

THE SMITHSONIAN IN TRANSITION

MEETING BEFORE THE COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES ONE HUNDRED TENTH CONGRESS FIRST SESSION

MEETING HELD IN WASHINGTON, DC, AUGUST 1, 2007

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THE SMITHSONIAN IN TRANSITION

WEDNESDAY, AUGUST 1, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Committee met, pursuant to call, at 11:13 a.m., in room 1310, Longworth House Office Building, Hon. Robert A. Brady (chairman of the Committee) presiding.

Present: Representatives Brady, Capuano, Davis of California and Ehlers.

Staff present: Liz Birnbaum, Staff Director; Matt Pinkus, Professional Staff/Parliamentarian; Diana Rodriguez, Professional Staff; Kristin McCowan, Chief Legislative Clerk; Ryan McClafferty, Intern; Bryan T. Dorsey, Minority Professional Staff; Fred Hay, Minority General Counsel.

The CHAIRMAN. Good morning, everyone. Unfortunately, we have a vote on the floor. We will try to get this done as quickly as possible. I thank you, and I ask for your patience, and we will get through this. It may take some time, but we will get through this. Thank you again.

We are in recess. Thank you.

[Recess.]

The CHAIRMAN. Thank you for your patience.

I will call this hearing to order. I do have an opening statement, but for the sake of time factors, we do not know when we are going to run out; I am just going to ask unanimous consent to insert that into the record.

[The statement of the Chairman follows:]



Chairman Robert A. Brady
For Immediate Release
August 1, 2007

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**House Administration Committee Oversight Hearing on
"The Smithsonian in Transition"**
Wednesday, August 1, 2007, 11:00 a.m.

Opening Statement of Chairman Robert A. Brady

The Smithsonian Institution is currently undergoing major changes to its internal operations and governance. Two reports recommending significant reforms will be discussed in testimony today.

Clearly, the Institution is undergoing a transition. The Secretary and Deputy Secretary, the Under Secretary for Science, and other key officials resigned this year. The head of Smithsonian Business Ventures has resigned. The Institution is in the process of selecting a new Secretary and other new management officials to support and advance its goals.

The internal culture of the Smithsonian will also need to change to function in its modern role as a 21st century non-profit entity that receives 70 percent of its funding from the Federal government and controls a vast array of museums and research centers.

There is a strong sense in Congress that the Smithsonian has veered off course in recent years. There was too much public emphasis on raising money and naming buildings and exhibits after donors. There seemed to be less commitment to scientific research. The former Secretary avoided serious review by the Board of Regents and short-circuited existing mechanisms for internal oversight. Top officials had too many unsupervised perks. There were financial irregularities.

The Institution didn't consult adequately with Congress about plans like the controversial Smithsonian on Demand initiative last year.

Nonetheless, I am pleased that the Board of Regents acted quickly to address major problems. It conducted both an internal and an external review of governance issues. I am also pleased that the Independent Review Committee, under Chairman Bowsher, was permitted to operate on its own terms in providing an objective and unvarnished view of defects in the Institution.

The Regents have now adopted the recommendations of its Governance Committee and are moving toward adopting the recommendations of the Independent Review Committee. These recommendations affect the structure of the Smithsonian's administration, the makeup of the Board, internal management, financial stability, personnel issues, business enterprises, and ethics.

The search process to find a new Secretary for the Institution is currently in its early stages. Hopefully that new leader will represent a return to the Smithsonian's traditional values, its scholarship, scientific research, and accessibility to the public. The candidate review process should be thorough and deliberate, but also not extended too long.

This Committee joins the Smithsonian in looking ahead to more positive developments in the future. We will work with the Institution to ensure that the American people's expectations of excellence are maintained and enhanced. We look forward to helping the Institution re-emphasize its strengths.

Today we will start by discussing the recommendations of the two reform committees, and where we go from here.

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The CHAIRMAN. I do want to thank Mr. Bowsler and Ms. Doris Matsui for being here. I have had meetings with her, and we have had many discussions, and I thank you for your energetic participation and interest in the Smithsonian Institution. You have a good set of fresh eyes. You are there and are extremely knowledgeable, and I am extremely confident that, as long as you are there, we are there, and things will be on the right track. So I do appreciate your being here, and I appreciate your testifying with all of the other witnesses.

With that, I will recognize the Ranking Member for whatever statement he would like to make.

Mr. EHLERS. Thank you, Mr. Chairman. Thank you for holding this hearing. I have a written statement I will submit for the record. I will try to shorten it because we do not know what might happen to our schedule.

I certainly appreciate your efforts, Mr. Chairman, to maintain vigorous oversight of the Smithsonian and of its operations. As you know, I have long been in support of conducting activities, such as today's proceeding, to assure the American public that the "Nation's attic" is not being looted by those who would put personal gain above the interests of the Institution. In the last Congress, this Committee conducted an oversight hearing into Smithsonian Business Ventures in what would turn out to be a prophetic concern about the museum's financial operations.

I am most pleased to see that, although the gavel may have changed hands since that time, the committee remains steadfast in its resolve to increase its oversight of the Institution.

While it would be easy to go through the laundry list of past excesses and abuses of power that were widely reported to have taken place within the museum, instead I would like to use today's hearing to begin refocusing on the future of the Smithsonian. We have already seen evidence of the positive steps being made toward a stronger governance by the Board of Regents into the museum's operations. The Board's increasingly "hands-on" role in these matters is an important line of defense in safeguarding the Institution and a crucial first step towards fully restoring the museum's health. I am just absolutely delighted with the efforts that the Board has made in the reexamination of itself and in the steps it has taken. That does not resolve all of my concerns, but I will get to that in just a moment. They are to be commended for the tremendous amount of work, and good work, that the Board has done in self-examination and in its examination of the role of the Institution.

I also want to commend Congresswoman Matsui, who has done yeoman's work on this. When she reported to us informally last month, I was in complete accord with what she was saying because it is exactly what we had been finding out and saying last year. It is unfortunate that it had to come to that impasse before the period in the press when everyone got all excited about it and before everyone woke up, but we have made very good, strong, positive progress.

In addition to the increased oversight activities of the Board, I have been pleased with the Smithsonian's Inspector General, Sprightley Ryan, who, I think, has again done yeoman's work or

yeowoman's work in conducting a number of audits into various facets of the museum's operations. I appreciate that. This is a very good step forward and has been enormously effective in providing increased transparency.

What I am interested in hearing today and what I would like to hear from our witnesses today is what part they believe this Committee may play in restoring public trust in the Smithsonian and in its leadership. In other words, you have done a good job to try to restore public trust. What can we do to help you? What role should we play in helping you restore that public trust? I think we are a long ways from being ready.

Also, I want to make it very clear that I still have continuing concerns, not about the Board and its structure, but about the internal operations of the Smithsonian. In other words, if you regard the structure as a pyramid, which we frequently do in the government and in the corporate world, we have done a good job of taking care of the top and of the peak of the pyramid. The Board is perhaps the peak of the pyramid. There are a lot of operations below that, I think, need inspection and clarification. In particular, I hope the Inspector General will vigorously pursue those activities.

There was a hearing last year and extensive study about the Smithsonian Business Ventures. One of the reasons given for the need for Smithsonian Business Ventures is that the Board and the management were too busy to deal with all of the details, so they needed something else to run it properly. I was very skeptical of that to begin with, particularly the way it was structured. It turned out that my misgivings were well placed because the Smithsonian Business Ventures did not really improve the operations at the lower levels as far as I could tell.

So I hope that Ms. Ryan and the Board will continue to pursue all facets of the operations of the Smithsonian. We want a squeaky clean, shiny, well-running operation from the top of the pyramid to the bottom. I think a crucial part of that is that the Inspector General now reports directly to the administration and to the Board and works with them. That is a good step forward, so that the employees all the way up and down the chain know that the Inspector General speaks from the top level of the administration of the Smithsonian.

So I commend you. Though I still have concern, and I am sure that factor will be addressed, but I am anxious to hear the remainder of the testimony.

Thank you again, Mr. Chairman, for calling this hearing.
[The statement of Mr. Ehlers follows:]



Opening Statement

[After the Chairman's opening remarks]

Thank you Mr. Chairman, and I appreciate your efforts to maintain the Committee's vigorous oversight into the Smithsonian Institution and its operations. As you know, I've long been in support of conducting activities such as today's proceeding to assure the American public that the "nation's attic" is not being looted by those who would put personal gain above the interests of the Institution. In the last Congress, this Committee conducted an oversight hearing into Smithsonian Business Ventures, in what would turn out to be a prophetic concern about the museum's financial operations. I am pleased to see that although the gavel may have changed hands since that time, the Committee remains



steadfast in its resolve to increase its oversight of the Institution.

While it would be easy to go through the laundry list of past excesses and abuses of power that were widely reported to have taken place within the museum, I'd like to use today's hearing to instead begin re-focusing on the future of the Smithsonian. We've already seen evidence of positive steps being made toward stronger governance by the Board of Regents into the museum's operations. The Board's increasingly "hands-on" role into these matters is an important line of defense in safeguarding the Institution, and a crucial first step towards fully restoring the museum's health.



In addition to the increased oversight activities of the Board, the Smithsonian's Inspector General, Sprightley Ryan, has conducted a number of audits into various facets of the museum's operations, which have been enormously effective in providing increased transparency into its inner workings. Ms. Ryan joins us today as a witness, and I look forward to receiving her testimony.

Finally, I'd like to hear from our witnesses today what part they believe this Committee may play in restoring public trust in the Smithsonian and its leadership. Press reports have highlighted many of the transgressions that have been orchestrated over the past several years by the very people who were entrusted with the preservation of the Institution. While their actions were egregious, we as



Members would also be derelict in our duties if we did not do everything in our power to protect the Smithsonian and its assets. As the museum searches for a new Secretary, audits its existing protocols to ensure they support an ethical environment, and continues to put safeguards in place to stop unethical behavior should it occur, much work will need to be done to support its goals. This panel must ensure that we have an accurate picture of the current state of the museum's operations, as well as a clear roadmap to restoring whatever damage may have been done to its reputation as a result of these recent scandals. With the assistance of all of our witnesses today, and the support of this Committee, I am confident we can restore the luster of this once bright jewel in our nation's crown.

The CHAIRMAN. Thank you. You are welcome.

Mrs. Davis, we thank you for being here. Do you have any opening remarks? Thank you.

Today, we will start discussing the recommendation to reform committees and discussing where we go from here. I am pleased to have two of the prime movers in the Smithsonian reform with us today. Our colleague, Doris Matsui, is one of six Congressional Regents. She has taken a leading role with the Regents in recommending revisions to the Institution's governance procedures. I have spent time with Ms. Matsui, learning about these issues. She cares enormously about this Institution, and she has taken her work here very seriously, with good results. I am confident that the Smithsonian will be stronger because of her service.

Charles Bowsher was Comptroller General of the United States from 1981 to 1996. He ran the GAO, Congress's chief investigative and auditing arm. He was asked by the Regents to form the Independent Review Committee. Their report reviewed the controversy surrounding former Secretary Small, and it also made numerous recommendations to reform the Institution.

We welcome you both. The full text of your written testimony will be attached and inserted into the record. I thank you again.

We will begin with Congresswoman Matsui.

STATEMENT OF THE HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman.

Thank you, Ranking Member Ehlers and distinguished members of the Committee.

It really is an honor for me to represent a historical institution such as the Smithsonian, often revered as a national treasure during this important phase of transition. This transition will result in a new secretary, an improved governance structure and a stronger relationship with Congress and the American people.

I am pleased to serve as a representative of the Board of Regents in front of my colleagues. My fellow Regents and I have done an immense amount of work to ensure that the Institution operates as a public trust, following only the highest ethical standards, and conducts its business with an increased ethos of transparency. I know there is a lot to discuss, and I will make my remarks brief.

Although I am a new member to the Smithsonian Board of Regents, I was asked to be a part of the newly formed Governance Committee because of my experience. I have served in the Federal Government as both an elected and as an appointed official. I also bring expertise from the nonprofit sector having served on numerous boards such as that of a public television station in Sacramento, California. Here in D.C., I have sat on the boards of Meridian International Center, the Woodrow Wilson Center and the Arena Stage.

The Governance Committee was vigorous and thorough in its investigation. We reviewed the Smithsonian Institute's governance practices, compared them to best practices of similar institutions and provided recommendations based on the shortcomings we found. We were also informed by leaders and experts in the nonprofit sector.

During 12 weeks of extensive factfinding, discussion and deliberation, the Governance Committee scrutinized the inner workings of the Regents and their oversight functions at the Smithsonian. In addition to weekly meetings, we spent countless hours reviewing documents and materials on best practices and landscape analysis of comparable institutions. We then compared these to the current Smithsonian policies.

These 3 months of intense efforts culminated into 25 recommendations that were adopted by the Board of Regents on June 18th. In our opinion, each is a critical part in revitalizing and reforming Smithsonian's Board as well as the senior management to ensure effective oversight, accountability and transparency. Let me take a moment to list several key proposals explicitly, most of which have already been implemented.

Our report recommended a new policy that prohibits senior staff from serving on corporate boards. We have also recommended that Smithsonian formalize its observance of the Freedom of Information Act. Other changes included adopting a Smithsonian-wide leave policy and strengthening direct access to the Regents for the Institution's gatekeepers—the Inspector General, the General Counsel and the Chief Financial Officer.

We have created a Web site, a real Web site, that makes available the Board's meetings, agendas and minutes. We have also recommended that the Smithsonian convene a public forum each year. The Board is also undertaking an audit of Mr. Small's expenses as well as analyzing criteria for making future nominations to the Board.

Our report also recommends that the Board review its composition and size, executive compensation policies, committee structure and underlying charters by early 2008. Finally, we have recommended and the Acting Secretary has begun the process of reviewing the Smithsonian Business Ventures' charter structure and options for the future.

These recommendations are but a start. We are working closely with the Smithsonian staff, Members of Congress and the public toward this goal. In fact, since our report was released, we have been working toward implementing our recommendations and have created a scorecard that is publicly available on our Web site. It outlines the work we have accomplished and the schedules of work that is in progress.

In addition, at our most recent meeting, the Governance Committee adopted changes to our bylaws that will allow for the election of our first chair to the Board at the September 17 Board meeting. This was both the recommendation from the Independent Review Committee and from the Governance Committee. The Independent Review Committee, headed by Chuck Bowsher, who is seated next to me, released their report on June 18, 2007. Both reports have since been used as momentum for future action to resolve governance problems at the Smithsonian and to restore the public's trust in this valuable institution.

Mr. Chairman and Ranking Member Ehlers, allow me to close with the following quote from Helen Keller:

“character cannot be developed in ease and quiet. Only through experiences of trial and suffering can the soul be strengthened, vision cleared, ambition inspired, and success achieved.”

While I do not think she was specifically speaking of an institution such as the Smithsonian, it is certainly fitting. The Smithsonian has a life of its own, replete with stories of America’s past and visions for its future. This experience has strengthened the Board of Regents’ resolve to preserve and to promote the mission of Smithsonian into the 21st Century, and I believe that we are actively moving in that direction.

I thank you very much.

[The statement of Ms. Matsui follows:]

Committee on House Administration Hearing

Testimony

**Congresswoman Doris O. Matsui (CA-05)
Member, Governance Committee
Board of Regents
Smithsonian Institution**

August 1, 2007

Chairman Brady, Ranking Member Ehlers and distinguished Members of the Committee:

Let me start by saying that it is an honor to represent an historical institution like the Smithsonian, well-regarded as a National Treasure, before my esteemed colleagues. The Smithsonian is in a phase of transition; one that will result in a new Secretary, an improved governance structure and a stronger relationship with Congress and the American people.

I am pleased to serve as a representative of the Board of Regents. My fellow Regents and I have done an immense amount of work to ensure that the Institution operates as a public trust, follows only the highest ethical standards, and conducts its business with an increased ethos of transparency.

Although I am a new member of the Smithsonian Board of Regents, I was asked to be part of the newly-formed Governance Committee because of my experience. I have served in the federal government as an elected and appointed official. I accepted this position during a difficult period in the Smithsonian's history because I have experience on numerous non-profit boards, ranging from public television in Sacramento to the Meridian International Center, and from the Woodrow Wilson Center to the Arena Stage. As such, joining the Smithsonian Board of Regents—and especially its Governance Committee—was an exciting step for me. I soon found out that it was to be a challenging one as well.

The purpose of our Committee was to review the Smithsonian Institution's governance model, compare it to best practices of similar institutions, and provide recommendations based on the shortcomings we discovered. The Governance Committee utilized every available resource both from within the Institution and outside. We inspected the Smithsonian's policies and management from top to bottom.

Throughout this process, the Board of Regents has been informed by leaders and experts in the non-profit sector. One of these outside advisors is fond of quoting Charles Kettering, who said, "Problems are the price of progress. Don't bring me anything but trouble. Good news weakens me." The Governance Committee has tried to embody this principle of full and honest disclosure and fact-finding in all that we have done. We were not formed to compliment the Smithsonian on its successes, which are considerable. We

were tasked with highlighting areas where the Smithsonian must improve, and I believe that we did so in a rigorous and focused way.

Let me say a few more words about the origins and nature of the Governance Committee's work.

Even before Secretary Small resigned in March, the Board of Regents had decided to conduct both an internal and external review of the Board and of the Smithsonian Institution's management in general. The Governance Committee, chaired by Patty Stonesifer, and the Independent Review Committee (IRC), chaired by Chuck Bowsher and joined by Stephen D. Potts and A.W. "Pete" Smith, were charged with this investigative review responsibility.

During twelve weeks of extensive fact-finding, discussion, and deliberation, the Governance Committee scrutinized the inner workings of the Regents and their oversight function at the Smithsonian. We set up an aggressive weekly schedule, often meeting two to four hours at a time. And in addition to these meetings, we each spent countless hours reviewing documents and materials on best practices, landscape analysis of comparable institutions, and current Smithsonian policies.

These three months of intense effort culminated in twenty-five recommendations. In our opinion, each recommendation is a critical part of our comprehensive plan to revitalize and reform the Smithsonian's Board and senior management to ensure effective oversight, accountability and transparency.

When the Board adopted the Governance Committee's recommendations, by definition it adopted guiding principles that will strengthen the Smithsonian for the future. The Institution will operate as a public trust, follow only the highest ethical standards, and conduct its business with an increased ethos of transparency. Additionally, the Board adopted Regent job descriptions, instituted direct reporting relationships for the Inspector General, Chief Financial Officer and General Counsel, and launched a new public website.

Allow me to take a moment to list several key Governance Committee proposals explicitly, most of which have already been implemented:

- Our report recommends creating guidelines to establish a unified federal and trust executive compensation system.
- Our report recommends a new policy that prohibits senior staff from serving on corporate boards.
- We have also recommended that the Smithsonian formalize its observance of the Freedom of Information Act.

- Other changes include adopting a Smithsonian-wide leave policy and strengthening direct access to the Regents for the Institution's "gate-keepers": the Inspector General, the General Counsel and the Chief Financial Officer.
- We have created a website that makes available the Board's meetings, agendas and minutes. We have also recommended that the Smithsonian convene a public forum each year.
- The Board is also undertaking a complete re-examination of Mr. Small's expenses, as well as analyzing criteria for making future nominations to the Board.
- Our report also recommends that the Board review its composition and size, executive compensation policies, committee structure, and underlying charters by early 2008.
- And finally, we have recommended, and the Acting Secretary has begun, the process of reviewing the Smithsonian Business Venture's charter, structure and options for the future.

Let me emphasize that these recommendations are just the beginning of a long and involved reform process for the Smithsonian. We on the Governance Committee view our report as a blueprint for future action, with an aggressive completion date of January 2008. We expect the Institution to move quickly to implement our policy changes, and the Independent Review Committee has also ratified this timeframe for future action.

The Governance Committee has not simply created a list for the rest of the Institution to follow, however. We hold ourselves accountable as well, and we have already created an agenda for implementing some of our own recommendations that require further action on our part. In fact, since our report was released we have been working towards implementing our recommendations, and have created a scorecard that is publicly available, and I have included with my testimony. It outlines the work we have accomplished and schedules for work that is in progress.

The Governance Committee will also continue our review of the Board composition and size, executive compensation, and the Board's Committees and Charters. We will undertake an in-depth review of Secretary Small's expenses, we will examine the resources allocated to the Office of the General Counsel and to the Inspector General, and we will analyze criteria for making future nominations to the Board. Reforming an integrated and complex organization, especially one as central to our Nation's historical and cultural identity as the Smithsonian, requires commitment from all parties, and the Governance Committee is a willing partner in the process of overhauling the way the Smithsonian functions.

On a more specific note, I would like to take a moment to discuss our future plans for reviewing the composition of the Board of Regents. Few topics are as critical as this one

to the Smithsonian's future viability, for the Board makes many of the critical decisions that govern the Institution's operations.

With this in mind, the Governance Committee has made Board composition our number one priority as we move forward with our recommendations. During our deliberations, members of the Committee engaged in extensive and focused discussions surrounding this issue. Based on best practice guidelines of other comparable organizations, we determined that an in-depth review of the Board's size and structure was necessary. We believe that this review should include: a thorough analysis of the history and purpose of the current structure; consideration of best practices of similar institutions; and consultation with stakeholders.

In our report, we also outline other key Board composition issues that must be resolved. The size of the Board itself must be examined, as must the makeup and function of the Smithsonian's Executive Committee. We believe that the role for the representatives of our three branches of government should be thoroughly reviewed, and that we should also take a good look at the Smithsonian's underlying committee structure. Hard decisions will have to be made concerning the number of Citizen Regents the Smithsonian should have, as well as what the roles of the Chancellor and Board Chair should be.

Of these topics, perhaps none is as important to me as that of the role of the federal government in the Smithsonian's governing structure. The Smithsonian was established as a public trust, endowed to the United States of America. Congress put representatives from all three branches of government on the Board of Regents, as overseers of the public trust and to ensure that the interests of American taxpayers were best represented.

There is an important and vital role for Congressional Regents to play within the Smithsonian. The Independent Review Committee has found this to be true as well. Members of Congress have a near-exclusive and in-depth knowledge of the Budget and Appropriations process, which funds more than half of the Smithsonian's operations. In addition, we are each sworn to uphold the public trust in all that we do. This commitment to the public is the same ethic that drives the very nature of the Smithsonian Institution. Members of Congress are a natural partner in ensuring that the Institution fulfills its responsibility to educate, inform, and inspire in a manner consistent with the values that all Americans hold dear.

As a Congressional Regent, I consider it an honor and part of my public service to do all that I can to ensure that the Smithsonian functions in the most effective way possible. Quite honestly, I treat this every bit as seriously as I do my Congressional Committee assignments. I serve on the Smithsonian Board of Regents because it is a personal and public priority of mine. I know for a fact that all of my fellow Board members do and feel the same.

I also believe that having the Chief Justice and Vice President on the Board is critical. Having these offices sit on the Board serves an historical and symbolic purpose, and it is undeniable that they contribute to the Smithsonian.

The Board, however, does acknowledge that balancing such high-profile day jobs with the increasing needs of governing such a sprawling and complex public institution is a difficult task. As a result, we are reviewing the roles of Congressional Regents, the Chief Justice, and the Vice President as they pertain to the Smithsonian's Board of Regents.

We have already taken action on this account. As a first step, we divided the role of Chancellor and Chair of the Board. This allows the Chief Justice to continue presiding as Chancellor. The newly-created Chair of the Board will preside in the Chief Justice's absence, and will assist with setting the agenda and handling the Board's day-to-day oversight responsibilities.

At our most recent meeting the Governance Committee adopted changes to our bylaws that will allow for the election of our first Chair of the Board at the September 17th Board meeting. This was both a recommendation from the Independent Review Committee and the Governance Committee.

We are also looking at consulting outside experts to inform the Board of Regents in their deliberations. Options for additional expertise include: adding more Citizen Regents; asking non-Regents to serve on our Committees, as we did with Diana Aviv, president and CEO of the Independent Sector; or more fully utilizing the Smithsonian National Board and the various museum Advisory Boards.

Mr. Chairman and Ranking Member Ehlers, allow me to close my remarks with the following thoughts.

The Smithsonian and its Board of Regents play a unique role in preserving the rich history and culture of America. I know that I speak for the Governance Committee as a whole when I say that we are aware of how much is at stake right now for the Smithsonian. Nonetheless, I join with my colleagues in saying how proud I am to be part of the Governance Committee and the Board of Regents during this challenging time. I have no doubt that the Smithsonian will emerge from this transformational period as a more accountable, more responsive, and more transparent organization, and I thank you for the trust you have placed in the Governance Committee to help speed this process along.

Helen Keller once said, "Character cannot be developed in ease and quiet. Only through experiences of trial and suffering can the soul be strengthened, vision cleared, ambition inspired and success achieved." While I don't think she was specifically speaking of an Institution such as the Smithsonian, it is certainly fitting.

The Smithsonian has a life of its own: replete with stories of America's past and visions for its future. This experience has strengthened the Board of Regents' resolve to preserve

and promote the mission of the Smithsonian into the 21st century. And I believe that we are actively moving in that direction.

I appreciate the opportunity to speak here today and look forward to hearing the testimony from the members on the panel. Thank you.

The CHAIRMAN. I thank the gentlelady, and I thank you for your diligence and for your hard work, and I feel extremely safe that you are overseeing and that you are right there on that Board of Regents. Thank you.

Ms. MATSUI. Thank you.

The CHAIRMAN. Mr. Charles Bowsher, we have a 10-minute call before we go for a vote. That gives you a good 5 minutes, if you think you can do that, and then we will come back for questions. If not, we will give you a full 10 minutes, whatever you think you want to do with it.

Mr. BOWSHER. You would like me to summarize in 5 minutes?

The CHAIRMAN. That would be nice.

Mr. BOWSHER. Yes, I will do it.

The CHAIRMAN. Thank you.

STATEMENT OF CHARLES A. BOWSHER, CHAIRMAN, INDEPENDENT REVIEW COMMITTEE, SMITHSONIAN INSTITUTION

Mr. BOWSHER. Okay. I just would like to say that I am pleased to be here. The Independent Review Committee came to its task with a deep affection for the Smithsonian Institution, and it is our hope that our report will help the leadership of the Smithsonian, both the management and the Board of Regents, to become more effective than they have been in the past.

I think that the problems of Mr. Small's compensation and his expenses have been well-documented, and I am not going to go into a lot of detail, but they were actually quite excessive. We also found that Mr. Small and his deputy spent a lot of time away from the Institution. We certainly think the deputy was a very hard-working woman but you have to have some management people there when you need decisions to be made, and we really do believe that this was a problem.

We think the oversight by the Board was antiquated. It was not up to what current organizations are expecting, but we think this can be improved. In other words, there is no reason why the problems in the oversight by the Board and also by the management cannot be changed, and we are very pleased by the positive reaction of the Board. We also had a meeting even just this morning with the Acting Secretary, and I think things are moving ahead.

Adding to what Congresswoman Matsui has said here, I think things really are moving in the right direction, and they certainly accepted our recommendations as we presented them to the Board of Regents. So we are optimistic that things are going to move in the right direction.

To go back to the issue that the ranking member raised, I think it is up to your Committee to periodically have hearings like this to find out how things are really going and to make sure that progress is being made on the recommendations of the Governance Committee and the Board of Regents and as the new management takes over and provide new leadership.

So, with that, I will stop, and I would be willing to answer any questions.

[The statement of Mr. Bowsher follows:]

INDEPENDENT REVIEW COMMITTEE
Smithsonian Institution

Opening Statement of Charles A. Bowsler
Chairman
Independent Review Committee
Smithsonian Institution
Hearing before the House Committee on Administration
August 1, 2007

Thank you, Congressman Brady. I am pleased to be here to summarize the findings of the Independent Review Committee of the Smithsonian Institution and to discuss the future of the Smithsonian.

The Committee was appointed by the Board of Regents in March following numerous allegations in the media concerning the compensation and expenses of former Secretary Lawrence Small. Joining me as members of the Committee were A.W. "Pete" Smith, a retired executive with extensive experience in both the public and private sectors, and Stephen D. Potts, chairman of the Ethics Resource Center and former director of the U.S. Office of Government Ethics under both Presidents George H.W. Bush and William Jefferson Clinton. We were assisted by counsel from the law firms of Williams & Connolly and Arnold & Porter.

The Committee came to its task with a deep affection for the Smithsonian Institution. It is our hope that our work will help restore the people's trust in this venerable institution and bring to an end the adverse media attention of the past few months. The Committee recognizes that the Board of Regents has agreed to implement the recommendations of the Independent Review Committee and its own internal governance committee.

The future of the Smithsonian depends largely, I believe, on fundamental reform of its management and renewed dedication on the part of the Board of Regents to effective oversight. In the 10 weeks of our investigation, we found that the governance structure of the Institution is antiquated and that the relationship between the Board of Regents and Mr. Small as Secretary was contrary to effective

oversight. At a time when organizations are expected to operate with increasing transparency, the operation of the Smithsonian had become increasingly secretive. Mr. Small created an imperialistic and insular culture in which the Secretary, rather than the Board, dominated the setting of policy and direction.

Mr. Small's compensation is an issue that demonstrates the problems that the Smithsonian faced. The IRC found that Mr. Small was accorded compensation that went far beyond that which had been provided to previous secretaries. By improperly labeling additional compensation as a "housing allowance" and adding overly generous payments "in lieu of pension," Mr. Small's compensation was "packaged" so that its true dimensions were obscured. His actual compensation in his first year exceeded \$500,000, not the \$330,000 disclosed to the media. This salary was 46% above the salary given his predecessor in his last year as Secretary. Similarly, in the realm of expenses, we found that Mr. Small was given a blank check to not only fly first class, but also to enjoy other expensive perquisites (such as hotel suites, limousines and on one occasion a charter flight) that went far beyond those allowed other executives of the Smithsonian or previous secretaries. They were not reviewed for reasonableness.

Mr. Small and his deputy, Sheila Burke, were allowed to serve on for-profit boards of directors with virtually no oversight from the Board of Regents, and both were allowed to take as much time as they liked for either vacation or their outside board activities. In the case of Mr. Small, he appears to have taken nearly 70 weeks of vacation over his seven years of tenure and spent 64 business days serving on for-profit boards, for which he earned over \$600,000 in cash compensation, \$3.3 million in stock compensation, and \$1.8 million in stock option compensation. Ms. Burke appears to have been away from the office for more than 400 business days during her tenure because of her service on boards and other non-Smithsonian activities, for which she earned about \$1.2 million in cash compensation, \$3.5 million in stock compensation, and \$5.6 million in stock option compensation. This compensation was more than three times the amount she received from the Smithsonian over the same period.

The Committee has recommended a number of reforms which it believes are essential to proper operation of the Smithsonian and it believes these can and should be addressed by the Regents before the end of the year. Our recommendations can be summarized as follows:

- The expenses of Mr. Small and his wife should be subject to an audit for reasonableness.
- The compensation of the Secretary should be reasonably competitive and transparent and take into account the Smithsonian's unique nature.
- The Smithsonian should follow federal regulations that foster openness, transparency and effective governance.
- Its salary structure should be generally consistent with government pay schedules.
- The Smithsonian must have an active governing board with a chairman who can provide the time for proper oversight. In this regard, the roles of the Chief Justice and the Vice President should be clarified, and Congressional Regents should accept fiduciary responsibilities.
- The Board should be expanded or reorganized to allow for the addition of Regents with needed expertise.
- Internal financial controls, audit functions, and the roles of the General Counsel and Inspector General should be strengthened.
- Smithsonian employees should be allowed to participate only in nonprofit board activities subject to prior approval.
- The selection of the next Secretary must reflect governance challenges facing the Institution.
- Achieving effective oversight and governance at nonprofit organizations may ultimately require legislative action.

Implementing these reforms will require dedication and hard work on the part of the Board of Regents. The Board's first priority, I believe, is to move as expeditiously as possible in its search for a new Secretary. The Board should take the time it needs to select the best possible person for this position, but it needs to be considered the number one priority.

Beyond this, I believe members of the Board – including Congressional Regents – need to take more seriously than they have in the past their duties as fiduciaries and the need to devote more time to oversight of the Smithsonian. While the Board’s governance committee recommended four meetings a year, I believe that the minimum should be six – and the Board will need to meet even more frequently than that to implement the reforms that we’ve recommended.

The Board needs to take very seriously the need for expertise in audit and finance, facilities management, compensation, and all the other areas that a modern board – whether in the for-profit or nonprofit world – must have to do an effective job. Similarly, the “gatekeepers” – the Inspector General, the General Counsel, and those who handle financial management and audit functions – must be given the tools to do an effective job and their findings must be readily available to Regents and not just management.

And finally, openness and transparency have to be watchwords for the future of this institution. Never again should the Board allow itself to be shunted aside and marginalized by management. The Board must be willing to ask the tough questions and demand answers.

The Smithsonian is only the latest example of scandals and crises that have plagued many large nonprofits, including the Red Cross, American University, and the United Way. Just two weeks ago, the Washington Post reported about a nonprofit student loan organization that has spent lavishly on perquisites and benefits for key employees. Unless the nonprofit world begins to take seriously the need for better internal controls and discipline, then the likelihood is that the courts, state legislatures, or Congress will be called upon to impose new and more stringent requirements.

That completes my testimony. I ask that the executive summary of the IRC report be included in the hearing record at this point.

EXECUTIVE SUMMARY**A. Overview**

The Independent Review Committee came to its task with a deep affection for the Smithsonian Institution.¹ It is the Committee's hope that its work will help restore the people's trust in the Smithsonian and bring to an end the adverse media and public attention of the past several months. Although the Smithsonian is in the midst of a governance crisis, the IRC believes the Institution itself appears sound and that its problems can be solved expeditiously if the Regents recognize the urgency of the situation and commit sufficient time and resources to correcting the matters. The Committee recognizes that the Board of Regents, through its Committee on Governance, has begun this process by developing an initial set of reform initiatives.

In reviewing the operations of the Smithsonian during the tenure of Lawrence M. Small as Secretary, with a particular focus on his compensation, benefits and expenses, the IRC has determined that the problem was not one merely of misunderstood guidelines, nor was it one only of poor decisions in spending Smithsonian funds on expensive or lavish travel, entertainment and personal needs. The problems go much deeper than this. Mr. Small's management style – limiting his interaction to a small number of Smithsonian senior executives and discouraging those who disagreed with him – was a significant factor in creating the problems faced by the Smithsonian today. In addition, Mr. Small limited the flow of information so as to prevent the Board from hearing criticism of his stewardship.

The Committee, however, believes that the resignation of Mr. Small has not, by itself, remedied the problems at the Smithsonian. The Smithsonian must correct the underlying deficiencies in its organizational structure, decision-making and financial controls that allowed inappropriate management conduct to go undetected. As noted by the Office of the Vice President in its letter to the Committee, the

¹ The Committee is referred to in this Report as the "**IRC**" or "**Committee**" and the Smithsonian as the "**Smithsonian**" or "**Institution**." References to the "**Board**" are to the Board of Regents of the Smithsonian.

current situation presents the Smithsonian with an opportunity to bring its management in line with best practices and to revamp the composition, selection and duties of the Board of Regents.

The root cause of the Smithsonian's current problems can be found in failures of governance and management. The governance structure of the Institution is antiquated and in need of reform. The relationship between the Board of Regents and Mr. Small, as Secretary, was contrary to effective oversight. At a time when organizations are expected to operate with increasing transparency, the operation of the Smithsonian, and especially the actions of Mr. Small and those who reported directly to him, had become increasingly secretive. Mr. Small created an imperialistic and insular culture in the Office of the Secretary in which the Secretary, rather than the Board, dominated the setting of policy and strategic direction for the Smithsonian. The Board of Regents allowed this culture to prevail by failing to provide badly needed oversight of Mr. Small and the operations of the Smithsonian. The Board did not look behind the tightly controlled data provided by Mr. Small. Nor did it engage in the active inquiry of Mr. Small and Smithsonian management that would have alerted the Board to problems.

As a result of the corporate scandals of the early part of this decade and the adoption of the Sarbanes-Oxley Act of 2002, boards of directors have become increasingly active in the oversight of management and in the development of strategy and long-term plans for organizations they control. Many nonprofit institutions have also updated their governance practices following the adoption of Sarbanes-Oxley. Historically, the Smithsonian Board of Regents appears not to have taken a strong oversight role. Mr. Small's predecessor tried to increase the involvement of the Regents in the affairs of the Smithsonian, but found a limited interest on the part of the Regents in taking a more active role. During Mr. Small's tenure, some changes were made to the Smithsonian's governance that brought it more in line with best practices. Over the last several years, for example, the Board, to its credit, has held planning and strategy sessions and has established committees on audit, compensation and governance. These efforts, however, did not go far enough. The governance structure of the Institution

needs more comprehensive reform. The Committee hopes that the findings and recommendations of this Report will aid the Smithsonian in its efforts at such reform.

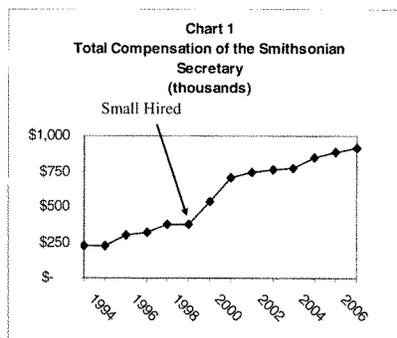
B. Summary of Committee Findings

1. Mr. Small's Compensation Far Exceeded the Compensation of Prior Secretaries

Historically, the Secretary of the Smithsonian received total compensation near the mid-point of comparable positions, with modest annual increases. In contrast, Mr. Small's total starting compensation – \$536,100 – was forty-two percent higher than the compensation of his predecessor, and by the time he left office this year, Mr. Small's total compensation – \$915,658 – was almost 2½ times the compensation of his predecessor. What made Mr. Small's initial package so much larger than that of his predecessor was a \$150,000 annual payment styled as a housing allowance.

Mr. Small's initial compensation package would have been reasonable had the \$150,000 housing allowance been a true housing allowance and not simply additional salary. The language of Mr. Small's contract read as if this housing allowance was to reimburse Mr. Small for his out-of-pocket housing costs in making his home available for Smithsonian business and social functions. An individual who played a key role in the initial financial negotiations with Mr. Small conceded that the language of the contract was misleading and that the housing allowance was, in fact, a "packaging device" for delivering Mr. Small additional compensation in a manner that would conceal the true size of his pay.

Another troubling aspect of Mr. Small's compensation was the forty-five percent increase in base salary – from \$330,000 to \$480,000 – he received in 2001. The then-Executive Committee increased Mr. Small's base salary, at his request, to put him in the 75th



percentile of what Smithsonian management had chosen as comparable institutions. The selection of the 75th percentile applied only to Mr. Small's compensation. Compensation for the rest of the Smithsonian senior staff remained close to the 50th percentile.

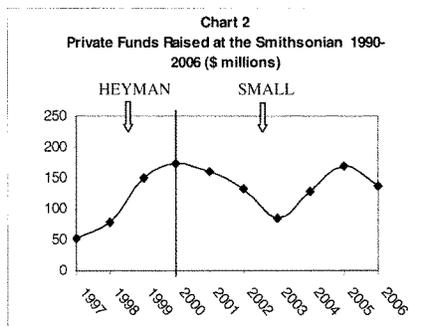
2. The Terms of Mr. Small's Compensation Were Not Fully Disclosed to the Board

Mr. Small's initial compensation package was negotiated between Mr. Small and a small number of Regents, none of whom is currently on the Board. The Committee found no evidence that the Board of Regents as a whole ever learned the terms of Mr. Small's initial compensation package. In fact, contrary to the requirements of the Smithsonian's governing documents, the full Board did not formally approve the terms of Mr. Small's annual total compensation until 2004, and some Regents did not learn all the details of Mr. Small's compensation until they read about it in the recent press accounts.

3. Private Grants and Contributions and Business Revenues Have Declined During Mr. Small's Tenure, Making the Smithsonian More Reliant on Federal Appropriations and Grants

One of the reasons for hiring Mr. Small was the belief that his business background and connections would allow him to increase the Smithsonian's private fundraising and business income and thereby reduce the Smithsonian's reliance on federal monies. There is a perception among many of the individuals interviewed by the IRC and the public that Mr. Small succeeded in those efforts. Certain Regents have defended Mr. Small's actions by pointing to this success, going so far as to suggest that his excesses might be excused in light of the fact that he raised over a billion dollars for the Smithsonian. This justification is wrong for two reasons. First, the IRC rejects the idea that success is in any way a license for inappropriate behavior.

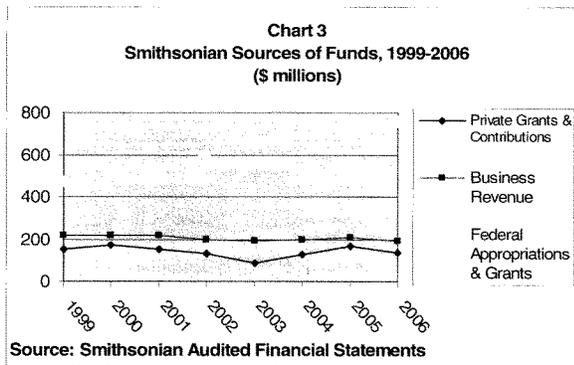
Second, as shown by Chart 2, private funds raised annually from donors have actually declined over the course of Mr. Small's tenure. Funds contributed by private sources peaked in



2000, and thereafter the amount of private funds committed to the Smithsonian began to decline, reaching a low of \$88 million in 2003. Although Mr. Small was involved in finalizing a gift of \$80 million from The Behring Foundation in 2000 and gifts of \$30 million and \$45 million from the Donald Reynolds Foundations in 2001 and 2005, respectively, those donations originated from the work of others. Private funds raised in 2006 improved to \$132 million, but that figure is about ten percent lower than the amount raised in 1999, the year before Mr. Small took over. The evidence collected by the Committee regarding comparable nonprofits does not show a similar decline in fundraising over the same period.

As Chart 3 shows, business revenue has dropped by a similar percentage during Mr. Small's tenure. This drop in business revenue has been further exacerbated by increased operating expenses (most notably senior executive salaries) at Smithsonian Business Ventures. In contrast, funds from federal appropriations and governmental grants have increased more than sixty percent over the same period. The Smithsonian informed the IRC that the increase in federal appropriations reflects, in significant part, the opening of two new museums and increased spending for anti-terrorism measures following 9/11, and

that the Smithsonian's federal staff has decreased by about percent since 2000. Nevertheless, the net effect is that the Smithsonian became



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dependent on taxpayer funds during Mr. Small's tenure.

4. Mr. Small's Expenses Were Not Reviewed for Reasonableness

Nonprofit organizations like the Smithsonian must properly document expenses incurred in the conduct of the organization's activities to evidence reasonableness and relation to the organization's mission. With respect to Mr. Small's expenses, the Smithsonian failed to do so. Until the recent review completed by Cotton & Co., there had been no review of Mr. Small's expenses by either the Chief Financial Officer or internal or external auditors of the Smithsonian. Instead, Mr. Small and his staff exercised sole discretion in determining which expenses would be charged to the Smithsonian. At the beginning of 2000 and 2001, Mr. Small was given by his chief of staff signed blank expense authorizations. Thereafter, while the Smithsonian had detailed guidelines and policies for business expenses, Mr. Small exempted himself from these policies.

5. Mr. Small and the Deputy Secretary Have Been Absent from the Smithsonian for Substantial Periods Due to Vacation and Compensated Service on Corporate Boards

The records provided by the Smithsonian show that from 2000 through 2006 Mr. Small and Sheila P. Burke, the current Deputy Secretary, were absent from the Smithsonian for about 400 and 550 work days, respectively, as a result of vacation time and time spent serving on corporate and other boards and performing other non-Smithsonian-related duties. This level of absenteeism was not prohibited by the Smithsonian leave policy because Mr. Small and Ms. Burke were allowed unlimited leave. Mr. Small appears to have taken nearly 70 weeks of vacation over his seven years (or nearly 10 weeks per year). In addition, he spent 64 business days serving on for-profit corporate boards for which he earned approximately \$642,925 in cash compensation, \$3.3 million in stock compensation and \$1.8 million in stock option compensation.

Ms. Burke appears to have been out of the office for about 400 business days (or about one-quarter of the work days) during her tenure because of her service on boards and her other non-Smithsonian activities. For her corporate board service, Ms. Burke earned approximately \$1.2 million in cash compensation, \$3.5 million in stock compensation and \$5.6 million in stock option

compensation. Her total compensation for outside board service was more than three times the compensation she received from the Smithsonian over the same period. The Committee is cognizant of her reputation for hard work, long hours, willingness to return phone calls promptly, and ready response to email, even when she is away from the office. Still, the IRC believes that any person who holds the job of Deputy Secretary and Chief Operating Officer should expect to spend full time at the Smithsonian without the distraction of extensive outside activities.

6. Mr. Small's Disposition Was Ill-Suited for the Position of Secretary

In selecting Mr. Small as Secretary, the Regents hoped that his experience in the business world would bring talents that complemented the Smithsonian's existing expertise in science and the arts. As one now looks back over his tenure, it is clear, however, that his attitude and disposition were ill-suited to public service and to an institution that relies so heavily, as the Smithsonian does, on federal government support. The mismatch between Mr. Small and the Institution appeared as early as the initial negotiations with Mr. Small when he made it clear that if he and his wife were not allowed to travel in first class, it would be a "deal breaker." Over the years, Mr. Small placed too much emphasis on his compensation and expenses. Rather than seeing this as an indication of the need for careful oversight, the Regents involved in Mr. Small's compensation, to the contrary, became complicit in Mr. Small's desire to maximize his personal income and have the Smithsonian pay his expenses.

7. The Board Exercised Inadequate Oversight Over Mr. Small

The Board frequently deferred to the Secretary, allowing him to run and dominate the meetings, set the agendas, and determine who would contact the Regents and what information would be provided them. With limited and controlled information provided by the Secretary, the Regents were unable to engage in real and effective debate. During Mr. Small's tenure, it appears that the Board reported to him rather than the Secretary reporting to the Board. The Committee was told by a Regent that Mr. Small "did not listen to the opinions of the Regents" and "did not seek input from the Regents in decision making." Another Regent commented that Mr. Small did not seek advice, only approval.

In the place of full Board oversight, the Executive Committee, on numerous occasions, agreed to compensation requests from Mr. Small without engaging in its own analysis of the reasonableness of those requests. In 2001, for example, as discussed above, the then-Executive Committee acquiesced to a request by Mr. Small for a forty-five percent increase to his salary without questioning the need for the increase and without consulting with the full Board. More recently, when asked, the Board retroactively approved actions of the Secretary that were contrary to Smithsonian guidelines and to contractual arrangements, in almost all situations without adequate investigation or analysis. The Board often minimized Mr. Small's mistakes, glossed over or ignored criticism of him, and offered post-hoc justifications for his improper acts even in the face of new revelations and Congressional scrutiny.

As early as 2001, there was public criticism of actions taken by Mr. Small that should have raised questions about his ability to manage the Smithsonian effectively. For example, several newspaper articles questioned Mr. Small's use of a privately chartered plane for Smithsonian business. Yet the minutes and transcripts of the Board meetings give no indication that the Regents at the time ever discussed, let alone investigated, this or any other adverse comments. Had the Board done so, it would have learned that Mr. Small did not pay for the plane as he claimed, but rather the Smithsonian paid for it and management directed accounting staff to alter its accounting records after the fact.

The Board also had no involvement, either before or after the fact, in setting the terms of the employment for Ms. Burke, the Deputy Secretary and the Institution's number two official. (Ms. Burke became the Deputy Secretary in 2004. Prior to that, her title was Under Secretary for American Museums and National Programs.) The basic terms and policies of her service were set solely by Mr. Small and, in most instances, were known only to her and Mr. Small. Despite the fact that Ms. Burke disclosed her outside board service on her conflict of interest forms submitted to the Office of the Secretary, Mr. Small failed to provide these forms or the information regarding Ms. Burke's outside board service to the Board.

8. The “Gatekeepers” of the Smithsonian Were Marginalized

The General Counsel and the Inspector General of the Smithsonian should serve “gatekeeper” roles by monitoring compliance of senior management with laws and policies. The General Counsel and the Inspector General did not play these monitoring roles because Mr. Small isolated them from not only the Board of Regents but also from having any meaningful oversight of the Secretary’s office. Additionally, over time Mr. Small significantly reduced the budget and staff of, among others, both the Office of General Counsel and the Office of Inspector General. Neither the General Counsel nor the Inspector General made adequate efforts to overcome the isolation from the Board or the diminution of their respective roles. The Chief Financial Officer was also ineffective in monitoring financial matters of the Office of the Secretary.

9. The Smithsonian’s Internal Financial Controls and Audit Function Are Inadequate

Internal financial controls are systems of policies and procedures that create reliable financial reporting, promote compliance with laws and regulations and achieve effective and efficient operations. The Smithsonian’s internal financial controls have been inadequate to achieve these goals for a number of reasons. First, the Smithsonian has not committed sufficient resources to the accounting and audit functions. Second, the Smithsonian lacks comprehensive and formal accounting procedures and policies. Third, the Smithsonian has not complied with its own policies and procedures with respect to accounting for expenses. Finally, the Smithsonian’s outside auditor had not been vigorous in monitoring the Smithsonian’s implementation of recommendations contained in its management letters until early 2007, when it finally noted that insufficient accounting resources and staff capacity at the Institution constituted a “reportable condition.”

10. Smithsonian Business Ventures Has Operated with Insufficient Oversight from the Board or Senior Smithsonian Management

In the course of its review, the Committee has become aware of significant failures of internal controls and inappropriate conduct at Smithsonian Business Ventures (“**SBV**”), the Smithsonian

division responsible for managing the commercial activities of the Smithsonian. Senator Grassley has indicated his desire for the Committee to conduct a review of the senior management of SBV and the appropriateness of compensation and benefits paid to senior management of SBV. While the Committee agrees that such a review is necessary and warranted, it is beyond the scope of the Committee's review. There appear to have been severe failures in oversight of SBV by Smithsonian senior management and the Board. It also appears that neither the Board nor the Smithsonian executives who sat on the SBV board, including the Chief Financial Officer and the Deputy Secretary, provided oversight of SBV, even though all acknowledged the widespread allegations of inappropriate activity and failures of internal controls at SBV.

11. The Smithsonian Appears to Remain a Strongly Ethical Institution Despite the Problems with the Office of the Secretary and SBV

The ethics of an organization usually reflect the attitude and behavior of those in senior management. There was a clear indication that Mr. Small deemed himself outside the Smithsonian's otherwise recognized ethics standards. Accordingly, given the "tone at the top" set by the Office of the Secretary, one might expect to find the absence of internal controls and ethical lapses to be pervasive at the Smithsonian. While it did not undertake a comprehensive review, the Committee did not find evidence that indicated that there are major internal control issues at the Smithsonian as a whole, other than in the Office of the Secretary and at Smithsonian Business Ventures. Nor did the Committee find evidence to indicate that the strong ethical principles that have characterized the Smithsonian over the years have been compromised.

C. Summary Of Recommendations

The Committee recommends that, wherever possible, the Board of Regents should implement the following recommendations by reorganizing its internal governance structures and procedures. The Committee, however, offers no legal opinion as to whether these recommendations can be implemented solely by the Board of Regents. If the implementation of any recommendation requires

legislative action, the Committee urges the Board of Regents to seek Congressional assistance promptly and for Congress to act with all deliberate speed to enact necessary legislation.

1. The Regents Must Act Quickly to Address the Governance Crisis

The current crisis of governance at the Smithsonian and the resulting loss of public confidence necessitate urgent action by the Regents. To restore public and Congressional confidence, the Regents must devote substantial time and resources over the next several months to considering and then implementing a comprehensive program to improve governance. With diligence, the IRC believes the necessary governance changes can be implemented by the end of the year.

2. The Expenses of Mr. and Mrs. Small Should be Subject to an Audit for Reasonableness and the Expenses of Senior Management Should Be Subject to Annual Audits

The Committee did not conduct a complete audit of Mr. Small's expenses. Rather, the Committee reviewed the work of Cotton & Co. and the supporting materials. The Cotton & Co. review was a limited review based on information and policy interpretations provided by the Smithsonian. Thus, there has been no independent audit of the expenses of Mr. Small. If for no other reason than potential tax liabilities, the Committee recommends that the Smithsonian have an independent auditor perform an audit of Mr. Small's expenses and those of his wife. The Committee believes this audit could be done expeditiously because a significant amount of information has already been collected by Cotton & Co. The Committee also recommends that the Audit and Review Committee of the Smithsonian undertake to have the expenses of senior management audited on an annual basis for compliance with Smithsonian policies and reasonableness.

3. The Compensation of the Secretary Should be Reasonably Competitive and Transparent and Take Into Account the Smithsonian's Unique Nature

The Committee recommends that compensation for the Secretary be competitive with similar CEO roles at comparable nonprofits focusing on a comparison group that includes a significant number of institutions (such as major state universities) that principally rely, as the Smithsonian does, on

public funds. Historically, the Smithsonian appears to have had little difficulty in attracting qualified Secretaries at such compensation levels. It is the Regents' responsibility to determine this amount, and the Committee considers it beyond its mandate to provide specific guidance as to the appropriate compensation level. In determining this level, the Committee urges the Regents to consider developing a compensation philosophy that is transparent, reasonably competitive and reflective of the special nature of the Smithsonian. Working at the Smithsonian is a privilege. Serving as its Secretary is an honor. Compensation levels should reflect this. The Committee sees no reason why the Secretary should be given special travel privileges, perquisites or other benefits that are not available to other executives of the Smithsonian, except where the Board makes a determination in advance that such perquisites and benefits are reasonable and appropriate.

4. The Smithsonian's Policies Should Be Consistent With Federal Regulations and its Salary Schedule Should be Consistent With Government Salary Schedules

The Committee is concerned about the tendency of the Institution to embrace those federal regulations it finds convenient while ignoring others. For example, at times, the Smithsonian denies requests filed under the Freedom of Information Act ("**FOIA**") on the ground that it is not a federal entity, while, at other times, it grants FOIA requests. The IRC recommends that the Smithsonian affirmatively adopt policies to promote openness, transparency and effective governance consistent with federal regulations, such as FOIA, the Privacy Act of 1974, Chief Financial Officer Act of 1990, the Sunshine Act, personal financial disclosure requirements, the Ethics in Government Act and conflict of interest rules. If the Smithsonian does not so act, Congress should consider appropriate legislation.

The IRC finds that there has been a marked disparity in the salary structure of the Smithsonian due, in part, to the fact that most employees are bound by government pay scales while others are employed by the Smithsonian trust and are paid on a separate scale. Additionally, the Committee learned that, for the purpose of raising the salaries of certain individuals who worked closely with the Secretary, positions were transferred from government pay scales to the trust.

To bring better balance to the Smithsonian's salary structure, the Committee recommends that the Smithsonian develop one comprehensive salary structure for all Smithsonian employees, rather than having a separate structure for trust employees. To the degree possible, this structure should align with the salary structure that incorporates standards of the federal senior executive service ("**SES**") or its equivalent. To be competitive in attracting talented museum curators or scientists, the Smithsonian should also be allowed, on a very limited basis, to exceed federal salary limitations in order to ensure that they can hire highly qualified individuals for key positions. Those paid above federal SES levels should be limited in number, perhaps 40 or 50. The needs of the Smithsonian when it comes to compensation should be well thought out, open to Congressional and public scrutiny and not arbitrary.

In determining the salaries of the Secretary and those who are paid above government salary limitations, careful attention should be paid to developing appropriate peer group analysis and maintaining reasonable ratios between these salaries and those governed by federal pay structures. The IRC recognizes that there is significant competition for museum curators, directors and scientists, but it recommends that the Smithsonian strive to pay at the 50th percentile, recognizing that a job with the Smithsonian carries great prestige to the outside world and offers the opportunity to make substantial contributions to the arts and sciences. It is also recognized that there may be instances that call for travel and expense guidelines to be exceeded. These should be carefully controlled and should be subject to prior approval. The Board should maintain oversight of these instances and make sure that they are in fact the exception and not the rule. So that the Secretary and Deputy Secretary set an appropriate example, the expenses of the Office of the Secretary should be audited annually and reviewed by the Audit and Review Committee of the Board.

5. The Smithsonian Should Have an Active Governing Board with a Chairman Who Can Provide the Time and Proper Oversight

The Committee proposes the governing structure of the Smithsonian be reorganized by establishing a Governing Board as a major component of the Board of Regents that would take on primary fiduciary responsibility for overseeing the Smithsonian. Being a fiduciary carries with it a major commitment of time and effort, a reputational risk and, potentially, financial liability.

The IRC recognizes the historical value of having the three branches of government represented on the Board. Fiduciary constraints, however, require that the Smithsonian be run by a governing board whose members act as true fiduciaries and who have both the time and the experience to assume the responsibilities of setting strategy and providing oversight. Time is a major factor. For an organization as complex as the Smithsonian and with a budget surpassing \$1 billion a year, the Regents should expect to meet at least six times each year. As discussed further below, the Committee recognizes and agrees that the governmental Regents play an important substantive, as well as symbolic, role at the Smithsonian.

The establishment of a Governing Board would in many ways formalize the Smithsonian's informal governance structure in which a "Committee of the Whole" meets in advance of the Board of Regents meeting to have a vigorous and probing discussion of issues requiring Board consideration. Under this present system, the Board of Regents meetings that follow have been formal proceedings to approve what had been discussed by the Committee of the Whole. The proposal of the IRC would formalize this process by establishing within the Smithsonian's governance documents a recognition that the Governing Board members would be the Regents responsible for the oversight of the Smithsonian and its management.

The Governing Board should have its own Chairman who would handle issues requiring the attention of the Board where items would be discussed and debated and where reports would be received from officers such as the Inspector General, Chief Financial Officer, General Counsel, Ethics

Officer and museum and scientific project leaders. The IRC believes strongly that an organization with a budget as large and with operations as complex as the Smithsonian requires the services of a chairman who can devote far more time to the operations of the Board than can the Chief Justice.

While meetings of the Governing Board should be open to those whose knowledge or reports are important to deliberations of the Governing Board, the Board should reserve, at every meeting, time for an executive session where issues involving management, including the Secretary's performance, can be freely and openly discussed without the presence of employees. The Committee also recommends that the Executive Committee be enlarged to five members and its activity limited in practice to handling routine affairs of the Board between meetings and when special meetings, either in person or telephonically, cannot be arranged. All actions of the Executive Committee should be presented to the full Governing Board for review.

6. The Role of the Chief Justice and Vice President Should Be Clarified

Historically, the Chief Justice has been elected to serve as the Chancellor. In that role, the Chief Justice would preside over the second part of the Board meeting where discussion and formal votes would be taken on those issues requiring action of the Board of Regents. Under the IRC proposal, however, the Chief Justice would not be considered a fiduciary Regent. Only fiduciary Regents would vote. The IRC recommends such a unique structure because it believes the historic role played by the Chief Justice in governance of the Smithsonian should not lightly be discarded and because the Chief Justice has made it clear he wishes to remain associated with the Institution. The Committee believes, however, that if governance of the Smithsonian is to be updated, it will require a commitment of time on the part of every Regent that far surpasses that which has been expected in the past. The Committee also questions if it is appropriate for the Chief Justice to have fiduciary obligations to a separate entity, even if that entity is closely linked to the government, and to assume the legal and reputational risks associated with being a fiduciary. The Committee believes that it is not feasible to expect the Chief Justice to devote the hours necessary to serve as a fiduciary Regent.

The same situation applies to the Vice President. Under the IRC's proposal, the Vice President would continue to serve as a Regent in a non-fiduciary capacity, and would chair meetings of the Board in the absence of the Chief Justice. If neither the Chief Justice nor the Vice President were present at a meeting of the Board, the Chairman would preside.

7. Congressional Regents Should Accept Fiduciary Responsibilities

A clear understanding needs to be reached regarding the role of the Congressional Regents. Service as a Regent must require that all members of the Board, including members of Congress, be willing and able to assume a role with clear fiduciary responsibilities and to devote the time necessary to carry out those duties personally. So that there will be neither an actual nor an appearance of conflict of interest, the IRC believes that any Congressional Regent who serves on one of the Congressional authorizing or appropriations committees with authority over the Smithsonian should recuse himself or herself from Congressional votes involving Smithsonian financial matters.

8. The Board Should be Expanded or Reorganized to Allow for the Addition of Regents with Needed Expertise

The Board must expand the level of expertise among the Regents on key issues, especially financial management and facilities and museum management, and ensure that the Regents who are appointed have sufficient time and attention to dedicate to the Smithsonian. To achieve this expansion of current expertise and ensure that Regents are active and engaged, the Committee recommends the Regents consider the following: (1) if current Regents have sufficient time and interest in continuing to serve; (2) adding to Board Committees – such as Audit and Review, Governance and Compensation and Human Resources – non-Regent members with special expertise; (3) employing outside experts to advise the Board and its Committees in specific subject areas; and (4) increasing the total number of citizen Regents from 9 to 11 by either adding two additional citizen Regents or reducing the number of Congressional Regents from six to four - two from the House and two from the Senate.

To make sure that the Smithsonian Board is made up of individuals capable of providing the necessary expertise, the Regents should adopt a nominating process that allows for a broader field of candidates. In looking at candidates, those charged with picking future Regents should note the necessity for expertise in financial management, investment strategies, audit functions, governance, compensation, and facilities management, as well as an interest in and a devotion to the arts and sciences. Contributions to the Smithsonian should not be the determining factor for service on the Board, but only one of many factors considered in the selection of Regents. Care should be taken to avoid appointing Regents who have clear personal and professional ties to the Secretary that may compromise the Board's independence.

In addition, if the Smithsonian desires to have positions for individuals that honor them for their contributions to the arts and sciences, including their financial generosity, it should establish non-fiduciary advisory boards for the Institution in general as well as for its various museums and divisions. The National Board, now primarily a development group, could have its scope expanded. The formerly active but now moribund Smithsonian Council could be revived to bring together distinguished scientists, academics, and museum directors to advise the Smithsonian and its constituent parts on programs, policy, and long range planning. Having both a vibrant Board and Council should help curb the extensive criticism the Smithsonian received during recent years regarding the conditions on certain donations and the scope and content of certain shows and displays.

9. Internal Financial Controls, Audit Functions and the Role of the General Counsel and Inspector General Must be Strengthened

The Smithsonian's system of internal controls and audit needs to be strengthened through additional resources, adoption of best practices and retention of personnel with substantial experience in the financial and audit area. In February 2007, KPMG identified the inadequacy of the Smithsonian's accounting staffing and resources as a "reportable condition." The Committee understands that the Smithsonian is in the process of selecting an outside auditor, and the Committee

recommends that the Smithsonian expeditiously implement the recommendations of this auditor, as well as those recommendations contained in prior management letters. In addition, the Committee recommends that (1) the Smithsonian provide the General Counsel's office and Office of the Inspector General with the necessary tools and resources to perform their gatekeeper and guardian functions, (2) the General Counsel serve as the Smithsonian's corporate secretary and (3) the Smithsonian ensure vigorous compliance with the Inspector General Act.

10. Smithsonian Executives Should Be Permitted to Participate in Only Nonprofit Board Activities Subject to Prior Approval

As a general rule, the Smithsonian has been careful in monitoring the outside work of its employees. The exceptions have been Mr. Small and the Deputy Secretary, both of whom have been allowed to collect significant compensation for service on the boards of for-profit corporations. As discussed above, these outside commitments have taken these individuals away from the Smithsonian during working hours for significant periods of time. The Board must develop a uniform policy on outside work. The IRC recognizes that arguments can be made in favor of allowing an organization's senior executives to serve on the boards of for-profit corporations. The benefits of doing so, however, accrue primarily to the individuals and only secondarily to the Institution. Accordingly, the IRC recommends that the Board prohibit its executives from serving on the boards of for-profit corporations.

With respect to nonprofit boards, the Regents should control and require prior approval of any outside activities, including service on any other professional service boards and teaching and lecturing obligations, weighing carefully the time commitments needed and the benefits to the Smithsonian. Any compensation received by any Smithsonian employee for service on any outside board or organization should not be kept by the individual, but should be turned over to the Smithsonian for the benefit of the Institution.

11. The Selection of the Next Secretary Must Reflect the Governance Challenges Facing the Smithsonian

Being Secretary is a difficult and time consuming job. The Secretary oversees a complex amalgam of museums, research centers, a zoo, retail shops, restaurants and buildings. The Secretary is the caretaker for one of the great names in the science and arts. It is also a job with great challenges, prestige, and opportunities to have a lasting mark on our national heritage. Business skills are valuable to the Smithsonian and efforts to introduce business planning and measurement tools should be encouraged. But what must be avoided in picking the next Secretary is the manner in which Mr. Small operated. The Secretary must work for the Board. The Secretary must set the ethical tone, not sidestep it. The operations of the Smithsonian, especially the Secretary's office, should be open and transparent.

12. Achieving Effective Oversight and Governance at Nonprofit Organizations May Ultimately Require Legislative Action

Unfortunately, the problems at the Smithsonian are not unique. As the media and Congressional oversight committees have made clear, there have been similar problems at several large tax-exempt organizations, including major museums and universities, not to mention the income and expense excesses and governance issues at for-profit companies. This raises the issue of effective management of nonprofits and how governance at these entities should be structured, the responsibilities of their boards of directors and trustees, and how oversight of these organizations should be provided. The IRC believes that boards of nonprofits – especially large nonprofits – should move to reform their governance structures to bring them into line with best practices that have been well documented. These include the financial management and audit requirements in the Sarbanes-Oxley legislation, as well the recent Securities and Exchange Commission requirements for disclosure of the total compensation of senior executives. Some nonprofits have made progress in these areas, while others have not. Failure to take voluntary action will likely lead, ultimately, to action by Congress, state legislatures, and the courts to impose reforms from without, just as was done in the case of the corporate world.

The CHAIRMAN. Thank you so much.

Again, we apologize, but we must go to the floor for a vote. If you can indulge us and stay a little while, we will have some questions when we return.

Mr. BOWSER. Sure.

The CHAIRMAN. With that, we will recess.

[Recess.]

The CHAIRMAN. I would like to call the hearing back to order. We will now proceed with questions for our panelists. Thank you again for being here.

Congresswoman Matsui, in asking this Committee and the Congress to change the law to implement the recommendations of the Governance Committee and of the IRC and of any other reforms the Board of Regents wants to make, on which subjects and recommendations do you foresee coming back to us with in order to prepare us a little bit?

Ms. MATSUI. What I would like to tell you is that we are trying to move forward as quickly as possible, and of those recommendations that we have had out there that we can handle administratively, we are doing that, and we are changing some bylaws in order to accommodate some of this.

I must say that a lot of the other things that we are talking about, such as Board composition structure, would take deeper study, consulting with constitutional people and historians about the real purpose of how the charter was developed. James Smithson endowed us with the money to create the Smithsonian Institution in 1829, and then, in 1846, Congress established the Smithsonian Institution and really designated the Board of Regents and the secretary to oversee it. So there is a lot of history and purpose that was developed here. So we are taking the time, not a lot of time, but enough time so that, by the end of the year, we can make recommendations.

In order to do some of the changes that we believe are appropriate, we will need to change the charter, and that would mean like if we wanted to add a couple more Regents or to change, for instance, the size of committees, and we do not believe we should do that piecemeal. So, therefore, we believe what will happen is that we will go through our studies so that, by the end of the year, we can come back by the beginning of the year, perhaps with some recommendations to the Congress, so that would be, therefore, to your Committee.

The CHAIRMAN. Thank you.

One last question regarding the Smithsonian Business Ventures. What is your feeling on that?

Ms. MATSUI. Well, my feeling on that, as you will hear from the Inspector General, who is here, is it is something where we believe and where we have found that there were some gross problems there, and it was certainly—I would like to call it a “misadventure” to a certain degree, and it was allowed to operate on its own.

What we have decided to do, as one of our recommendations, is to bring it back under the umbrella of the Smithsonian and to establish that they will have to adhere to our Smithsonian policies widely held. So, therefore—the Acting Secretary will be coming up and explaining what he will be doing here—we are taking a good,

hard look at this, but we are not stopping at the same time. We have a new acting CEO who will be taking over as of today, who will be moving forward and will be working with the secretary on the changes that will have to be done.

The CHAIRMAN. Thank you.

Mr. Bowsheer, thank you for all you have done in oversight. We need your help and your input.

Are there any recommendations that you have received any resistance to?

Mr. BOWSHER. No. We were very pleased. We briefed the Board of Regents at a half-a-day meeting, and even at that initial meeting—and that was before we even released the report—we found a great deal of acceptance, and then when we saw the recommendations of their Governance Committee, we saw that it was moving in the same direction as many of ours were. So we have been very pleased with the acceptance of our recommendations by the Board of Regents and by the Acting Secretary. I think that is a big plus because, when you do a review like this, sometimes you do run into resistance, and we did not, not so far in this case.

The CHAIRMAN. Thank you.

Are there any skills that you think ought to be added to the Board that they may be lacking? Are there any people with certain skills that you think should be added to the Board?

Mr. BOWSHER. Yes. In other words, one of the things that we think is lacking is the fact that—you know, in the corporate world, one of the things that was lacking big time was that the people who were serving on the audit committees were not really qualified. The Sarbanes-Oxley legislation changed that by requiring that there be a financial management expert among the board members serving on the audit committee. That is the kind of expertise that we think is needed on the Board of Regents. Also, we do believe there are two or three areas, like in construction and areas like that, and background in museums is needed. You have got to get the right mix today on your Board of Regents just like in the corporate world. We think that, as the openings come to the Board, this is something that the remaining Board of Regents has to give a lot of consideration.

The CHAIRMAN. Thank you. Thank you for your participation.

Mr. Ehlers.

Mr. EHLERS. Thank you. Yes, I have several questions.

First, Representative Matsui, I thank you, again, as I did earlier, for your excellent service and for all of this work.

You described a minute ago, in response to the chairman's question, the possible need for statutory changes. Are you proposing to prepare those and to present them to us, or do you want this to be a cooperative project where we work together with you to develop these statutory changes? What are you envisioning on that?

Ms. MATSUI. Mr. Ehlers, what I envision on this is that what we find today is a more transparent way of operating amongst the Board of Regents, certainly, and we feel it is really important to inform the Congress about the direction we feel we would like to go. Now, we are going to be reaching out to Congress, to our stakeholders and to experts in the nonprofit world to look forward to see what is necessary to change. So, definitely, these will not be rec-

ommendations that you will be surprised with at all. We will be consulting with you along the way also.

Mr. EHLERS. All right. I think that will be good simply not because we are trying to run the show but because it will ease the legislative process if we simply work together on it.

Do you have a timetable set up? Do you have any idea when you will be coming forward with some ideas?

Ms. MATSUI. Well, we feel that we will take the rest of the year to formulate our recommendations and to do our outreach on many of these tougher items, and we hope that, by the beginning of the year, we will be ready. In some of these cases, we believe we can handle them administratively with the bylaws process, but if, in fact, we do feel like we need to—we have 17 members on the Board of Regents, for example. If we want to expand it by two or three more, we will have to come back to you. The executive committee right now is three people. We believe that is too small. Now, we can expand it informally, but we might feel that, if, in fact, we have to go and change the charter, we might look at everything that we may feel needs to be changed so we can do it in one fell swoop. So I believe that, by the beginning of next year, we will have some recommendations, and we will certainly work with you as we move forward if need be.

Mr. EHLERS. Thank you. Thank you also for your emphasis on transparency, which is sort of a code word these days. Everyone is using it. I was appalled last year when I was chairing this Committee. I simply asked for a look at the SBV charter and contract, and they would not give it to us. We literally had to browbeat them just to get the parts of the contract and it was heavily redacted. In the government, everything has to be transparent.

Ms. MATSUI. That is exactly my message.

Mr. EHLERS. That is the rule we work by. I could not begin to understand how the Smithsonian Secretary thought that he could avoid that.

You mentioned the Smithsonian Business Ventures and a new role for them. My question is, why have them at all? I was very suspicious about the setup. When it was described to us and we saw the contract, it looked like it was being set up primarily to avoid government regulations. There were so many things they wanted to do and wanted to be able to pay the employees more than they normally would be paid in government positions. I could not find a useful purpose for this group that could not be accomplished by the Smithsonian itself running its business properly.

I am not objecting to contracting out for concessions and things of that sort, but to set up a separate business arm seems, to me, as an unnecessary duplication. I am not aware of other government agencies that do that. For example, NASA, I do not think sets up a separate business for all of the ventures they have in the operation of the Space Center for tourists and things of that sort. These are things that can be contracted out.

Can you make a good case for even keeping the Smithsonian Business Ventures?

Ms. MATSUI. Well, Mr. Ehlers, certainly the acting secretary is doing a very sensitive study about this.

My feeling about this is that the Smithsonian is composed, as you know, of a wide number of institutions—museums, the zoo and research institutions—and I think it was an attempt to bring the revenue portion of the private side under one umbrella. Now, there are different ways to structure that, and I believe that there were mistakes made, and I have, certainly, heard much criticism from the Board of Regents, itself.

So, therefore, I am not yet convinced of what needs to be done there at all. I do know, though, we need to look at it. We may have to pull it apart and put it together again in a much more reasonable way, and that is something that the Board of Regents is going to be very, very much involved with. The Smithsonian Business Ventures has been allowed to sort of operate on its own. No longer will that be true. We will have oversight over it.

Mr. EHLERS. Well, at the very least, change the name. I do not want that heritage living with it.

Ms. MATSUI. Exactly.

Mr. EHLERS. I would encourage the Board, as they go through this, to just start de novo and ask the simple question, Do we even need it? The even more important first question is, What do we need?

Ms. MATSUI. Right.

Mr. EHLERS. So throw Smithsonian Business Ventures out the door and say we are going to start over. Maybe you will end up with something similar to it. Maybe you will end up with something quite different. Maybe you will end up with nothing like it. That is fine. Given all of the problems of its conception and its founding and its history, I would certainly think you would be well advised to just get rid of it and to do a study of what you really need there. Do that, and get away from another one of the many mistakes of the past.

Mr. BOWSHER, as I said to you earlier in the hallway, I deeply appreciate your interest, your time, and your willingness to work on this. I appreciate the contributions that you have made. I believe the Board has begun implementing all of the Governance Committee's report recommendations by Congressional hearings and so forth. It is a lot of activity, a lot of good activity.

Do you think anything else needs to be done?

Mr. BOWSHER. No. As to the recommendations that we have in our report of what their Governance Committee has, I think if those are properly executed and implemented and done.

So, by early next year, I hope there will be a lot of progress, and those are the issues that we have in the report. We did not hold anything back, when we issued this report.

Mr. EHLERS. Well, I think it is a very good report, and I am pleased with the progress that has been made. I do not have any specific question. I have, perhaps, I guess, just one public relations question.

Do you think that all of this activity—and do you have any evidence for this—has restored the public's trust?

Mr. BOWSHER. Do I think it will restore it?

Mr. EHLERS. Or that it has.

Mr. BOWSHER. Oh, I think it has started to restore the public trust, but I think, in the final analysis, only if you successfully

carry out the reforms will you be able to do it. So I think that we have to wait, and I think that is the role of the Congress, to hold hearings next January or February to just see how things have worked out.

Mr. EHLERS. Okay.

Mr. BOWSHER. I am very hopeful at this point in time. Yes.

Mr. EHLERS. Just another question. I commented earlier about the need to continue the investigation down the rest of the pyramid. You have been in the business for many years.

Do you concur with that?

Mr. BOWSHER. Yes, I think there are areas, and I think the acting secretary, in some of our discussions with him, is thinking of that in certain other areas. There are certain areas that need further review, and we did not review the Smithsonian Business Ventures, but we did say in our report that we had heard that there were a lot of problems over there, that we thought there was a problem with the oversight. I think that the report that has just come out yesterday, it is a good area that, of course, is an illustration of an area that needs to be fixed.

Mr. EHLERS. I truly think it was an attempt, and I do not normally assign ulterior motives to people, but I truly think there was an attempt to keep a lot of it away from the Board, and that it was set up specifically to do that. Just the fact that the Board was not even given a full opportunity to review and to approve the contract is evidence of that.

Thank you very much. Both of you have done a marvelous job. I yield back.

The CHAIRMAN. Thank you.

Again, I thank both of you for your dedication, and I thank you for your participation on this important issue and important matter. Thank you.

Ms. MATSUI. Thank you.

Mr. BOWSHER. Thank you very much.

The CHAIRMAN. This concludes our first panel.

We would like to hear now from our second panel.

STATEMENT OF CRISTIÁN SAMPER, ACTING SECRETARY, SMITHSONIAN INSTITUTION; AND ANNE SPRIGHTLEY RYAN, INSPECTOR GENERAL, SMITHSONIAN INSTITUTION

The CHAIRMAN. Dr. Cristián Samper was appointed acting secretary in March of this year by the Board of Regents after 6 years at the Smithsonian.

Sprightley Ryan has worked at the Smithsonian since 2003. She was appointed Inspector General in 2007.

We welcome you both. The full text of your written statements will be attached and will be inserted into the record.

We would like to begin with Secretary Samper.

STATEMENT OF CRISTIÁN SAMPER

Mr. SAMPER. Thank you very much, Mr. Chairman and Mr. Ehlers. Thank you for the opportunity to testify before this committee.

I want to assure the Committee and the public that the Smithsonian is moving forward with a thorough and a vigorous agenda, as

you have heard, and in my sense, we have definitely turned a corner, and there is no turning back, and the transition, as the title of this hearing implies, is well underway.

But we clearly have a lot of work ahead of us, so I would like to explain a few of the things that we are doing and reassure you that I am confident the Smithsonian will emerge as a stronger institution as a result of this process.

Ever since I became acting secretary 4 months ago, I have focused on three main priorities. The first one is strengthening the public trust in the Institution, as Mr. Ehlers was suggesting. The second is working with our Regents to improve the governance, communications and accountability of the Smithsonian, including transparency. The third is making sure that we continue furthering our mission through our work and through our research and museums and education programs.

As you just heard and as you know, the Board of Regents has adopted 25 recommendations for governance, and they are very much in sync with the recommendations of the Independent Review Committee. The majority of the work is well underway. Of the 25 recommendations, we have already fully implemented 5. We estimate we will have completed about 17 by September and all but one of them by the end of the year, so we have a very aggressive movement forward. I have established a task force with Smithsonian staff from both central administration and from the museums to help us move forward and to make sure we get everything done. And we are keeping a public monthly scorecard of our progress on every one of those 25 recommendations. That is available on our Web site.

The Inspector General has also been working on issues relating to Smithsonian Business Ventures, and that is one of the areas that I have started to take a closer look at. Effective today, Smithsonian Business Ventures has a new leader, and I have appointed Tom Ott, who is the president and the publisher of the Smithsonian Magazine Group, as the acting CEO of Smithsonian Ventures. I am doing this in parallel with having established a task force that is reviewing the broader strategic issues about Smithsonian Business Ventures and its activities. We can discuss more about this.

Our overall goal is much more than just to fix some of the past problems. Our goal is to make sure that we become a leader in good governance and that we have a stronger institution for the future for our children and for our grandchildren. Throughout this transition period, thanks to our dedicated staff and to our volunteers, the vital work, the mission of the Smithsonian, has continued forward. I just want to mention a few, Mr. Chairman, because it is important not to lose sight of them, with just three examples.

The scientists at the National Zoo have been monitoring the populations of birds on the eastern coast of the United States and have identified, having long-term data, a sharp decline in populations of many of them. And we have now tied that with the introduction of the West Nile virus.

The National Museum of Natural History has announced a partnership to launch an online Encyclopedia of Life, which will produce a Web page for every species we know on the planet that

will be available for free to every student across America and to the world.

The renovations at the National Museum of American History, including the glorious new home for the Star-Spangled Banner and the plans for the National Museum of African American History and Culture, are moving well ahead.

Unfortunately, in this process, one of the problems that we have faced is the facilities maintenance problem, and this is one issue that we have clearly identified. And it is fundamental for us to look at our collections, our visitors and our research.

The Smithsonian owns or leases more than 700 buildings or other structures. Some of these buildings are new, and some of them are 150 years old or many decades old, and both the National Academy of Public Administration and the GAO have looked into this matter and have underscored its seriousness. As you know from prior reports, the GAO has said that the current funding levels are insufficient to provide what we estimate to be a \$2.5 billion backlog that is really required to fix and to maintain the Institution's facilities over the course of the next years. Given the current funding for facilities' upgrades and maintenance, which is about \$150 million a year, what we are looking for are ways to come up with an additional \$100 million a year beyond the current base.

As you know, we had to close the Arts and Industries building last year because of the decline in condition and because of the fact that it actually represented health hazards and safety hazards for some of our visitors and staff. We are working diligently in trying to explore options related to the Arts and Industries building, but we estimate it would cost somewhere on the order of \$70 million just to upgrade the building, the roof and the systems to get it to where it should be.

I would welcome your comments regarding the future of this, and as you and your committee know, one of the options that we are considering at this point is issuing a request for qualifications of a public-private partnership that would allow us to secure the funding to do this in a way that would be fully compatible with our mission.

The Smithsonian tells the story of what it means to be an American, and it also provides a picture of America to the rest of the world. In cooperation with the Congress, the Smithsonian will move ahead with its ambitious plans and continue to safeguard America's treasures, to lead the pioneering research and to provide new educational experiences, and as we do, we must also look to the future and contemplate how this great institution will serve our country and the world and the generations ahead of us.

Thank you very much, Mr. Chairman, and I look forward to answering your questions.

[The statement of Mr. Samper follows:]

**Committee on House Administration Written Testimony
Smithsonian Institution Acting Secretary
Cristián Samper
1 August 2007**

Thank you for this opportunity to testify before the Committee on House Administration.

The Smithsonian was established in 1846, thanks to a generous bequest from British scientist James Smithson, with the mission: “the increase and diffusion of knowledge.” Over the decades, the Smithsonian has become the world’s largest museum and research complex, providing inspiring experiences for millions of visitors. Historian David McCullough recently described the Smithsonian as a “storehouse of ideas.” It is indeed that and much more. With 19 museums, nine research centers and the National Zoo, the Smithsonian stands out as a unique entity, a leader in science, history, art, and culture. As an international institution it offers the world a picture of America and America a picture of the world.

It was James Smithson’s bequest that launched the Smithsonian, but the debate and counsel of the Congress helped to shape it from day one—and does so to this day. Without the generous support of the Administration and the Congress, the Smithsonian simply would not be able to function. We appreciate the support and look forward to working with members to make the Smithsonian even stronger in the future.

Ever since I became acting secretary four months ago, I have focused on three priorities: strengthening the public trust in the Smithsonian; working with the Board of Regents to improve governance, communication and accountability; and making sure that all of our key programs and priorities are strong. As we review the governance of the Institution, it is important that we continue to focus on our core mission, and take steps to strengthen our programs and improve our facilities.

I have held more than 25 town hall meetings across the Smithsonian, met with most of the advisory boards of our museums, and reached out to members of Congress and other key supporters. It is clear to me that everyone has deep affection and respect for the Smithsonian, and that we all want to work together to strengthen the Institution going forward.

I would like to thank our staff and volunteers for looking after our collections, carrying out our research, producing new exhibitions and education programs, and their ongoing dedication and commitment to our mission. I am pleased to report that activities across the Smithsonian’s museums, research centers and the National Zoo continue to be strong and there are many exciting results to share with our visitors. I am also pleased to report that attendance at our museums and the National Zoo hit nearly 13 million for the first half of the year, and we expect to have more than 24 million visitors by the end of the year.

As you are well aware, the Smithsonian has been reviewing and reforming its governance practices in recent months. I have always thought that where there is crisis there is opportunity, and have no doubt the Smithsonian is emerging from this difficult time as a strengthened Institution. The Smithsonian's Board of Regents adopted 25 recommendations last month issued in the report from the Regents' new permanent Committee on Governance. We are moving forward with a vigorous, thoughtful and thorough reform agenda. Our work is not yet done, but we have definitely turned a corner—and there will be no turning back. We have entered a new era of oversight, transparency, accountability, and cooperation with Congress. Our goal is much more than to fix past problems; our goal is to become a leader in good governance. We have started down that path.

As you just heard, the Smithsonian's Board of Regents commissioned a three-person Independent Review Committee to review aspects related to compensation and expenses, as well as the Regents' response and actions. The committee, composed of three distinguished citizens who were not members of the Board of Regents, was chaired by Charles A. Bowsher, a former Comptroller General of the United States; he was joined by Stephen D. Potts and A.W. "Pete" Smith, Jr. The committee issued its report last month. We are grateful for all the hard work of the Independent Review Committee.

The Board of Regents' new permanent Committee on Governance compared the governance of the Smithsonian with best practices of comparable organizations. Regent Patricia Stonesifer, head of the Bill and Melinda Gates Foundation, chaired this new standing committee (the new Chair is Regent Shirley Ann Jackson). Ms. Stonesifer was joined by fellow Regents Congresswoman Doris Matsui and Robert Kogod. Other members are Walter Massey, a former Regent; and Diana Aviv, president and chief executive officer of Independent Sector, a national leadership forum. The committee also issued its report last month; it focuses on three priority areas: 1) Effective Board and Committee Structure; 2) Effective Monitoring, Oversight and Information Flow; and 3) Effective Transparency. The Board of Regents accepted the report at its meeting on June 18th. We are now implementing the 25 recommendations and have established internal Smithsonian committees to move the process forward.

I want to take this opportunity to thank the entire Board of Regents, the Governance Committee, and particularly Chair Patricia Stonesifer, for their immeasurable contributions to the Smithsonian at a crucial time in its history.

Specifically, the Smithsonian's Board of Regents new set of governing practices were crafted to strengthen the board's oversight of the Institution. The new and updated practices, spelled out in the Governance Committee's 55-page report produced after extensive deliberation, directly address recent congressional concerns that the Regents had been remiss in their oversight.

The new policies provide guidelines for executive compensation; prohibit staff from serving on corporate boards; call for a new system to review executive compensation, more in keeping with nonprofit practices; establish a new Smithsonian-wide leave policy;

and strengthen the roles of the inspector general, general counsel and chief financial officer.

The new and updated governing policies to be implemented by the Secretary and staff in the coming months include:

1. The Secretary, Deputy Secretary and senior staff will not be permitted to serve on corporate boards.
2. Compensation for the Secretary and executives will follow the best practices of the nonprofit sector. The Regents' Committee on Compensation and Human Resources will be independent of the Secretary; outside compensation consultants will be engaged by and report directly to the committee; the Secretary's entire compensation package will be examined for reasonableness in light of comparable market information; and all decisions about executive compensation will be documented in the Regents' minutes.
3. The Chief Financial Officer and General Counsel will have direct access to the Board of Regents. As the report states, "The General Counsel shall have the right and obligation to bring directly to the Board ... any information on legal or compliance matters that he determines should be brought to their attention."
4. Smithsonian Business Ventures will follow established Smithsonian guidelines in such areas as compensation and human resources, contracting, travel and accounting. Exemptions to general policies must be approved by the Secretary and the Regents. (In addition, I would like to point out to the Committee that we are conducting a full review of SBV's structure and mission.)
5. The Smithsonian will establish an official policy by the end of this year that is in keeping with the principles of the Freedom of Information Act. Although the Institution is not an executive branch agency and therefore is not covered by FOIA, it has been guided by the Act's principles. We are working to establish a clear policy statement for the Smithsonian on this matter.

The work of the Governance Committee is not finished. During the next six months and beyond, members will continue to identify areas in need of improvement and present its findings to the full board.

We have also reviewed the Independent Review Committee (IRC) report, which includes 11 findings mostly related to the compensation and expenses of the Secretary, and a number of recommendations related to the Board of Regents and Smithsonian policies. Nearly all of the recommendations from the IRC report have been included in the recommendations adopted by the Board of Regents last month. It is important to note that the IRC report found the Smithsonian overall to remain a strongly ethical institution despite problems they identified as part of their review.

These two committees had different tasks but a similar goal—a better Smithsonian. The IRC report was established to review past actions and decisions related to compensation and expenses under the former Secretary. The Governance Committee examined best practices in governance of non-profit organizations and compared them to the Smithsonian, and came up with a blueprint for change. In spite of the different tasks, the conclusion and recommendations were remarkably similar. As the Regents' Governance Committee report notes:

Reaching similar results from such dissimilar approaches gives the Governance Committee added confidence that the critical weaknesses and failures prompting these reviews have been identified and addressed. (p.2)

As you know, the Smithsonian's Board of Regents' *ad hoc* committee is conducting the search for the 12th Secretary of the Smithsonian. The search committee is chaired by Regent Alan Spoon and has eight members, and three advisory members: Rick West, founding director of the National Museum of the American Indian; Irwin Shapiro, senior scientist and former director of the Harvard-Smithsonian Center for Astrophysics; and Maxine F. Singer, former President of the Carnegie Institution and Chair of the Commission on the Future of the Smithsonian Institution in 1995. On July 12th, the committee held a town hall meeting to solicit comments and advice from Smithsonian staff. The committee is also planning to hold an open town hall meeting in September to receive input from the general public.

It is my hope that we can work with the Congress to address the questions that have been raised, improve accountability, and continue to expand the valuable service the Smithsonian provides the public.

One of the biggest obstacles we face in continuing this work is our facilities maintenance problem, which directly affects our mission, "the increase and diffusion of knowledge." This issue concerns not only the buildings themselves, some of which are priceless national treasures in their own right, but more importantly the fact that the buildings enable us to educate the public, exhibit national collections, and create the experience of a lifetime for our visitors.

The Smithsonian's facilities represent an investment made by the American people. The Smithsonian is the custodian of the largest museum collection in the world, with more than 136 million objects and specimens, documenting our history and heritage, the natural and cultural diversity of this planet: meteorites, moon rocks, the Hope Diamond, the hat Lincoln wore the night he was assassinated, the Star-Spangled Banner, Gilbert Stuart's Lansdowne portrait of George Washington, the Wright Flyer, plus more than 2,800 animals at the National Zoo. More than 23 million visitors from around the world came to see these treasures last year.

Researchers from the Smithsonian and from around the world use these collections to pose new questions and advance our knowledge. Through our exhibitions at our many museums and in our programs, the collections and research galvanize our education

efforts. Those efforts are expanded across America through traveling exhibitions, affiliate museums, curriculum guides, Web outreach, and much more. Without the proper facilities in safe operating order, none of this is possible.

Today the Smithsonian owns or leases more than 700 buildings and other structures in the District of Columbia, seven states, Panama, Belize, and Chile, about 10.2 million square feet of owned space and 1.7 million square feet of leased space with an estimated replacement value of more than \$5.1 billion. Some of these buildings are new, some are 150 years old, many are decades old, more than half are more than 25 years old. Five buildings are National Historic Landmarks, and many are listed on the National Register of Historic Places or are eligible for special consideration under federal guidelines for historic buildings, making them more difficult to maintain. The Smithsonian is unique in both the architectural variety and functional diversity of its buildings. We house everything from spiders to elephants, moon rocks to rocket ships, even the proverbial kitchen sink, given to us by Julia Child. It's an expensive, challenging task to care for such collections and keep our workers and visitors safe—especially in a post 9-11 world where security is of paramount concern.

Both the National Academy of Public Administration and the Government Accountability Office have looked into this matter and underscored its seriousness with the GAO saying current funding levels are insufficient to provide the \$2.5 billion we know is required to fix and maintain the Institution's facilities over the course of the coming years. Over a ten-year period, this would represent \$100 million more each year than is provided with current funding levels. With more than half its buildings—and their electrical and mechanical systems—well past their normal, useful life spans, this is an overwhelmingly problematical issue.

As you know, we had to close the Arts and Industries Building (A&I) because the declining condition of the building presented safety hazards. We are working as hard and as fast as we can to reopen A&I, but it could cost more than \$75 million to fix just the shell and roof of the building. An External Review Committee recently examined the Smithsonian's art museums and galleries and cited facilities maintenance problems and the funding to solve those problems as a major, ongoing issue. My own experience as director of the National Museum of Natural History, a building that opened in 1910, has given me first hand experience of the need to improve and maintain the facilities for our collections, research, and education.

As mentioned, our museums, galleries, and research centers house some of America's greatest treasures, and historically the federal government has recognized its responsibility to ensure that those treasures are housed, preserved, and exhibited in facilities adequate to the task—and safe for employees and the public. It's clear that the scope of the facilities problem is enormous; we are very grateful for all the federal support to correct this massive problem—and for funds for research and exhibitions as well. The Smithsonian is working very hard to raise private funds to be used in partnership with federal funds to repair our facilities. Leaders of our management team met recently in an effort to expand our options in this area and discussions continue.

The Smithsonian has a proven track record of accountability. As the Government Accountability Office said in its April 2007 testimony before the Senate Committee on Rules and Administration:

The Smithsonian, we think, has done a very good job in centralizing and improving and professionalizing the facilities management of the Smithsonian and its operations over the last couple of years. And in fact, as the chair indicated earlier in wondering why some of the numbers have been increasing and the estimates, it's because of the professionalization and the better accuracy of developing the numbers and the true figures of what it's going to cost to take care of the problems.

With the help of the Congress, we can solve these problems.

The Smithsonian has demonstrated that with sufficient resources, it has the ability to manage large, complex maintenance, renovation, and new construction projects. Over the last five years (fiscal years 2002-2006), the Smithsonian's facilities capital obligation rate has averaged more than 90%.

In the last few years alone, among other things, the Smithsonian has opened two new museums: the Steven F. Udvar-Hazy Center of the National Air and Space Museum and the National Museum of the American Indian on the Mall; revitalized the historic Patent Office Building, which now houses the Donald W. Reynolds Center, home to the National Portrait Gallery and the Smithsonian American Art Museum; and launched the National Museum of African American History and Culture, as well as opened many new exhibitions and exhibition halls, and completed a new state-of-the-art storage facility for collections stored in flammable alcohol.

The largest multi-disciplinary project ever undertaken by the Smithsonian Institution is under way—the \$78 million Ocean Science Initiative at the National Museum of Natural History, in collaboration with the National Oceanic and Atmospheric Administration. The project includes a new exhibition space, the Ocean Hall (opening in 2008), a new endowed Chair for Marine Science research, educational outreach, a new Ocean Web Portal, plus funding for research. More than \$34 million (44%) of the total funding will come from private sources, the rest federal.

The National Museum of American History will reopen in 2008. Implementing recommendations from its Blue Ribbon Commission, this museum will have a new home for the Star-Spangled Banner and a completely redesigned central core of the museum. Of the nearly \$113 million for the project, \$67 million (59%) of the total funding will come from private sources, the rest federal.

Further into the future, the Smithsonian's 19th museum, the National Museum of African American History and Culture will open on the National Mall. Part of that museum is up

and running right now, with a Web site and special programs. As directed by Congress, funding for the museum will be half private and half federal.

One of my top priorities as acting secretary is to ensure that our ambitious plans move forward and that the programming side of our mission is stronger in the future. We will need to invest in the programs, i.e. the activities taking place in our facilities, in the coming decade, as well as the facilities themselves. The Smithsonian has so much to offer the public in terms of education, outreach, research, exploration, exhibitions, and much more. We've built up great momentum and it must continue.

For example, the Smithsonian Center for Education and Museum Studies (SCEMS) is collaborating with the Council of Chief State School Officers (CCSSO) to create new ways for teachers and students to access Smithsonian collections and experts. The purpose of the collaboration is to enrich classroom instruction for all students. SCEMS, as part of the collaboration, leads SI-based professional development opportunities for the State Teachers of the Year.

The National Science Resources Center (NSRC), a partnership with the National Academies, is helping improve science education in school districts that enroll 22% of the United States' K-12 student population. Using the NSRC's reform model, 13 states, including Pennsylvania and Alabama, are all working to improve student achievement in science, mathematics, and reading.

Scientists at the National Zoo have been conducting research on the reproductive biology of endangered species. The results of their work have enabled the successful reproduction of animals such as the Golden Lion Tamarin, the Black-footed Ferret, and the Giant Panda, bringing some of these animals back from the brink of extinction.

Smithsonian astronomers at the Smithsonian Astrophysical Observatory (SAO) in Cambridge, Massachusetts study the origin, evolution and ultimate fate of the universe. They continue to make break-through discoveries, finding new planets (called extrasolar planets) outside our solar system. Last September they discovered a new planet (designated HAT-P-1) unlike any other in that it is the biggest planet ever found inside or outside our solar system, yet has the smallest density of any planet ever seen. It is bigger than Jupiter but lighter than a giant ball of cork—it is called a "puffy" planet.

We have so much to offer learners of all ages. The Smithsonian is keeper of our nation's historic, scientific, artistic, and cultural heritage. It tells the story of what it means to be an American.

The Smithsonian is a public trust; it belongs to every American, young and old. Tens of millions of adolescents have come to the nation's capital and have experienced the Smithsonian. Through our expansive education and outreach programs, millions more have experienced the Smithsonian in their own hometowns. I am particularly interested in this younger audience because they are America's future. We inspire the next generation

of astronauts, scientists, artists, explorers, and historians. Once they experience the Smithsonian, this great Institution is in their hearts and minds for life.

Again, thank you for this opportunity to testify. I'd be happy to answer any questions.

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The CHAIRMAN. Thank you.
Inspector General Ryan.

STATEMENT OF ANNE SPRIGHTLEY RYAN

Ms. RYAN. Thank you. Good morning. I appreciate this opportunity to give you my views on the recommendations of the Smithsonian Board of Regents' Governance Committee and the Independent Review Committee, or IRC, as they affect the operations of my office.

In April, I testified to your counterparts in the Senate about governance issues, including impediments to effective oversight and the need to improve accountability. I questioned whether the Regents had adequate information for meaningful oversight, and I questioned whether the Institution adequately considered its fiduciary duty when spending Smithsonian funds.

Since that time, the Governance Committee and the IRC have explored these and other governance issues in-depth. We strongly endorse their conclusions and recommendations. Indeed, some of the IRC's report is based on data we generated and reported in our two audits of executive compensation and in our review of the secretary's expenses. I would also note that the Government Accountability Office has studied Smithsonian governance as well at the request of the Senate Rules Committee.

The Smithsonian Regents and management have taken significant steps to address the critical weaknesses in oversight and accountability. While I think it is premature to judge this work in progress, I can report on the recommendations relating to my office, which cover access, compliance reviews and the level of our resources.

In the first area, the Governance Committee's recommendations recognize the important role the Office of the Inspector General plays in oversight and accountability. The Regents have committed to strengthening our office, welcoming unfettered communication on any matter we deem appropriate. At the Regents' Audit and Review Committee meeting in early September, we will be working to formalize the reporting relationship of our office to the Board so that our role is embedded more firmly in the governance structure.

I am pleased to report that our office will be moved back downtown, likely by year's end, easing our access not only to management but also to core facilities and employees.

The recommendations also ask that we conduct regular reviews to monitor compliance with new policies such as those on executives' and Regents' travel and business expenses. We will also try to examine the policies themselves, which are still evolving, to make sure that they appropriately safeguard the Institution's limited resources and reflect its nonprofit status.

Finally, the Governance Committee directed the Audit and Review Committee to determine whether our resources are adequate. As the IRC noted and as we have long maintained, they are not. Our staff, which is currently authorized at 16 positions, has declined from a high of 24 in the mid-1990s, although the Institution's appropriations and number of museums has increased during that time.

Currently, in addition to the new requests under the committee's recommendations, we are required to oversee the annual financial statement audits of the Institution and IT security reviews under the Federal Information Security Management Act. We are about to issue audit reports on retail operations at the zoo and how the Institution has handled employee relocation expenses, and we are working on an audit of revenue contracts with Smithsonian Business Ventures, and we are beginning one on workers' compensation at the Institution.

There are additional high-risk areas that we need to address, such as the multi-million dollar capital projects that are going on, financial reporting systems and internal controls—and that goes back to what the ranking member was saying as to going below the top level of management—facilities maintenance, and following up on animal care issues at the zoo, to name a few, and that does not even include our investigative work.

Nonetheless, we are more optimistic now that our resources will begin to match the Institution's oversight needs. Just last week, we learned that management had agreed to forward our request for five new positions for fiscal year 2009. Of course, much will depend on OMB and congressional appropriators.

In sum, governance reform has begun in earnest, and the signs are encouraging. The real benefits will come with the comprehensive implementation of the committee's recommendations, as Mr. Bowsler noted. The strengthening of our office promises better oversight of and therefore more confidence in the Institution. We look forward to providing you with further updates on this progress.

Thank you.

[The statement of Ms. Ryan follows:]

STATEMENT OF
ANNE SPRIGHTLEY RYAN
INSPECTOR GENERAL, SMITHSONIAN INSTITUTION
BEFORE THE
COMMITTEE ON HOUSE ADMINISTRATION
UNITED STATES HOUSE OF REPRESENTATIVES
AUGUST 1, 2007

Good morning. I appreciate this opportunity to give you my views on the recommendations of the Smithsonian Board of Regents' Governance Committee and the Independent Review Committee (IRC) as they affect the operations of my office.

In April, I testified to your counterparts in the Senate about governance issues, including impediments to effective oversight and the need to improve accountability and transparency. I questioned whether the Regents had adequate information for meaningful oversight. And I questioned whether the Institution adequately considered its fiduciary duty when expending Smithsonian funds.

Since that time, the Governance Committee and the IRC have explored these and other governance issues in depth. We strongly endorse their conclusions and recommendations. Indeed, some of the IRC's report is based on data we generated and reported in our two audits of executive compensation and our review of the Secretary's expenses, and the entire governance crisis arose because of the Regents' response to our reviews. I would also note that the Government Accountability Office is studying Smithsonian governance as well, at the request of the Senate Rules Committee.

The Smithsonian Regents and management have taken significant steps to address critical weaknesses in oversight and accountability and to reestablish the public's trust. While it is premature to judge this work-in-progress, I can report on the recommendations relating to my office, which cover three areas: access; compliance reviews; and the level of our resources.

In the first area, the Governance Committee's recommendations recognize the important role we play in oversight and accountability. The Regents have committed to strengthening our office, welcoming unfettered communication on any matter we deem appropriate. At the Regents' Audit and Review Committee meeting in early September,

we will be working on formalizing the reporting relationship of our office to the Board so that our role is embedded in the governance structure. And I'm pleased to report our office will be moved back downtown, likely by year's end, easing our access not only to management but also to core facilities and employees.

The recommendations also ask that we conduct regular reviews to monitor compliance with new policies, such as those on executives' and Regents' travel and business expenses. These reviews will ensure greater accountability. We will also examine the policies themselves, which are still evolving, to ensure that they appropriately safeguard the Institution's limited resources and reflect its nonprofit status.

Finally, the Governance Committee directed the Audit and Review Committee to determine whether our resources are adequate. As the IRC noted, and as we have long maintained, they are not. Our staff, which currently is authorized at 16 positions, has declined from a high of 24 in the mid-90s, although the Institution's appropriations during that time increased 80 percent. With such limited resources, our office has not been able to provide critically needed oversight of this complex Institution's over 6,000 employees and its 19 museums, 9 research centers, and the National Zoo.

Currently, in addition to the new requests under the Committees' recommendations, we are required to oversee the annual financial statement audits of the Institution and IT security reviews under the Federal Information Security Management Act. We are about to issue audits reports on retail operations at the zoo and on how the Institution has handled employee relocation expenses; we are working on an audit of revenue contracts at Smithsonian Business Ventures, and are starting one of worker's compensation. There are additional high-risk areas that we need to address, such as multi-million dollar capital projects; financial reporting systems and internal controls; facilities maintenance; and following up on animal care issues at the zoo, to name a few. And all this does not even include our investigative work.

Nonetheless, we are now more optimistic that our resources will begin to match the Institution's oversight needs. Just last week, we learned that management had agreed to forward our request for 5 new positions for fiscal year 2009. Of course much will depend on OMB and Congressional appropriators.

In sum, governance reform has begun in earnest, and the signs are encouraging. The real benefits will come with the comprehensive implementation of the Committees' recommendations. And the strengthening of our office promises better oversight of, and therefore more confidence in, the Institution. We look forward to providing you and your staff with further updates on this progress.

The CHAIRMAN. Thank you.

I have a question for the Secretary.

As to the Arts and Industries building, you are currently considering entering a redevelopment with a private-public partnership. Who would occupy it? Who would be leasing it? What would happen when that lease is up?

Mr. SAMPER. Well, that is precisely one of the issues that we want to look at, Mr. Chairman.

There are a number of activities for which the building could be used, and it will depend on possible interest. One of the original designs was to strengthen the visitors' service for the whole Smithsonian and to expand some of the facilities. The question is, we could either do it entirely with Federal funding in getting it there, which will be a fairly expensive proposition, but it is one of the possibilities. The alternative is to see if there is some compatible partnership that would allow us to secure private funding to do it in a way that we could occupy and maybe enhance some of the visitor experiences. Our proposal specifically is to go ahead and, as discussed and approved by the Regents, to issue a request for qualifications, not a full request for proposal, but to see who is interested and what kind of projects will be most interesting and would be relevant and consistent with the mission.

So that is our proposal. We have provided your staff with the full text of the proposal, and we would welcome any feedback you have in terms of that so that we could move ahead, and of course, we would be letting you know as we get the results of that before we proceed with any activities or partnerships.

The CHAIRMAN. We would appreciate that very much.

Mr. SAMPER. Absolutely.

The CHAIRMAN. Fees. Where are your thoughts on fees? I think you know where mine are. I do not want to charge people to go to the Smithsonian.

Mr. SAMPER. I think one of the things that makes the Smithsonian a great institution has been the fact that it belongs to every American. We acknowledge that it is supported by Federal taxes, and therefore, we have provided free admission. In my view, that is one of the things that makes the Smithsonian a very important institution. So, clearly, my preference is to have no fees.

We have, on an occasional basis in the past, charged fees for particular special exhibitions, and that is something that we do sometimes regarding particular exhibitions that come from outside whose particular projects may have very high maintenance costs. So it is something that we are looking at, and unfortunately, we have had to look at some of those because of some of the constraints we have had on our budget for these exhibitions. That is where I am, Mr. Chairman, and I hope we are on the same page.

The CHAIRMAN. When you say you will not charge anybody, we are on the same page.

Mr. SAMPER. Okay.

The CHAIRMAN. I appreciate that.

Mr. Ehlers, any questions?

Mr. EHLERS. Thank you. I am sorry that I had to step out for a moment. The first question relates to both of you.

I appreciated your comment, Ms. Ryan, about your offices being relocated to the main administration building. I did not even know you were not. Obviously, there is an advantage to being there, not just administratively but for little clues you pick up from people you meet in the hallway.

Now, the recommendations have been made. This is directed to you, Mr. Samper. The crucial part is how the information gets from the Inspector General to you and what you do with it. As you know, I have an academic background. I remember a college president who told me once that, when he took office, the first thing he did was walk over to the I.G.'s office and say, "I do not care what you find. If it is wrong. Whatever it is, you come to me before you talk to anyone else." He wanted absolute, direct, immediate communication with the I.G. It served him well. It turned out, because one of the chief financial officers was doing some hanky-panky with the money, and the I.G. went right to him and addressed the whole issue. If they had not had that structure, it would have been in the newspapers for a week. I am not saying you have to do that, but it is very important for you to be in direct communication even though you are also under the spyglass as well.

Also, I am wondering what you are going to set up to handle the recommendations of the Governance Committee, IRC, and the IG, because a lot of these things involve long-term recommendations and actions. What processes will you use to deal with that?

Mr. SAMPER. Thank you, Mr. Ehlers.

You are absolutely right, and I am happy to report that I am in regular communication with the Inspector General. We actually have a regular monthly meeting, and then, on particular studies, we will be in contact about how they are evolving. I certainly find that it has been helpful, and one of the things I decided when I became acting secretary was to go over to the Inspector General's office in Crystal City and meet with her and learn a little bit more about particular concerns I had with regard to Smithsonian Business Ventures and other areas. So I think we do have that communication. As you know, with the change in reporting, the Inspector General is reporting now directly to the Board of Regents, and she meets with them in executive session when any issues come up. So I think we have got that—that is my sense—and I will certainly look at that going forward.

In terms of tracking the recommendations—because you are absolutely correct; some of the recommendations are fairly straightforward and simple to implement, and others will take longer to implement. We have a tracking system for all of the open recommendations that we monitor quarterly, and we see exactly where we are with those, and we have closed many of them, but some of them will be there for a number of years. Just to mention one I am familiar with from my previous role as director of the Natural History Museum, improving the collections care for the National Museum of Natural History is something that is contingent on the funding and will take many years to complete. Therefore, that recommendation will remain open for several years. So we are doing that. I think, overall, it is working well from my point of view.

Mr. EHLERS. All right. I am very concerned about your \$2.5 billion facilities maintenance backlog. Unfortunately, that frequently happens in government. When I was in the State legislature, I was convinced that most of the universities did that deliberately when they wanted a new building. Of course, when the legislature did not want to give it to them, they would just stop maintaining the old one until it was ready to collapse. Then the government would come in and proclaim an emergency and give them \$1 billion for a new building.

I am not accusing you of that, but the pattern is too familiar. In the public sector, we tend not to take care of our properties and maintain them the way we should. I do not know how you are going to address that, but that is a crucial issue. Your board is going to have to be active in fundraising, and we are going to have to do our part, too.

You have just completed a review of the compensation and expenses of the CEO of the Business Ventures. What are the findings? Can you put them into context for us with regard to your other work on this SBV operations?

Mr. SAMPER. Mr. Ehlers, in terms of mentioning the finding and the report you are referring to, which was done by the Inspector General, maybe we could ask her to provide the report, and I would be happy to report the management response to that if that would work for you.

Mr. EHLERS. That would be fine.

Ms. RYAN. Thank you.

We found, summarizing very quickly, as far as the numbers were concerned, that of the CEO's business expenses for the period of fiscal year 2001 to 2005—we are going to go back and do 2006 to the present later this fall—that almost 60 percent of his expenses did not have sufficient supporting documentation; 13 percent had virtually none; and 16 percent of his expenses were unauthorized; which leaves about 20 percent of his business expenses that were fully authorized and fully documented to the level required by the IRS to deduct those business expenses.

So we made a number of recommendations, all of which with minor tweaking, that the Board of Regents through the Audit and Review Committee accepted. We asked that the CEO reimburse the Institution for certain expenses, about \$26,000, that he be taxed on certain amounts for the last 3 years because expenses that are not supported have to be treated as taxable income under IRS rules. We also recommended that the Institution strengthen some of its policies regarding the use of car service, for example, and regarding the use of what is called "actual expenses" rather than "per diem" or "traveling." I would consider these to be sort of luxury travel expenses. The final thing is we asked that the CEO reimburse the Institution for some outstanding personal expenses on his card because he used his card for personal expenses when he should not have.

Now, turning to more general issues, we made a number of observations about the internal controls, or the lack thereof, at SBV having to do with the business expenses of the CEO. There was terribly lax recordkeeping. There were no written policies and procedures until 2006 about business expenses at this business even

though it had been founded in 1999 and even though you can pull a business expense policy off the Web very simply. There was a lack of compliance with travel card policies, and the Institution, itself, did not engage in sufficient oversight. People were aware that individuals in SBV were not using their travel cards properly, people in other parts of the Institution, but it was allowed to continue. So those were my final notes.

Mr. SAMPER. Thank you, Congressman. We have read the report from the inspector general, and the report went to the Audit and Review Committee of the Regents, which held a meeting, a conference call, last Friday. Bottom line is, the Board of Regents has accepted the recommendations, as have I, and we are going ahead and following the recommendations in terms of reimbursements, in terms of taxable income and the others, immediately.

But I do think that some of the broader issues and some of the problems that we have had in this area have had to do with policies and controls. So I have instructed the chief financial officer to review the existing travel handbook and the policies to make sure that the Smithsonian Business Venture's travel policies conform with the Smithsonian's policies.

As you heard from Congresswoman Matsui, one of the things that has been challenging is that Smithsonian Business Ventures has had an independent set of policies since it was created in 1999 that don't always match the ones of the Smithsonian; and we are taking steps to review all of them and to bring them in line with ours, and any exceptions will be approved by the Board of Regents directly. So we are moving ahead with that swiftly.

I think what I would like to stress is that the good news in terms of the report is that we did not find that any of the expenditures violated the law or were used for personal gain—that is the good news—but it clearly revealed problems with the policies and problems with management. And I am confident now that with new leadership, with their recommendations and others', we will start gearing back to have a stronger activity in that area.

Mr. EHLERS. Well, I guess my problem is, we keep talking about policies, et cetera. Virtually all of the offenses that you have described, in many of the institutions I have worked for, both public and private—and I suspect this is true of the chairman, that if he did that, those are immediate firing offenses. And, likely, some of them are illegal.

That is part of my problem; by having an offshoot like that that can even go wild—where did this come from in the first place, and why in the world do we want it to continue? Why have an army that can set its own policies, and particularly if people are hired? I mean, it is just common sense that if you have a business expense, you keep the receipt. You keep your expenses small; you have limits on it. And if the director doesn't put that up, no employee is going to follow it either.

It just blows me away that any agency like this could possibly have done that.

Mr. SAMPER. I don't disagree, Mr. Chairman. And that is precisely why one of the first steps I took when I became Acting Secretary was to undertake a comprehensive review not just of the policies, but of the concept of Business Ventures. In my view, hav-

ing a semiautonomous kind of organization within the Smithsonian has not worked as well as what was expected, based on what I can read throughout the documents.

So what I have done is, I have appointed a task force, including several members from the advisory boards of the museums and some of our staff, to look at the fundamental questions about this, including what is the role of these business kinds of activities within the institution? Which of those makes sense to run directly or outsource? How do you deal with the revenue-sharing work in museums? And what kind of governance and oversight should they have?

Our goal is to have that report by the Regents meeting in November, and it will ask exactly those kinds of fundamental questions in a way that will help us and guide us forward.

Mr. EHLERS. Well, this seems to me—and I am not going to ask you to kill Ventures, or force you to do it, but it just seems to me exceedingly strange to have that type of setup.

Again, my preference, if I were in charge, I would want the person running that to be in the office next to me so I knew exactly what was going on all the time. Hire a very capable business person to run it so that it is run like a business, but not something autonomous that can go wild as this one has done.

I think, Mr. Chairman, that is the end of my sermons for today. Thank you very much for holding this hearing. And I yield back.

The CHAIRMAN. Thank you.

We will be issuing additional questions in writing, and we will hold the record open for your response. Thank you for being here.

I know you have had a tough couple years behind you; and for lack of a better word, you were left with some residue that you have to clean up. We want you to know that we appreciate the work you are doing, and we will be here to help you do that and make sure that we can move forward and make this the gem it once was.

And I think, and my family thinks, that I have a conversation with you, and you tell them it is the three generations—it is the children, the mothers; the grandchildren and then the grandfathers, you know. And I am reaching that stage. So we want to make this the gem that I know it is and it should continue to be.

So I thank you.

Mr. Ranking Member.

Mr. EHLERS. Thanks.

The CHAIRMAN. Thank you. This hearing is adjourned.

[Whereupon, at 1:03 p.m., the committee was adjourned.]

[Information follows:]

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-2061
www.house.gov/cha

VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

August 16, 2007

Dr. Cristián Samper
Acting Secretary
Smithsonian Institution
PO Box 37012 MRC 016
Washington DC 20013-7012

Dear Dr. Samper:

Attached are questions from the Committee, to be added to the record of the August 1 oversight hearing on "The Smithsonian in Transition." Some may be similar to those asked at the hearing but are repeated here to provide you with an opportunity to respond in greater detail.

Please send your responses to Matt Pinkus of the Committee staff, at 1309 Longworth House Office Building, Washington, D.C. 20515, via e-mail at matt.pinkus@mail.house.gov. Your responses should be received by the Committee no later than the close of business, Monday, September 10, 2007, after which the hearing record will be closed.

I appreciate your cooperation in responding to these questions.

Sincerely,



Robert A. Brady
Chairman

Cc: Hon. Vernon J. Ehlers

Questions to Acting Secretary Samper for the record of the Aug. 1, 2007, oversight hearing:

(1) Do you think it likely that the Smithsonian will ask Congress to change the law to implement the recommendations of the Governance Committee and the IRC and other reforms the Board of Regents wants to make? If so, on which subjects?

(2) The Smithsonian is currently considering issuing an RFQ to enter into a partnership with a public or private entity to redevelop the currently-mothballed Arts and Industries Building on the Mall.

(a) If we allow this effort to go forward, what procedures will be followed to consult with Congress, up to and including the choice of a final occupant or occupants, if any?

(b) How much would a partner in any redevelopment of the Arts and Industries Building be required to raise to be considered a viable candidate?

(c) What types of entities would you consider viable candidates?

(d) How long would any lease be? What would happen when the lease expired?

(3) The Committee is extremely concerned that the Smithsonian may move toward charging entrance fees to exhibits, or even to buildings, to raise additional funds, following disclosure of plans to do so for the forthcoming Butterfly Pavilion.

(a) Under what circumstances would you consider it acceptable to charge admission to any Smithsonian exhibit or facility? What would be unacceptable?

(b) Have you attempted to raise private funds to offset the need for such fees at the Butterfly exhibit?

(c) Will the Smithsonian consult with Congress before approving any additional such fees?

(4) You have suggested that you are prepared to revisit the question of the need for Smithsonian Business Ventures, which was created in 1998 and has been a disappointment in a number of ways. You appointed a new acting CEO of SBV on August 1.

(a) What is the current status of your review of SBV?

(b) Are you satisfied or dissatisfied with SBV's current revenue stream for the Institution?

(c) Would you consider a different kind of business model to handle the Institution's money-making activities?

- (d) What is your opinion of the recent consultants' report on the performance of the Smithsonian's retail outlets? Did you have any significant disagreements with the findings?
- (e) What is the status of the search for potential outside vendors to run Smithsonian retail outlets?

(5) What additional steps beyond those currently in place can be taken to increase the level of private donations to the Smithsonian?

(6) What is the current status of the "Smithsonian on Demand" relationship with Showtime? Is it moving ahead on the timeframe originally conceived? Has there been success in establishing the "on demand" feature initially advertised? Has the Institution received any revenue thus far from the venture? If not, when is revenue expected? Please also provide updated status (from the period following our 2006 hearing to the present) of the Institution's response to requests for access from filmmakers to the collections and staff.

(7) The Committee has been told that while the Smithsonian is not covered under the Freedom of Information Act, it adheres to the "spirit" of FOIA, or a similar such characterization, but it is apparent that there has been a backlog in dealing with public information requests. In mid-May of this year, we were informed that there were 19 pending FOIA requests, nine of which were received in 2007, and, of the other 10, nine were received in April and May of 2006; many of these involved the Smithsonian's contract with Showtime, which the Smithsonian has refused to release publicly.

- (a) Why has it taken so long to process these requests, some of which were pending even before this Committee held its hearing on Smithsonian on Demand in May, 2006?
- (b) How many requests are currently pending as of mid-August, and what is the status of each?

(8) Now that the Board has moved to, as the Governance Committee report states, "embrace the principles of disclosure reflected in (FOIA)," the Smithsonian is required to issue, by the end of 2007, a policy on disclosure of Smithsonian records to implement this guidance.

- (a) Do you anticipate the new policy to be effectively a mirror of FOIA as it is applied to the Smithsonian?
- (b) Are there some matters in which the Smithsonian differs sufficiently from a Federal entity that it would be impossible to embrace FOIA procedures, and so the final policy might differ?

(9) Have the Regents approved any construction projects in fiscal 2008 which will require congressional authorization? How do you determine the projects for which you will request specific congressional authorization, and for which you believe you can proceed without authorization?

(10) According to the GAO, the Smithsonian needs an estimated \$2.5 billion to fix and maintain the Institution's facilities. Of the major maintenance issues facing the Institution, which ones are the most urgent and highest on the priority scale, and which could have the most direct impact on the public visiting your facilities?

(11) Following the controversy over Secretary Small's resignation and allegations that he took actions in disregard of Smithsonian policies, would it be correct to state that you as Acting Secretary have no authority to waive Smithsonian policies, and that only the Regents may do so?

(12) Earlier this year, a former Smithsonian employee asserted that the Institution had succumbed to political pressure from the Administration in preparing an exhibit on the Arctic and global warming in 2006. At the request of Congress, the Smithsonian subsequently reviewed the process by which the exhibit was conceived, set up and administered, and examined relevant documents.

- (a) Describe the Institution's original intentions in setting up this exhibit--what was it intended to convey?
- (b) Was the exhibit executed in the manner originally conceived or was it altered? If so, for what reasons?
- (c) Please briefly summarize the conclusions you drew about allegations of political interference, following your internal review. Can you assure the Committee that the Smithsonian was not contacted by or influenced by the Administration in its preparation of the Arctic exhibit? Can you assure the Committee that the Institution followed its normal practices in applying scientific, curatorial and other standards in establishing the exhibit?



Smithsonian Institution

Cristián Samper
Acting Secretary

September 10, 2007

The Honorable Robert Brady
Chairman
Committee on House Administration
United States House of Representatives
1309 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed document is in response to Committee on House Administration questions presented in your letter of August 16, 2007. As you noted, the responses will be added to the record of the August 1 oversight hearing on "The Smithsonian in Transition." The responses have also been provided via e-mail today to Matt Pinkus.

Thank you for your continued support of the Smithsonian Institution.

Sincerely,

A handwritten signature in black ink that reads "Cristián Samper K".

Enclosure

cc: The Honorable Vernon J. Ehlers

Smithsonian Institution Building
1000 Jefferson Drive SW
Washington DC 20560-0016
202.633.1846 Telephone
202.786.2515 Fax

Questions to Acting Secretary Samper for the record of the Aug. 1, 2007, oversight hearing:

(1) Do you think it likely that the Smithsonian will ask Congress to change the law to implement the recommendations of the Governance Committee and the IRC and other reforms the Board of Regents wants to make? If so, on which subjects?

I believe all issues that have been raised by these groups can be addressed without legislation. More than half of the Governance Committee's and the IRC's recommendations can be accomplished through administrative means, including changes in the by-laws, and we are acting on those right now. Others will require more thought and a thorough stakeholder analysis. It is our hope that we can address all the longer-range recommendations through non-legislative means as well. If, however, after thorough analysis and thoughtful deliberation, the Regents conclude that statutory changes are necessary, we will certainly look forward to moving swiftly in that direction. The wisest course is to let the Smithsonian do as much as it can administratively, and assess the adequacy of those results, rather than resort to what may be premature legislation that could pose risk to other parts of the Institution that are functioning well.

(2) The Smithsonian is currently considering issuing an RFQ to enter into a partnership with a public or private entity to redevelop the currently-mothballed Arts and Industries Building on the Mall.

(a) If we allow this effort to go forward, what procedures will be followed to consult with Congress, up to and including the choice of a final occupant or occupants, if any?

The Smithsonian will keep Congress closely informed by briefing our key committees on the project before any important decisions are made. For example, we have submitted the draft Request for Qualifications to our congressional oversight committees, and we will brief you on the results of the Request for Qualifications before the Regents decide whether to proceed to a Request for Proposals.

(b) How much would a partner in any redevelopment of the Arts and Industries Building be required to raise to be considered a viable candidate?

Our most recent and very preliminary estimate is that it would cost about \$70 million to provide a "conditioned shell" ready for interior fitout. The cost estimate assumes that the interior spaces will be reconfigured to their circa 1900 layout. The estimates contemplate replacing the roof, wrought iron roof trusses, and windows; providing appropriate security and fire protection; installing modern links to the on-site U.S. General Services Administration heating and cooling district (but do not include the cost of distribution within the building); providing simple wall finishes; and associated soft costs. This

figure also does not include the additional costs associated with fitting the building out for any particular use, which would likely cost many tens of millions more.

(c) What types of entities would you consider viable candidates?

The Smithsonian will consider redevelopment approaches that include commercial uses, exhibits, conferences and/or mixed retail, and which are consistent with the mission of the Smithsonian. Importantly, any of these concepts for re-use must be compatible with the ambiance of the Mall and serve all visitors to the Mall and Washington, D.C. One of the Smithsonian's principal goals is to preserve, propagate and disseminate traditional American cultural elements. Accordingly, any proposed use that furthers this objective will be of significant interest. Concepts for museum, theater or exhibition uses are welcome, assuming that such uses do not duplicate the function or focus of other museums on the Mall. The Smithsonian will welcome concepts that combine typical private sector redevelopment goals with educational, scientific, cultural, technological, or other like-minded elements. The Smithsonian will not entertain concepts for uses that are inappropriate to the dignity of the Mall. Accordingly, uses such as nightclubs or similar commercial entertainment venues, residences, hotels, religious activities, or partisan political activities will not be considered. The selection group will carefully evaluate proposals against the following factors: proposing creative, appropriate, and exciting reuse concepts that complement Smithsonian activity on the Mall and provide educational, cultural or other services to the Mall visitors; preserving this historic asset while making the building into a productive asset for the Smithsonian and the public; demonstrating a well-defined track record of successful operations, financial stability and the financial capability to get full redevelopment underway within 24 months of execution of an agreement with the Smithsonian; and demonstrating past and current managerial capability that can carry this project to fruition.

(d) How long would any lease be? What would happen when the lease expired?

Our preliminary research indicates that partners willing and able to invest the necessary funds will require a relatively long-term lease in order to recoup that investment. Such a lease would likely be for 20-30 years. The building will remain the property of the Smithsonian, and future use will be determined after the lease expires.

(3) The Committee is extremely concerned that the Smithsonian may move toward charging entrance fees to exhibits, or even to buildings, to raise additional funds, following disclosure of plans to do so for the forthcoming Butterfly Pavilion.

(a) Under what circumstances would you consider it acceptable to charge admission to any Smithsonian exhibit or facility? What would be unacceptable?

The Board of Regents has discussed the implementation of an admission fee at various times in recent years, and has concluded each time that such a fee would be counter to the Institution's mission. We emphatically agree that one of the most important

characteristics of the Smithsonian is that it is free and open to the public. However, because of the focused expense of very selected offerings, such as the IMAX theaters and the National Air and Space Museum's Planetarium and simulator rides, we have no real choice but to charge a fee. Also, three previous temporary exhibitions charged admission: "Drugs: A Special Exhibition" (1972) at the Arts and Industries Building; "Dinamation's Dinosaurs Alive and In Color" (1990) at the National Museum of Natural History; and "Amber: Window to the Past" (1997) also at the National Museum of Natural History.

The National Museum of Natural History is planning to open a new exhibit, *Butterflies and Plants: Partners in Evolution* in 2008. One portion of this exhibit is very special--the chance for people to actually be among living butterflies and learn about the relationships between insects and plants. We believe this is a very high-quality learning experience, so we made the choice to offer this opportunity but to charge a fee to cover the operating costs. Because of our concern that some people could be excluded, we will offer the exhibit one day a week free (52 days per year), we also will have reduced rates for school groups, and we will try to share the experience as effectively as possible in the free parts of the exhibit and on the web.

The exhibition will have two components: a free, long-term exhibition focusing on plants and animals that have evolved together through time, and a special Butterfly Pavilion featuring live butterflies and plants. There will be an admission charge for the Pavilion. The free exhibition will have a strong focus on science and the co-evolution of plants and insects. The new 2,600 square foot exhibition hall will be located adjacent to the popular O. Orkin Insect Zoo. The total area of the exhibition will be 4,000 square feet, including the 1,400-square-foot Pavilion where visitors can walk among hundreds of butterflies and plants.

Butterfly houses have proven popular at several venues across the United States, but they are expensive to build and operate. The total investment to build the exhibit is \$3 million from Trust funds and private donors. The Butterfly Pavilion admission charge will be used to cover the exhibit's estimated \$900,000 annual operating costs. Activities associated with these costs include maintaining the Pavilion at a constant 80 degrees Fahrenheit and 80 percent humidity; continuously replenishing butterflies and plants; and maintaining staff and supplies to care for the live collection in accordance with USDA regulations. The museum will import butterfly pupae raised on farms in Latin America, Africa, Asia and North America; none will come from the wild. The exhibit's pesticide-free plants will be raised and provided by the Smithsonian Horticulture Division.

A steady funding source is necessary to provide for these annual costs; otherwise an exhibit of this type would not be possible. The fee option was selected only after opportunities for other sources did not prove viable, and is not intended to generate a profit.

(b) Have you attempted to raise private funds to offset the need for such fees at the Butterfly exhibit?

This free exhibit and the live butterfly Pavilion will be a major addition to the National Museum of Natural History and to the Washington experience of thousands of visitors each year. Although we were successful in securing \$3 million to build the exhibit and Pavilion, we have been unable to secure donations to support maintenance costs. Funding operating expenses through donations is a challenge. Donors typically will fund the construction of an exhibit or the creation of a program. Donors rarely fund exhibit maintenance because they see this to be the responsibility of the institution. In this case we will require an annual commitment of \$900,000 or an endowment of \$18 million to support that annual amount. To date, we have been unable to identify donors at these levels for this project. The fee will not make a profit for the Institution; it will only cover expenses. The alternative would be not to offer the experience at all.

(c) Will the Smithsonian consult with Congress before approving any additional such fees?

There are currently no plans to charge fees for entrance to buildings or other exhibits, but we would consult with Congress should that be proposed in the future.

(4) You have suggested that you are prepared to revisit the question of the need for Smithsonian Business Ventures, which was created in 1998 and has been a disappointment in a number of ways. You appointed a new acting CEO of SBV on August 1.

(a) What is the current status of your review of SBV?

I have appointed a ten-member Task Force to review SBV and to recommend improvements in its structure and organization, and examine ways to maximize SBV's contribution to the overall mission of the Smithsonian Institution (both income and program). The Task Force includes Smithsonian staff representing both the senior management and the museums, the Chair of the SBV Board, as well as some current and former members of museum advisory boards. They have recently begun their inquiry and will have several meetings throughout the fall. Their final recommendations are expected by the end of the year.

The Task Force will consider the following questions during its inquiry:

- What should be the role of revenue-generating activities within the Smithsonian Institution and how do they contribute to our mission?
- Which activities should be managed directly by the Smithsonian going forward, which might be outsourced, if any?
- What type of models for sharing revenue with the units should be employed for the different activities, so as to promote and reward involvement by the units?
- What is the best way to manage these activities going forward (governance)? Should SBV continue to exist as a semi-autonomous unit or be fully integrated into the Smithsonian?

- (b) Are you satisfied or dissatisfied with SBV's current revenue stream for the Institution?

SBV generates important unrestricted income for the Institution that supports critical research and programmatic activities. (SBV's overall revenues are estimated to be around \$170 million in FY 2007 which will generate approximately \$25 million in net profit for the Smithsonian.) We are hopeful that the SBV Task Force's review will reveal new ways to increase these revenues and the overall benefit of these business activities to the mission of the Institution.

- (c) Would you consider a different kind of business model to handle the Institution's money-making activities?

The SBV Task Force has been asked this question and is open to considering other business models, in particular, whether certain business activities should be outsourced (see answer to 4(e) for more detail).

- (d) What is your opinion of the recent consultants' report on the performance of the Smithsonian's retail outlets? Did you have any significant disagreements with the findings?

The report on our retail stores, conducted by Berglass-Grayson at our request, contained some observations about our current retail operations and suggestions for improvement in those operations. A few of the suggestions contained in the report have already been implemented at some of our SBV- and non-SBV retail stores and have resulted in increased sales. The overall report will be considered by the SBV Task Force as it looks at the operations of our retail stores.

- (e) What is the status of the search for potential outside vendors to run Smithsonian retail outlets?

A "Request for Information" was released on August 17, 2007, soliciting responses from entities interested in operating the Smithsonian's museum and airport retail stores that are currently operated by SBV. A copy of the RFI can be found at <http://www.si.edu/about/policies.htm>. Responses to this request are due by October 1 and will be considered by the SBV Task Force in its overall review of business activities at the Institution. The RFI was developed by senior Smithsonian staff with assistance and input from representatives of a number of Smithsonian museums, SBV, and an outside consultant experienced in these matters.

- (5) What additional steps beyond those currently in place can be taken to increase the level of private donations to the Smithsonian?

The Smithsonian Institution has the potential to raise significantly more private support. To do this the Institution must engage a broader donor base. To engage more donors, the Institution must invest in hiring more staff and developing more outreach programs.

The Smithsonian's fundraising program both centrally and at the unit level is understaffed and underfunded. Under these conditions the Institution has had no choice but to focus its fundraising resources on immediate, operational requirements. The current environment addresses short-term needs but limits the Smithsonian from engaging the number of individuals, corporations and foundations needed to address more significant, long-term future needs.

With a long-term investment in trust-funded staffing and programs, the Institution should launch its first major campaign to secure new funds for critical programs in education, collections and research, and build its endowment to ensure a solid base of support.

(6) What is the current status of the "Smithsonian on Demand" relationship with Showtime? Is it moving ahead on the timeframe originally conceived? Has there been success in establishing the "on demand" feature initially advertised? Has the Institution received any revenue thus far from the venture? If not, when is revenue expected? Please also provide updated status (from the period following our 2006 hearing to the present) of the Institution's response to requests for access from filmmakers to the collections and staff.

Smithsonian Networks, the joint venture between the Smithsonian and Showtime Networks Inc. was created in January 2006. Smithsonian Networks has been focused on two primary activities, (i) developing and producing television programs and (ii) negotiating distribution agreements with interested cable, satellite, and Telco operators.

On the programming front, Smithsonian Networks has developed and produced over 75 programs, with many more in various stages of production. Of this total, 15 are 'mission-critical' programs specifically about topics the Institution defines, and many more rely heavily on Smithsonian collections and activities. Short promotional videos for many of these programs are available on the Networks' website, www.smithsoniannetworks.com, which was launched earlier this year. The work has been fast-paced, but rewarding and both parties have learned to work together effectively over the past year. Smithsonian Networks now has enough programming to be able to launch its offering, pending distribution agreements.

The distribution agreements, which provide for the Network's programming to be available to consumers, were initially delayed by approximately six months, when compared to the original timeframe. Smithsonian Networks was projecting to launch a video-on-demand channel first and then rollout linear channels as the market demanded. Interest, particularly by satellite and cable distributors, in the all high-definition (HD) programming strategy of Smithsonian Networks led to the acceleration of the development of a linear channel as part of Smithsonian Network's 'multi-platform' distribution strategy. This had impacts on the market positioning, number of programs necessary to launch, and the nature of the discussions with potential distributors which extended those negotiations over the course of the summer of 2007.

Smithsonian Networks is close to finalizing its first distribution deal agreement. The agreement will be formally announced once the deal is finalized. That agreement will provide for the launch of a linear (24/7 channel) High-Definition (HD) channel by September 30, 2007. The final terms of the roll-out for "Smithsonian Channel HD" (when, how many households, promotional periods, etc.) will be subject to finalization of the distributor's HD strategy. The agreement will also provide for a video-on-demand (VOD) service, "Smithsonian Channel On Demand," which is projected to launch by the end of this calendar year. Further, Smithsonian Networks is confident this agreement will be an excellent catalyst for finalizing agreements with other distributors with whom they are in serious negotiation and consequently they expect to announce more deals over the next 4-8 weeks, perhaps sooner.

The Institution has received revenue from the venture in both fiscal year 2006 and fiscal year 2007, equal to the minimum guarantee payments the Institution receives under the terms of the contract. In addition to this revenue, the Institution has received reimbursements, per the venture agreements, for selected expenses related to the operation of Smithsonian Networks, including salaries, travel and related expenses for participating personnel and/or units. Smithsonian Networks is also supporting a pilot project to help preserve damaged film and make Institutional archival holdings more accessible for integration into its programs as well as for use by the general public.

Between January 2006, when the contract went into effect, and August 2007, we have received 217 filming requests. Of those requests, we have denied two because of they conflicted with our obligations under the contract, or less than 1%.

(7) The Committee has been told that while the Smithsonian is not covered under the Freedom of Information Act, it adheres to the "spirit" of FOIA, or a similar such characterization, but it is apparent that there has been a backlog in dealing with public information requests. In mid-May of this year, we were informed that there were 19 pending FOIA requests, nine of which were received in 2007, and, of the other 10, nine were received in April and May of 2006; many of these involved the Smithsonian's contract with Showtime, which the Smithsonian has refused to release publicly.

- (a) Why has it taken so long to process these requests, some of which were pending even before this Committee held its hearing on Smithsonian on Demand in May, 2006?

The agreements made with HarperCollins Publishing Co. and Showtime Networks were entered into with the understanding and express condition that the terms of the agreements would be kept confidential by the parties, in accordance with standard business practices of the publishing and entertainment industries. Both agreements were negotiated in good faith by SBV as part of the Institution's effort to supplement the Institution's federal appropriations with income generated by commercial activities. The requests for the Showtime and HarperCollins agreements were the first received by the Institution for contracts that contained confidentiality provisions. In response, the Institution first sought permission from Showtime and HarperCollins to create a redacted

version that could be provided to the public. After several months of negotiation, neither Showtime nor HarperCollins gave permission to release any version of either agreement.

The question of how to resolve the conflict between the inability to release confidential agreements and the Institution's policy of following the principles of the FOIA became part of the larger discussion about creating a formal policy on the disclosure of Smithsonian records. None of the requests could be answered until decisions about the Institution's formal policy were made, since the formal policy impacts how the Institution would respond to these requests.

Two other requests are pending from April 2006, asking the Institution for documents about the compensation and expenses of former Secretary Small and former SBV CEO Gary Beer. The question of what financial data and expense reports could be released about SBV executives also depended upon decisions about the Institution's formal policy, since the formal policy impacts how the Institution responds to these requests.

Last week the Office of General Counsel was able to begin drafting responses to all the requests pending from 2006. The request pending since February 2007 will also be answered. The Institution anticipates sending each requester a formal response within the next few weeks.

(b) How many requests are currently pending as of mid-August, and what is the status of each?

- 6 requests for the Showtime agreement, pending since April 2006
- 1 request for the Showtime agreement, pending since May 2006
- 1 request for the HarperCollins agreement pending since May 2006
- 1 request for documents related to the compensation and expenses of former Secretary Small pending since May 2006
- 1 request for documents related to the compensation and expenses of former SBV CEO Gary Beer, pending since May 2006
- 1 request for the Showtime agreement, the Corbis agreement, and the Institution's formal policy about providing documents, pending since February 2007

Seven other requests for documents are currently pending, as follows:

Request	Date Received	Status
Documents about the elephants housed at the National Zoo	3/21/2007	Acknowledgment letter sent 3/21/07. Zoo provided documents 8/17/07. Ready for document review.
Documents about the elephants housed at the National Zoo	4/25/2007	Acknowledgment letter sent 4/25/07. Zoo provided documents 8/17/07. Ready for document review.

Archived documents pertaining to Park-Davis & Co.	6/18/2007	Acknowledgment letter sent 6/18/07. Boxes requested from Archives. Boxes received in Archives office 7/12/07. Ready for document review.
Exhibit 300's for FY 2008	6/29/2007	Acknowledgment letter sent 7/3/07. Seeking documents.
Documents pertaining to the hiring process for a particular position	7/9/2007	Acknowledgment letter sent 7/11/07. Documents received 7/17/07. Ready for document review.
Racial data related to background checks	7/25/2007	Acknowledgment letter sent 8/28/07. Seeking documents.
Past 4 years of qualifications for OFEO employees promoted from GS8 to GS9	7/29/2007	Acknowledgment letter sent 7/31/07. Request to OHR 7/31/07 for documents.

(8) Now that the Board has moved to, as the Governance Committee report states, "embrace the principles of disclosure reflected in (FOIA)," the Smithsonian is required to issue, by the end of 2007, a policy on disclosure of Smithsonian records to implement this guidance.

(a) Do you anticipate the new policy to be effectively a mirror of FOIA as it is applied to the Smithsonian?

It is intent of the Institution to approve a policy that mirrors FOIA to every extent possible, given the Institution's mission and unique nature as a trust instrumentality of the United States.

(b) Are there some matters in which the Smithsonian differs sufficiently from a Federal entity that it would be impossible to embrace FOIA procedures, and so the final policy might differ?

Unlike federal agencies governed by FOIA, the Smithsonian must supplement federal appropriations through private donations and commercial ventures in order to carry out the mission mandated by Congress. In this way, the Institution is sometimes required to collect and maintain certain types of records beyond those ordinarily maintained and disclosed by federal agencies subject to the FOIA. Such records include, for example, the value of artifacts, donor agreements, and business-related information which, if released, could cause substantial competitive harm to the Smithsonian's business activities.

(9) Have the Regents approved any construction projects in fiscal 2008 which will require congressional authorization? How do you determine the projects for which you will request specific congressional authorization, and for which you believe you can proceed without authorization?

The Regents have approved 2 construction projects in Fiscal Year 2008: construction of a greenhouse facility and construction of a research laboratory. The Institution proposes building a greenhouse facility at the Smithsonian's support facility in Suitland, Maryland to replace the existing greenhouse complex. For more than 30 years, the Smithsonian has leased a greenhouse complex for its horticultural operations on the property of the Armed Forces Retirement Home (AFRH) in northwest Washington. The AFRH plans to lease the property where the greenhouse complex is located to developers as early as September 30, 2008, when the current lease expires. The Smithsonian will require a new greenhouse facility to maintain its horticultural operations and preserve its world class Orchid Collection. The estimated cost is \$12 million.

The second project is the construction of laboratory space to accommodate the Smithsonian Tropical Research Institute's (STRI) terrestrial research program in Gamboa, Panama. Research space at Gamboa is desperately needed for STRI's terrestrial research program. The building currently on the site was built in the 1930s. It is a three-story structure of composite construction—concrete base with wooden superstructure—of around 35,600 square feet. The building has been closed for more than five years because of its deteriorated condition. The building has been heavily infested with termites as well as bees, snakes, and bats. Based on the comparative costs and programmatic operating considerations, the Smithsonian's Office of Facilities Engineering and Operations believes that the most economical solution to making the building usable for STRI research activities is to completely replace the old structure with a comparably sized new building made of concrete and/or steel, and other low-maintenance, pest-resistant materials. The estimated cost of constructing a replacement building is \$3.8 million.

The Smithsonian seeks congressional authorization for all new construction projects at or above the \$1 million threshold. In addition, the Smithsonian consults with the House and Senate Committees of jurisdiction on all construction matters and will follow their guidance on whether congressional authorization is required.

(10) According to the GAO, the Smithsonian needs an estimated \$2.5 billion to fix and maintain the Institution's facilities. Of the major maintenance issues facing the Institution, which ones are the most urgent and highest on the priority scale, and which could have the most direct impact on the public visiting your facilities?

Facilities Capital and Maintenance Projects are prioritized in a matrix that combines two characteristics: the type of work and the time sensitivity of the work. The highest priority projects (ranked #1) are those that involve safety and health hazards and active failures of building systems that must be taken care of immediately to prevent unsafe conditions or irreversible loss of facilities. The next highest priority projects (ranked #2)

are those that involve conditions as in #1 above that will cause damage in 1 to 2 years; additionally, projects that address code compliance and security concerns are coded #2.

Of the estimated \$2.5 billion facilities maintenance backlog, the following is a description of the highest priorities that are dealt with in the FY 2008 request:

Priority #1 Catastrophic failure and critical life safety requirements; will cause irreversible damage to collection or facility immediately; or, work is coordinated with a programmatic priority that must take place in the current budget year request.

FY08 program includes these #1 priorities:

NZP	Design for fire protection systems, infrastructure and utility upgrades and seal/sea lion facility. The completion of the Elephant Trails portion of Asia Trail including all systems upgrades; installation of an emergency generator, initiation of the structural repairs to the General Services Building; fire protection improvements at the Ape House, Lion/Tiger, Bird House, Mammals, Reptiles, Think Tank, Amazonia; water main installation at lower Zoo; water, power and telecom improvement to the Vet Hospital and Research facilities; maintenance requirements include replacing emergency generator in Reptile House and repairing cooling tower in Lion House.
NASM	Waterproof leaking terrace at perimeter; maintenance requirements include replacement of 30 year old restrooms
NMNH	Major Mechanical room improvements; maintenance requirements include replacement of air handling unit in transformer vault, steam station piping and valves
NMAH	Construct perimeter security barriers; maintenance requirements include installing fireman service into elevators
STRI	Initiate improvements to the site of the Gamboa schoolhouse for a new laboratory
Multiple	Construction supervision and administration and support functions for all design and construction projects
MSC	Improve fire detection and protection; maintenance requirements include refurbishing two motor control centers.

Miscellaneous Maintenance requirements include extending emergency power to two buildings at SERC, upgrading fire alarm systems at Cooper Hewitt; replacing pumps and piping at the Castle basement.

Priority #2 imminent failure and code compliance requirements will cause damage to collection or facility within 1-2 years, or work is coordinated with a concurrent programmatic priority, such as replacement of a permanent exhibition.

FY08 program includes these #2 priorities:

NASM	Complete replacement of electrical systems
NMNH	Renovation of windows, elevators, air towers, utility tunnels; complete systems replacements in ground floor areas and basement.
NMAH	Begin design for garage infill in advance of wing renovation.
NZP	Front Royal emergency generator and fire alarm reporting system.
Suitland	First increment of three for Pod 3 collections storage; begin replacement of greenhouses; demolish asbestos-laden collections storage buildings 15 and 18.

The most urgent and highest priority maintenance and capital projects are distributed throughout the Institution, with a concentration in the largest and most highly visited facilities. All of the capital and maintenance projects planned will improve the visitor experience directly and indirectly through renovated buildings and grounds, improved light and air, increased reliability and safety.

(11) Following the controversy over Secretary Small's resignation and allegations that he took actions in disregard of Smithsonian policies, would it be correct to state that you as Acting Secretary have no authority to waive Smithsonian policies, and that only the Regents may do so?

As Acting Secretary, I have no authority to waive policies adopted by the Regents, including on such issues as travel, expenses, and standards of conduct, except as expressly provided for by the Regents in those policies. Nor do I have authority to waive other Institution-wide policies as they apply to my own actions. There are, however, Institution policies governing general operations which I can change, waive or revise on my own authority in the interest of the best and most efficient operation of the Smithsonian, subject always to the general oversight of the Regents.

(12) Earlier this year, a former Smithsonian employee asserted that the Institution had succumbed to political pressure from the Administration in preparing an exhibit on the Arctic and global warming in 2006. At the request of Congress, the Smithsonian subsequently reviewed the process by which the exhibit was conceived, set up and administered, and examined relevant documents.

(a) Describe the Institution's original intentions in setting up this exhibit--what was it intended to convey?

The exhibit, Arctic: A Friend Acting Strangely, was on display at the National Museum of Natural History (NMNH) from April 15 through Nov. 30, 2006. The goal was to show the environmental and socio-cultural impacts of arctic climate change. The exhibit showed the impact of climate change on the Arctic ecosystems through scientific data and testimonies from Native peoples.

- (b) Was the exhibit executed in the manner originally conceived or was it altered?
If so, for what reasons?

The National Museum of Natural History (“the Museum”) uses a collaborative and iterative approach for exhibition development. The exhibit evolves from a concept through a selection of illustrations, objects and text that is revised and edited throughout a lengthy process. Every exhibition developed is the combined effort of exhibit developers, project managers, educators, designers, and in-house and external scientific reviewers. To ensure reliable and scientifically accurate exhibitions, every exhibition goes through an extensive review process to ensure accuracy. As the exhibit is developed and reviewed changes may be made for scientific accuracy, clarity, punctuation, grammar, visitor understanding, and in preparation for launch to the press and public. The Teams of reviewers included in the process are as follows:

The Arctic: A Friend Acting Strangely exhibit review process was particularly rigorous because of the complex and interdisciplinary nature of the topic. The Museum’s Arctic scientific expertise lies in the cultural anthropological and archaeological scientific research from our Anthropology Department’s Arctic Studies Center. There are no Arctic physical or biological scientists or researchers on staff at the Museum. Thus, the Museum looked to external scientific advisors to supplement this anthropological research.

The exhibit core team is the 3-7 member team that produces the script and design for the exhibit. Teams are composed as a combination of exhibit planner(s), designer(s), exhibit writer, scientist/scholar(s), educational expert(s), and evaluator(s). A qualified exhibit developer/project manager is designated to coordinate the management of the project. The exhibit core team creates and edits all exhibit content, participates in every exhibition review phase, and is the primary repository for all exhibit materials throughout the development process.

The exhibit extended advisory team includes additional reviewers needed by the exhibit core team to support its work, including: scientists, scholars, educators, evaluators, consultants, fiscal administrators, development staff, audience representatives, community advisory groups etc. The exhibit core team plays the lead role in identifying the members of this group and members are added to this team as necessary. Various members of the extended advisory team review exhibit content at the concept phase, 35% completion phase, 65% completion phase, and 95% completion phase. Extended advisors may also be contacted at other times during development when their expertise is required to further the exhibit content. Extended advisors may review all exhibit content or may only review parts of the content pertaining to their area of expertise.

The exhibit approval team is the group whose initials indicate that Smithsonian’s institutional standards are met and that the Smithsonian is committed to the project. The exhibit approval team always includes the Associate Director for Public Programs and External Affairs, the Associate Director for Research and Collections, the Chiefs of Exhibit Design and Development, Education, Production, and those scholarly reviewers that are

selected to participate based on their individual technical expertise. It is recommended that no individual serve on more than one team. The approval team reviews exhibit content at the concept phase, 35% completion phase, 65% completion phase, and 95% completion phase. Extended advisors may also be contacted at other times during development when their expertise is required to further the exhibit content.

- (c) Please briefly summarize the conclusions you drew about allegations of political interference, following your internal review. Can you assure the Committee that the Smithsonian was not contacted by or influenced by the Administration in its preparation of the Arctic exhibit? Can you assure the Committee that the Institution followed its normal practices in applying scientific, curatorial and other standards in establishing the exhibit?

We concluded that the exhibit *Arctic: A Friend Acting Strangely* was developed in accordance with the highest standards of museum practice, and accurately expressed the views of Smithsonian scientists. The Smithsonian did not receive any requests from the White House or Congress to alter the content of the exhibition. Scientists, scholars, and educators from Executive Branch Agencies were among the reviewers and advisors from outside the Smithsonian community who contributed to the development of the exhibition.

ROBERT A. BRADY, PENNSYLVANIA
CHAIRMAN

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION
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Washington, D.C. 20515-6157
(202) 225-2061
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VERNON J. EHLERS, MICHIGAN
RANKING MEMBER

August 16, 2007

A. Sprightley Ryan
Inspector General
Smithsonian Institution
PO Box 37012 MRC 1204
Washington, D.C. 20013

Dear Inspector General Ryan:

Attached are questions from the Committee, to be added to the record of the August 1 oversight hearing on "The Smithsonian in Transition." Some may be similar to those asked at the hearing but are repeated here to provide you with an opportunity to respond in greater detail.

Please send your responses to Matt Pinkus of the Committee staff, at 1309 Longworth House Office Building, Washington, D.C. 20515, via e-mail at matt.pinkus@mail.house.gov. Your responses should be received by the Committee no later than the close of business, Monday, September 10, 2007, after which the hearing record will be closed.

I appreciate your cooperation in responding to these questions.

Sincerely,



Robert A. Brady
Chairman

Cc: Hon. Vernon J. Ehlers

Questions to Inspector General Ryan for the record of the Aug. 1, 2007, oversight hearing:

(1) It is clear that your office in the past has lacked the authority and independence usually associated with an IG as envisioned by Congress in the 1978 law, which created these positions throughout the government. Please comment on recent legislation reported by the House Oversight and Government Reform Committee which would give IGs greater independence and a fixed term in office.

- (a) Is the Smithsonian covered under this bill?
- (b) What effect, if any, would its enactment have on the operation of your office?
- (c) Who currently has the power to replace the Smithsonian IG?
- (d) Do you believe that the bill should be amended in some way to reflect additional concerns specific to the Smithsonian?

(2) You stated in your testimony before the Committee that, prior to the issuance of the Governance and IRC reports, you questioned "...whether the Institution adequately considered its fiduciary duty when expending Smithsonian funds."

- (a) How would you define the fiduciary obligations of the Board and its members?
- (b) What actions, if any, should the Board take to embrace such obligations more specifically?
- (c) In your opinion, is any congressional action required to specify the Board's fiduciary obligations?



Smithsonian Institution

Office of the Inspector General

September 10, 2007

The Honorable Robert A. Brady
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515

Re: Additional Questions for the Record relating to
the August 1, 2007 Hearing on the Smithsonian

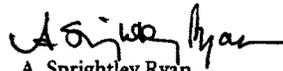
Dear Chairman Brady:

Thank you for your letter of August 16, 2007, containing additional questions for the record relating to the August 1, 2007 oversight hearing on the Smithsonian.

I am pleased to submit the enclosed responses.

If you have any questions, or if I may offer any further information or assistance, please do not hesitate to contact me at 202.633.7050 or sprightley@oig.si.edu.

Very truly yours,


A. Sprightley Ryan
Inspector General

cc: The Honorable Vernon Ehlers, Ranking Member
Cristián Samper K., Acting Secretary, Smithsonian Institution

MRC 1204
PO Box 37012
Washington DC 20013-7012
202.633.7050 Telephone
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*Smithsonian Office of the Inspector General
Responses to Questions for the Record for the
Committee on House Administration*

(1) It is clear that your office in the past has lacked the authority and independence usually associated with an IG as envisioned by Congress in the 1978 law, which created these positions throughout the government. Please comment on recent legislation reported by the House Oversight and Government Reform Committee which would give IGs greater independence and a fixed term in office.

(a) Is the Smithsonian covered by this bill?

All Inspector General Offices, including the Smithsonian's, are covered by this bill.

(b) What effect, if any, would its enactment have on the operation of your office?

This bill would enable our office to accomplish the purposes of the Inspector General Act, 5 U.S.C. App. 3, more effectively. Among other things, it would:

- (i) establish the Inspector General's office term as seven years, but permit reappointment;¹
- (ii) define permissible grounds for the removal of the Inspector General prior to the expiration of his or her term of office;²
- (iii) mandate 30 day's advance notice to Congress of an impending removal or transfer of the Inspector General by the Board of Regents;
- (iv) authorize the Inspector General to submit budget requests directly to the Director of the Office of Management and Budget, to Congress, and to the Board of Regents;
- (v) consider the Office of the Inspector General to be a separate agency;
- (vi) provide law enforcement authority to designated federal entities, such as the Smithsonian; and
- (vii) clarify the Inspector General's subpoena power to include any medium (such as electronically stored information and any tangible thing).

¹ This provision applies to any Inspector General appointed on or after the enactment of the amended Act. Therefore, it would not apply to my tenure.

² See footnote one.

(c) Who currently has the power to replace the Smithsonian IG?

As of July 13, 2006, only the Smithsonian Board of Regents has the power to replace the Smithsonian Inspector General.

(d) Do you believe that the bill should be amended in some way to reflect additional concerns specific to the Smithsonian?

The bill provides that the compensation for the Inspectors General of designated federal entities be at the same level as the majority of other senior staff who report directly to the agency head. Our office supports this provision generally because it would ensure that other Inspectors General receive compensation comparable to their agency peers. For a federal trust instrumentality like the Smithsonian, however, this provision presents an unusual situation. The compensation for the Smithsonian Secretary, one of the few direct reports to the Board of Regents, is not based on the federal scale and is therefore significantly higher than the Inspector General's other Institution peers. Therefore, this provision should be modified for the Smithsonian Inspector General to link his or her compensation with SES pay levels available to IGs at federal agencies.

(2) You stated in your testimony before the Committee that, prior to the issuance of the Governance and IRC reports, you questioned "... whether the Institution adequately considered its fiduciary duty when expending Smithsonian funds."**(a) How would you define the fiduciary obligations of the Board and its members?**

Before answering the Committee's question, I would like to clarify that my statement, which referred to my April 11, 2007 testimony before the Senate Committee on Rules and Administration, referred to what I believe was a failure by Smithsonian management to exercise prudent care when it permitted excessive spending of the Institution's trust funds.

I would also like to note that I have not had the opportunity to study the fiduciary obligations of the Board of Regents in depth. My comments are based on the common-law fiduciary duties of trustees and of boards of directors. I believe the duties differ slightly for the three different types of Regents (Citizen Regents, Congressional Regents, and *Ex Officio* Regents).

The fiduciary obligations of the nine Citizen Regents include the duties of care, loyalty, and prudence. They are required to act reasonably, prudently, and in the best interest of the Smithsonian; to avoid conflicts of interest; and to conduct themselves in accordance with pertinent laws, regulations, and other governing documents.³ The Independent Review Committee (IRC), in its report to the Regents, succinctly explains these duties.⁴

³ In the Report of the Governance Committee, the Board defined its responsibilities in similar terms: "Regents are responsible for carrying out their duties in a manner that encourages prudent and independent decision-making, places the Smithsonian's interests above personal interests and ensures that decisions are in keeping with the Smithsonian mission." June 14, 2007 Report, p. A-4.

⁴ *A Report to the Board of Regents of the Smithsonian Institution* (June 18, 2007), pp. 28-33.

My understanding is that the fiduciary obligations of the two *Ex Officio* and six Congressional Regents are similar to those of the Citizen Regents, but only to the extent appropriate for their roles and other obligations to their respective branches of government.

The Board of Regents is currently reviewing its structure and functions, in response to its own Governance Committee's recommendations and the recommendations of the IRC. This review, which is supposed to be completed by January 2008, will also address the appropriate role and obligations of *Ex Officio*, Congressional, and Citizen Regents.

(b) What actions, if any, should the Board take to embrace such obligations more specifically?

Before suggesting any further actions, I believe we should await the results of the significant steps the Board is taking to assure greater attention to these obligations. The Board adopted the IRC's recommendation for the establishment of a Chair of the Board to assume the fiduciary responsibility of day-to-day leadership and oversight. It also recently adopted formal job descriptions outlining the duties and responsibilities of individual Regents.⁵ Each Regent must take into consideration whether he or she has sufficient time and ability to fulfill the requirements of their position. Moreover, by increasing transparency and accountability, and especially by encouraging the flow of unmediated information to the Board from management and this office, I believe the Board is better able to act reasonably, prudently, and in the best interests of the Institution.

(c) In your opinion, is any congressional action required to specify the Board's fiduciary obligations?

Given the well defined, common-law fiduciary obligations of trustees and nonprofit boards, as well as IRS rules that prohibit self-dealing and conflicts of interest,⁶ I do not believe that congressional action is required to specify these obligations at this time. The Regents have committed to implementing the many Governance Committee and IRC recommendations by January 2008. Our office will continue to provide independent and objective information to the Board – separate from management – and thus help the Board fulfill its fiduciary duties of care and loyalty when making its decisions for the Institution. Your Committee's continued oversight as the Regents implement their reforms will also ensure continued attention by the Board to these critical obligations.

⁵ This job description may be revised after the Board's review of its structure and functions in January 2008.

⁶ Internal Revenue Code § 4958.