first step may be to request a response from the subject to assist the IC in resolving the allegations raised in the complaint. In keeping with this practice, the IC requests a response and any additional information you wish to provide to address the following allegations in the complaint:

- 1) That you have retaliated against staff and/or engaged in personal vendettas, including:
  - a. retaliating against OIG staff for making complaints about your conduct,
  - b. denying OIG employees access to the NARA Human Capital/Human Resources and EEOC office,
  - c. retaliating against OIG staff who have expressed disagreements with you,
  - d. filing an official letter of reprimand against a Special Agent in retaliation for a complaint he filed against you.

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Matthew Elliott

- e. instituting inappropriate supervisory restrictions on a Special Agent, including that he provide you notice within 24 hours of receiving any phone calls, e-mail, or written correspondence from anyone outside NARA, or from NARA employees at grades GS-13 and above,
  - f. removing a Special Agent in Charge from her position because of her support for the Special Agent you put on restrictions.
- 2) That you fail to follow appropriate investigative standards, including:
- a. the manipulation of investigative reports to support the results you and/or that the IG want to obtain.

The IC requests your response to these allegations within 30 days of receipt of this letter. Please address your response to the Integrity Committee, 935 Pennsylvania Avenue, N.W., Room 3973, Washington, D.C. 20535. You may contact Supervisory Special Agent David Hanzal, IC Program Manager, at (202) 324-3831 with any questions regarding the IC's request.

Sincerely,

Valarie Parlave  
Acting Chair  
Integrity Committee

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OFFICE of  
INSPECTOR GENERAL

September 12, 2012

**Integrity Committee**

935 Pennsylvania Avenue, NW  
Room 3973  
Washington, DC 20535

**Members of the Integrity Committee:**

I am in receipt of your letter dated August 22, 2012, and I welcome the opportunity to respond to the allegations made against me. I have been the Assistant Inspector General for Investigations (AIGI) at the National Archives and Records Administration (NARA), Office of Inspector (OIG) since September 2011. I was previously employed at the NARA OIG as a criminal investigator between 2006 and 2008. From 2008 until being re-hired at NARA, I worked briefly at the Department of State, OIG before holding the positions of Special Agent in Charge and AIGI at the Government Printing Office, OIG.

When I returned to NARA as the AIGI, I found an Office of Investigations in need of case management and organizational change. I quickly implemented case management metrics and reorganized the office into two distinct teams. I also re-wrote two GS-1811-14 position descriptions and updated the GS-1811-13 performance plans. My changes were meant to improve an already successful office. Nonetheless, many of my changes have been met with resistance and, in some cases, blatant insubordination by the staff. I believe that is the root of the allegations made against me.

I patently deny all the allegations levied against me. They are without merit and I consider the implication that I have "manipulated" or falsified investigative reports to be malicious and knowingly false. Specifically:

**(1) You have retaliated against staff and/or engaged in personal vendettas, including:**

I have no personal vendettas against any staff member and have never engaged in retaliatory behavior. I have taken disciplinary action against one employee (a GS-1811-13 criminal investigator) for insubordination and conduct unbecoming a criminal investigator, as further described below. The disciplinary action was vetted through the NARA Office of Human Capital and is supported by fact. In the past year, I have not: 1) taken any adverse action against an employee; 2) issued a less than satisfactory performance rating to an employee; 3) denied leave to an employee; or 4) withheld a within grade increase in pay for an employee. I have also never yelled at, berated or otherwise demeaned any staff member. In fact, I have treated them all

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with respect and have made every reasonable effort to accommodate their personal and professional needs.

**(1a) Retaliating against OIG staff for making complaints about your conduct**

In the absence of specific detail, I can only speculate that this allegation relates to my counseling of a GS-1811-13 criminal investigator who failed to follow the chain of command and, without justification or proper authority, contacted the Inspector General (IG). In an effort to undermine my authority and overturn my direction, the investigator called the IG while the IG was on leave. The call was not consistent with an "Open Door Policy" conversation and was not perceived by the IG as a complaint about my conduct. In fact, the IG concurred with my direction and the subsequent investigation was successfully resolved.

**(1b) Denying OIG employees access to NARA Human Capital/Human Resources and EEOC office**

I have no authority over the NARA Office of Human Capital or the Equal Employment Opportunity Commission. Therefore, I cannot and have not denied staff access to either. In a recent meeting with a Human Capital representative, I and the IG were informed that the GS-1811-13 criminal investigator to whom I issued a Letter of Reprimand made several appointments with her, but subsequently cancelled them all.

I and the Counsel to the Inspector General also initiated discussions with the NARA Office of Human Capital and Office of General Counsel to define an administrative grievance process for NARA OIG employees. The existing NARA directive does not provide NARA OIG employees the same level of due process conferred to all other NARA employees. Specifically, there is no grievance process beyond the IG and, given the small size of the OIG, it can be reasonably argued that there may be circumstances when the apparent objectivity of the IG could legitimately be questioned.

**(1c) Retaliating against OIG staff who have expressed disagreements with you**

Again, I can only speculate about the basis for the allegation. I stand behind all my decisions to reorganize and implement needed change within the NARA OIG Office of Investigations. While I welcome and value the input of staff members, the responsibility and authority to manage the Office of Investigations rests with the AIGI.

This allegation may relate to my decision to move the aforementioned GS-1811-13 criminal investigator from the Archives I facility in Washington, DC back to the main OIG office at Archives II in College Park, MD. As a point of clarification, all OIG staff are located at the Archives II facility in College Park, MD. The employee in question had been placed at Archives I by my predecessor without on-site supervision, as he was the only OIG staff member working from the satellite office. His position was never formally relocated to Washington, DC. I openly stated to the two Special Agents in Charge and this staff member that I believed the satellite office in Washington, DC needed to be more fully defined and should, at a minimum, be staffed by a GS-1811-14. Because the two GS-1811-14 Special Agents in Charge had no interest in working from Washington, DC, I further clarified that I saw no need to create a third GS-1811-14 position in an office of (at that time) eight 1811s.

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In January 2012, the Deputy Archivist of the United States contacted the IG and requested that the criminal investigator working at Archives I stop parking his personal vehicle in the loading dock parking area of the facility. Given the Deputy Archivist's request, the lack of available parking, the informal manner in which the investigator was assigned to Archives I, and my belief that the OIG did not have a fully defined investigative presence at Archives I, I moved the investigator back to Archives II where he rejoined the rest of the OIG staff.

**(1d) Filing an official letter of reprimand against a Special Agent in retaliation for a complaint he filed against you**

A representative from the NARA Office of Human Capital has informed me that the Letter of Reprimand I issued to Greg Tremaglio was forwarded to the Integrity Committee for review. I coordinated the issuance of that letter through Human Capital and acted only after conferring with representatives from that office. The letter and supporting documentation were reviewed and edited by Human Capital before I issued them to Mr. Tremaglio. I stand behind that letter and my reasons for issuing it. The insubordinate behavior exhibited by Mr. Tremaglio will not be tolerated.

These are the only complaints I know that have been filed against me. I issued the aforementioned Letter of Reprimand in June 2012 -- over two months before I received a letter from the Integrity Committee. Please also see my response to allegation 1a.

**(1e) Instituting inappropriate supervisory restrictions on a Special Agent, including that he provide you notice within 24 hours of receiving any phone calls, e-mail, or written correspondence from anyone outside NARA, or from NARA employees at grades GS-13 and above**

I do not know the definition of an "inappropriate supervisory restriction," however, I have placed the same aforementioned GS-1811-13 criminal investigator under my direct supervision -- an action well within my authority and done in an effort to address his documented insubordinate behavior. The investigator denied me and the Counsel to the Inspector General access to an investigative work product after citing unsubstantiated concerns from a Department of Justice representative. As a result, I required that employee to report to me in detail the substance of all his contacts outside of the OIG. This staff member had exhibited a propensity to withhold and mischaracterize case information and I lost faith in his ability to keep me adequately and accurately informed. Over the course of several weeks and while working with Human Capital to formally address the employee's history of misconduct, the restrictions were lessened and eventually rescinded.

**(1f) Removing a Special Agent in Charge from her position because of her support for the Special Agent you put on restrictions**

This allegation has no basis in fact. In late October 2011, I designated two GS-1811-14s as Special Agents in Charge. Neither employee has been removed.

(2a) You fail to follow appropriate investigative standards, including the manipulation of investigative reports to support the results you and/or the IG want to obtain. This allegation is absolutely false. All investigative reports distributed from my office go through the same review process. Criminal investigators draft the reports, they are reviewed by a Special Agent in Charge and then they are provided to me for final review. Over the past year I have worked to improve the thoroughness and readability of Office of Investigations reports. In some cases this process has required several re-writes and direction on my part to conduct additional investigative activity. Nevertheless, all final Reports of Investigation (ROIs) and investigative referrals are fact checked by the responsible investigator before they are issued. Additionally, all ROIs are signed by the investigator who prepared the original draft. No criminal investigator in my office has opposed the issuance of an ROI or other report because he/she disagreed with the facts reported.

Despite the lack of detail and supporting evidence, I have made an effort to address all the allegations made against me. Unfortunately these allegations have distracted me and others from the work necessary to prepare this office for its first mandatory peer review after receiving statutory law enforcement authority in February 2012. I hope my responses assist in resolving these allegations, so that I and my staff can move forward. If necessary, I can be contacted at (301) 837-2941 or [matthew.elliott@nara.gov](mailto:matthew.elliott@nara.gov).

Respectfully,

  
Matthew Elliott  
Assistant Inspector General for Investigations

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