

**EMPLOYING OFFICE  
COMMENTS**

**APPENDIX F**

**Chief Administrative Officer**  
**U.S. House of Representatives**  
**Washington, DC 20515-6660**

November 13, 2002

**Gary Green**  
**General Counsel**  
**Office of Compliance**  
**Room LA 200**  
**John Adams Building**  
**110 Second Street, S.E.**  
**Washington, D.C. 20540**

Re: Office of Compliance Report

Dear Mr. Green:

In regards to the General Counsel's Report on Occupational Safety and Health Inspections, it should be noted for the CAO in Appendix B at: B - 9, 10, 11, 17, 19, and 22 that:

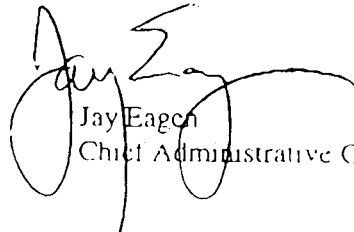
"Electrical issues are the jurisdiction of the AOC. Accordingly, the CAO is working with the AOC to correct any outstanding issues."

Also, on B-23 it should be noted that:

"Improper extension cord use has been abated and that the Office Supply Store will be stocking various types of power strips to help alleviate future extension cord issues."

Please incorporate these responses into your report.

Sincerely,

  
Jay Eagon  
Chief Administrative Officer

APPENDIX F



Washington, DC 20515

November 12, 2002

Mr. Gary Green  
General Counsel  
Office of Compliance  
110 Second Street, SE, Rm LA-200  
Washington, D.C. 20540-1999

Dear Mr. Green:

This letter is in response to the General Counsel, Office of Compliance *Report on Occupational Safety and Health Inspections Conducted Under the Congressional Accountability Act* dated November 2002 that you provided in your letter dated November 6, 2002.

First, thank you for your recognition of the positive steps the Architect of the Capitol has taken and the improvement you have noted in our fire and occupational safety and health programs. Although much remains to be done, I am proud of our accomplishments and progress to date and appreciate your recognition and support of these efforts.

I understand that Ms. Susan Adams and Mr. Kevin Mulshine of my staff have been communicating with Mr. Michael Lemov of your staff regarding the omission of the Senate Appropriations Committee on page 32 and the off-site facility responsibilities discussed on-page 40. I understand that the final report will be amended to reflect their input. I thank you for making those modifications.

Drawing your attention to page 32 of subject report, as discussed in Mrs. Adams letter to you dated October 24, 2002, and provided as an attachment, the AOC and OSHA are not as close to an agreement as we would like. Unfortunately differences of applicable laws regarding Agency disclosures policies (Freedom of Information Act) have complicated and prolonged the finalization of the formal arrangement with OSHA. As detailed in Mrs. Adams letter, the assistance already provided by OSHA and the assistance provided by the Public Health Service and DuPont Safety Resources has made the formal agreement with OSHA less of a necessity. As our safety program progresses, we are re-assessing the focus of additional able assistance from OSHA. We are in the process of finalizing our 5 year Safety Master Plan and re-evaluating OSHA's possible role.

Mr. Gary Green  
November 12, 2002  
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In the following paragraph, you raise concerns about a proposed organizational change. As I discussed in my letter to you of October 23, 2002, the reorganization you refer to is under review, it has not been approved or implemented. Regardless, I want to assure you that safety remains a top priority within the Architect of the Capitol. The proposed Safety, Fire, and Environmental (SFE) Programs Office will retain its current level of responsibility (safety program policy development, coordination, and oversight). The Director of SFE Programs will continue to have unlimited direct access to me. The Director also serves as a member of the Senior Policy Committee thereby assuring direct access to, and communication with, me and the Senior Agency Managers. Additionally, placing the Safety, Fire, and Environmental Programs Office within the Office of the Facilities Manager organization will improve the overall communication, emphasis, and execution of our safety program, not detract from it. The proposed facilities management organization will contain approximately seventy percent (70%) of the Agencies workforce and represents the same percentage (70%) of our Department of Labor reportable injuries over the last 36 months. Working from within the Facilities Manager organization, the Safety, Fire, and Environmental Programs Office will be able to improve the focus of resources, coordination of efforts, and consistency of implementation. I am, of course, continuing periodic safety walk arounds with the Director and remaining personally involved in the progress of our safety program. The AOC is a relatively small agency of approximately 2000 employees. I contend that the Director of SFE Programs will have equal if not better access to me than an Assistant Secretary at many larger agencies.

I will continue to monitor the effectiveness of our SFEP organization. If the proposed reorganization is approved and implemented and I find that the SFEP Office location within the organization is negatively impacting its effectiveness, I will take the necessary steps to correct that situation.

I am committed to implement an effective and comprehensive occupational safety and health program and to achieve our goal of an injury free work environment. I appreciate your feedback and recognition of the dramatic improvements that we have made. I look forward to continued support and assistance from your office in improving our safety program.

If you have any questions or require additional information, please contact me on 202-228-1204 or Ms. Susan Adams on 202-226-0630.

Sincerely,



Alan M. Hantman, FAIA  
Architect of the Capitol

Doc. No. 0211120301

copy to Mulshine

United States Senate  
OFFICE OF THE SERGEANT AT ARMS

November 18, 2002

Gary Green  
General Counsel, Office of Compliance  
John Adams Building, Room LA 200  
110 Second Street, S.E.  
Washington, D.C. 20540-1999

Via Fax: 202-426-1913

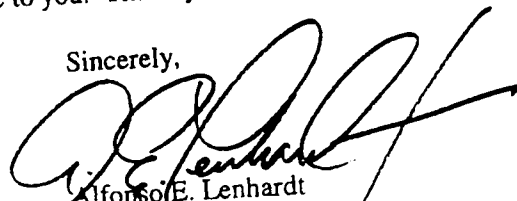
Dear Mr. Green:

This is in response to your letter dated November 6, 2002, in which you offered me the opportunity to provide "written comments for possible inclusion" in the Office of Compliance's Report on Occupational Safety and Health Inspections for the 107<sup>th</sup> Congress ("Final Report"). I understand that you plan to publish the Final Report shortly.

As you are aware, I previously submitted comments and information for inclusion in the Final Report by letters dated September 19, October 11, and October 25. I appreciate your inclusion of much of the information I provided. The proposed Final Report appears to be more complete than prior drafts; however, I am concerned that it still does not accurately reflect the successful efforts of the Office of the Sergeant at Arms (SAA) to correct identified safety hazards. For example, many entries in the chart at Appendix B list the SAA as a "Responsible Office," but fail to give credit to the SAA under the heading "Abatement Data" for corrections which have been made. In such "Abatement Data" entries, either the SAA is not listed as having made corrections or the entries simply state "no report for some locations." In addition, in several instances the chart at Appendix B misidentifies the SAA as the "Responsible Office" for some safety hazards.

While I understand that the Board of Directors has the final say in whether you must include in the Final Report comments from responsible employing offices, including the SAA, I hope that the Final Report will accurately reflect the responsibility of and corrections made by the SAA as described in my prior correspondence to you. Thank you.

Sincerely,



Alfonso E. Lenhardt  
Sergeant at Arms

AEL:jem

cc: Alan Hantman, Architect of the Capitol  
Kennie Gill, Chief of Staff, Senate Rules Committee  
Tamara Somerville, Minority Staff Director, Senate Rules Committee

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APPENDIX F



# UNITED STATES CAPITOL POLICE

OFFICE OF THE CHIEF

119 D STREET, NE

WASHINGTON, DC 20510-7218

November 18, 2002

OFFICE OF THE GENERAL COUNSEL

Gary Green, General Counsel  
Office of Compliance  
Room LA-200, John Adams Building  
110 Second Street, S.E.  
Washington, DC 20540

Dear Mr. Green:

We are in receipt of your November 6, 2002, letter affording the United States Capitol Police Board ("CPB")<sup>1</sup> the opportunity to submit written comments for possible inclusion in the General Counsel's Report on Occupational Safety and Health Inspections ("the Report").<sup>2</sup> As you know, the USCP requested changes to and/or clarifications of portions of the Report on October 25, 2002, in response to your October 9, 2002 letter. While we appreciate your efforts to make the corrections discussed in Items 2, 3 and 4 of the USCP's October 25, 2002, letter, we are concerned that several of the USCP's requested changes/clarifications were not fully made, particularly in the Anthrax-Emergency Response Training & Procedures section of the Report ("Emergency Response Section"). As a result this section of the Report continues to be inaccurate. As explained below, the GC must modify the Emergency Response Section to correctly reflect the facts in this matter.

Several inaccuracies are found in the Emergency Response Section on page 12, in

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<sup>1</sup> Your letter incorrectly identifies the United States Capitol Police ("USCP") as the employing office in this matter. For purposes of the Congressional Accountability Act of 1995, 2 U.S.C. §§ 1301-1348 ("CAA"), however, the employing office is the CPB. See 2 U.S.C. § 1301(9)(D).

<sup>2</sup> In your November 6, 2002, letter, you assert that the Office of Compliance ("OC") has "informally promulgated" a new procedural rule. The CPB is unaware of any authority that permits the OC to informally promulgate such a rule. In fact, the CAA specifically requires prior to the adoption of a procedural rule that the Executive Director of the Office of Compliance ("Executive Director") publish a general notice of proposed rulemaking and provide a comment period of at least 30 days. See 2 U.S.C. § 1383. The Executive Director, however, has not published a general notice or provided a comment period with regard to this new procedural rule.

which you discuss the Anthrax investigation. First, the Report incorrectly implies that the CPB groundlessly refused to provide information to the GC during its investigation. As you are well aware, however, the CPB has a statutory duty to direct the policing of the Capitol Complex and to protect Members of Congress and their families, Capitol Complex employees and visitors to the Capitol Complex, including to protect the core functions of the legislative branch. See 40 U.S.C. §§ 212a, 212a-2, 212a-4, 212a-4a. You requested unlimited information related to your investigation. The CPB's statutory duty prevented it from providing this security-sensitive information absent a mechanism for protecting such information. As early as 2000, in an effort to work with you, the CPB sought a protective order that would enable it to provide you with this security-sensitive information, while still ensuring, consistent with its statutory obligation, that the information was safeguarded. Originally, this effort at cooperation on the part of the CPB was summarily dismissed by you in your letter of August 28, 2000, even after a Senate Committee in August 2000 advised your office to work with the Capitol Police to reconcile potentially competing statutory responsibilities.

Subsequent to your issuance of citations in this matter, the Board of Directors of the Office of Compliance ("Board") also recognized that the CPB had a legitimate statutory interest in protecting security-sensitive information and also urged that the parties work together to develop a process for protecting such information. As a result, the GC finally agreed to negotiate an agreement to protect security-sensitive information. The CPB submitted a proposed memorandum of understanding that would ensure the protection of security-sensitive information,<sup>3</sup> but, unfortunately, the parties could not agree on the appropriate language. Furthermore, to state that the Capitol Police provided "no information" is clearly a factual misstatement, since the Capitol Police has provided several certifications, including compliance details, regarding the USCP Emergency Response Plan and Personal Protection Equipment Program. See, specifically, p. 12, para. 3 of proposed OC Report.

We believe it is disingenuous and clearly misleading to report on your Anthrax investigation without setting forth the legitimate reasons that the CPB could not provide you with security-sensitive information and the efforts that the CPB undertook to enable it to provide you with such information. Accordingly, we request that this information be included in the Report.

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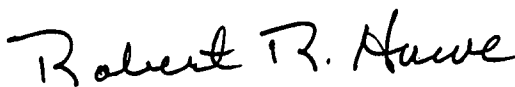
<sup>3</sup> The memorandum of understanding proposed by the CPB correctly provided that the USCP would determine whether information was security-sensitive and, thus, could not be released by the GC. The GC has neither the training nor the expertise to make such a determination. Moreover, the CPB and the USCP, not the GC, have the statutory duty to ensure that information is not released that could compromise the functioning of the legislative branch.

Second, the Emergency Response Section discusses the GC's conclusions regarding emergency response training and procedures without properly informing the public of the limited nature of the GC's investigation. As explained above, the GC refused to enter into an agreement to protect security-sensitive information, and the CPB, thus, was prevented by its statutory duty from providing the GC with any security-sensitive information. Because the GC lacked this important information, its conclusions in this matter are incomplete, inaccurate, and lacking in credibility. Thus, we strongly urge you to delete paragraph 3 of the Emergency Response Section.

The CPB requests the Report be modified to correct the inaccurate and misleading statements discussed above. To the extent that the GC refuses to make these modifications, the CPB requests that this letter and the USCP's October 25, 2002, letter be appended to the GC's Report. Prior to releasing the Report, we would appreciate hearing from you about whether the requested changes were made.

Finally, please be advised that I have attached the recommended redactions based on the latest USCP-Document Review Team's security sensitive review.

Sincerely,



Robert R. Howe  
Assistant Chief of Police

RRH:dms





November 19, 2002

Robert Howe  
Assistant Chief  
U.S. Capitol Police  
119 D Street, N.E.  
Room 701  
Washington, D.C. 20510-7218

Dear Chief Howe:

I acknowledge receipt of your letter of November 18, 2002, commenting on our Report to the 107th Congress on occupational safety and health. In the interest of full disclosure we will include your letter in Appendix F to our Report.

However, your letter includes several inaccurate statements as follows:

1. You assert that the Report is incorrect in its description of the CPB as uncooperative; you characterize your refusal to provide information during the General Counsel's investigation of the anthrax - response case as a function of your "statutory duty to direct the policing of the Capitol Complex". But the Report is accurate, as explained below, and your refusal was uncooperative, to say the least.

CPB Counsel tendered a proposed "protective order" on August 28, 2000, which, if agreed to by the General Counsel, would have given absolute and unreviewable authority to CPB to determine what information is "confidential" and what persons, if any, are entitled to receive it. But Congress has not given CPB any such special immunity from investigative and reporting authority under the Congressional Accountability Act.

Moreover, CPB refused to agree to any of the various counter-proposals later submitted by the General Counsel in an effort to resolve the confidentiality problem. Indeed, as late as May 2002, CPB was still asserting that it would not cooperate with the General Counsel's investigation unless the General Counsel executed the very agreement it had proposed back in August 2000 -- an agreement which would require the General Counsel to abdicate safety and health responsibilities imposed by law. Cooperation was also difficult to discern throughout this period because CPB frequently persisted in groundless claims, including the claim that the

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**APPENDIX F**

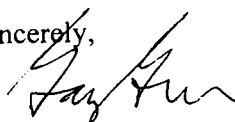
General Counsel lacked jurisdiction in this case. It is also unpersuasive for you to point to the various "certifications" you submitted as evidence of cooperation, since they came only very late in the day and, as we have previously noted, were uncorroborated and conflicted with evidence in our possession.

2. Your letter also states that our office lacked "important information" when it issued its anthrax citations. In fact, we had sufficient information - - based upon our interviews with dozens of CPB officers who were willing to testify, consultation with outside experts, and hundreds of pages of relevant documentary evidence. It is fair to say that CPB management delayed the progress of our investigation. But it also needs to be said, that, despite management's lack of cooperation, a very strong case was finally assembled.

I should also add that Chief Gainer's arrival seems to have had a very beneficial effect, and that I look forward to a more cooperative and productive relationship between our offices in the future.

This letter will be published together with your letter of November 18, 2002, in an Appendix to our Report.

Sincerely,



Gary Green  
General Counsel

**Office of the General Counsel  
Office of Compliance  
Room LA 200, John Adams Building  
110 Second Street, S.E.  
Washington, D.C. 20540-1999**

**Telephone: (202) 724-9250  
TTY: (202) 426-1665**

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