



Investigative Report of David Hayes: Alleged Post-Government Ethics Violation

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This is a version of the report prepared for public release.

SYNOPSIS

We received information from the U.S. Department of the Interior (DOI) Ethics Office, through DOI Chief of Staff Tommy Beaudreau, that David Hayes, Vice-Chair of the White House Advisory Council on Wildlife Trafficking (WHAC) and former Deputy Secretary of the Interior, may have violated ethics rules related to his involvement in the WHAC. Beaudreau asked us to examine Hayes' creation of the U.S. Wildlife Trafficking Alliance (Alliance) and the potential for a conflict of interest this may have caused. We were also asked to determine whether Hayes used his position as the WHAC vice-chair to further his personal financial interests by having the students in a class he taught at Stanford Law School develop recommendations for fighting wildlife trafficking and present them to the WHAC.

We found that Hayes formed the Alliance as part of his duties and responsibilities as the vice-chair of the WHAC to further the WHAC's mission. Hayes was also an unpaid Special Government Employee. We found no evidence to suggest that Hayes received financial compensation for his involvement with the Alliance, or that either Hayes or Stanford Law School benefited financially from his students' presentation to the WHAC.

During our investigation, we found that DOI's Office of the Solicitor did not conduct an ethics review of a June 2015 letter sent from the Office of the Secretary of the Interior to Hayes in support of the Alliance. The review process for correspondence from the Secretary's Office does not specifically require an ethics review, but we found that if one had been conducted, any potential conflicts of interest may have been identified and addressed. The letter was processed through the Office of the Executive Secretariat, whose employees contributed to the process failure when they failed to recognize that the letter concerned Hayes' and the Alliance's involvement with the WHAC.

BACKGROUND

A Special Government Employee (SGE) is defined as an officer or employee of the U.S. Government who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days (18 U.S.C. § 202). Like other Government employees, SGEs are prohibited from participating personally and substantially, in an official capacity, in any particular Government matter that would have a direct and predictable effect on their personal or imputed financial interests (18 U.S.C. § 208).

Additional restrictions are also placed on full-time political appointees, who must take an ethics pledge (Executive Order (EO) 13490, “Ethics Commitments by Executive Branch Personnel”). For example, the criminal statute on post-Government communication subjects certain high-level officials to a 1-year “cooling off” period (18 U.S.C. § 207(c)). In the year following their departure from Federal service, former senior employees may not, on behalf of someone else, communicate with their former agency to seek official action on any matter. The ethics pledge expands that period to 2 years.

In 2009, David Hayes, who at the time was the Deputy Secretary of the Interior, signed the ethics pledge required by EO 13490. Hayes resigned from the U.S. Department of the Interior (DOI) in July 2013. He would have been prohibited from communicating with DOI, on behalf of someone else, in order to seek official action until July 2015, had he not rejoined the Government as an SGE in August 2013.

DETAILS OF INVESTIGATION

On October 2, 2015, we received information from the DOI Ethics Office, through DOI Chief of Staff Tommy Beaudreau, that David Hayes, Vice-Chair of the White House Advisory Council on Wildlife Trafficking (WHAC), may have violated ethics rules related to his involvement in the WHAC. Beaudreau asked us to examine Hayes’ creation of the U.S. Wildlife Trafficking Alliance (Alliance), the potential for a conflict of interest in Hayes’ relationship with the Alliance, and whether Hayes violated the terms of his ethics pledge by communicating with DOI employees as part of his creation of the Alliance. We were also asked to determine whether Hayes used his position at the WHAC for personal financial gain by having the students in a class he taught at Stanford Law School develop recommendations for strategies to fight wildlife trafficking and present these recommendations to the WHAC during a public meeting.

The Creation of the WHAC and the Alliance

On July 1, 2013, the President signed EO 13648, “Combating Wildlife Trafficking,” which created a task force co-chaired by the U.S. Attorney General, the Secretary of the Interior, and the Secretary of State. The EO directed the task force to establish the WHAC to “make recommendations . . . and provide [the task force] with ongoing advice and assistance.” On August 30, 2013, Secretary of the Interior Sally Jewell appointed Hayes to the WHAC for 3 years as an unpaid SGE. The letter confirming Hayes’ appointment noted that the WHAC was established under the authority of EO 13648.

We interviewed Hayes, who said that after almost 2 years with the WHAC, he created a coalition of private companies and nongovernmental organizations (NGOs) that wanted to implement the guidelines outlined in the National Strategy on Wildlife Trafficking, which the President's task force had developed in 2014. He named this effort the U.S. Wildlife Trafficking Alliance and defined its mission as combating wildlife trafficking through a marketing strategy that emphasized reducing the demand for illegally traded wildlife and wildlife products. According to Hayes, the Alliance was a byproduct of the WHAC's mandate to assist the task force because it enabled interested organizations to take action. He said that it was not a separate legal entity, but rather a loose partnership of organizations that have similar missions with respect to combating wildlife trafficking.

Hayes informed us that he did not receive any financial compensation from the Alliance and that the Alliance did not generate any revenue. He said that his role in the Alliance was related to his work with the WHAC and that the Alliance's creation was endorsed by various members of the White House and supported by Secretary Jewell.

We interviewed Secretary Jewell, who confirmed that she asked Hayes to work with companies and NGOs to form what she called a "coalition" (i.e., the Alliance) in support of the National Strategy and the presidential task force.

Other DOI officials knew of the Alliance and supported its creation. U.S. Fish and Wildlife Service (FWS) Associate Director Robert Dreher and Letty Belin, Senior Counselor to the Deputy Secretary of the Interior, confirmed that Secretary Jewell supported Hayes' formation of the Alliance. Dreher said that he had known of Hayes' efforts to form the Alliance since its inception, and he knew that DOI supported Hayes' efforts, a statement that Beaudreau and FWS Director Dan Ashe both confirmed.

On two occasions, we interviewed Ed Keable, Deputy Solicitor, General Law. During his first interview, Keable did not have much information on the Alliance or the WHAC. During his second interview, he told us that the Ethics Office of DOI's Office of the Solicitor (SOL) first referred this matter to us because the Ethics Office did not know how the WHAC and the Alliance were related to each other. He explained, however, that he researched EO 13648 after we first interviewed him and realized that because the WHAC was required to assist the task force, Hayes' creation of the Alliance advanced the intent of the EO. Keable indicated that he saw no conflict of interest with Hayes' creation of the Alliance, as long as Hayes did not receive any compensation for his efforts in relation to the WHAC or the Alliance.

To learn more about the Alliance itself, we visited its website, which listed over a dozen for-profit businesses and nonprofit entities as members. We also reviewed the website of Recreational Equipment Inc. (REI), the outdoor recreation company where Secretary Jewell previously served as president and CEO, to determine whether REI had a relationship with the Alliance that might constitute a potential conflict of interest. We found no evidence to indicate that REI or its current CEO, Jerry Stritzke, was part of the Alliance, or that REI was a partner of any Alliance member.

The Secretary's Letter to Hayes in Support of the Alliance

On June 12, 2015, Hayes sent Secretary Jewell a letter asking her to support the Alliance. He wrote the letter on Stanford Law School letterhead, which, he explained during our interview with him, was the only letterhead he had. He told us that he sent the letter in his capacity as WHAC vice-chair, and wrote it only after discussing the Alliance with Beaudreau. Hayes said that his letter and the Secretary's June 25, 2015 response were related to his role as the WHAC vice-chair because the Alliance was an offshoot of the WHAC.

Secretary Jewell explained that she did not personally sign the letter responding to Hayes' request, but said she supported Hayes' formation of a coalition of entities that could help DOI within their own spheres of influence. She explained that the letter was written during a time of global interest in wildlife trafficking, when she was in Asia to discuss the Alliance and other wildlife trafficking initiatives. She said that President Obama's trip to Africa in July 2015 was also generating interest in wildlife trafficking issues.

Keable told us that because the WHAC was required to assist the task force, Hayes' interactions with Secretary Jewell and any other contacts he may have had in support of the Alliance were consistent with his role as the WHAC vice-chair.

Recommendations to the WHAC From Hayes' Stanford Law School Students

Hayes explained that he started working at Stanford Law School soon after leaving DOI in 2013, and that he developed and taught courses that varied each semester. In the spring of 2014, he taught a course titled "Wildlife Trafficking: Stopping the Scourge." The course description stated that the class would expose students to the WHAC, EO 13648, and the President's wildlife trafficking task force. Hayes explained that he developed the course in order to give students an opportunity to learn about current wildlife trafficking issues and policy development. He said that he was not compensated any differently for this course than for the other courses he taught at Stanford.

Hayes' students presented their work to the WHAC at a public meeting on March 20, 2014. (The WHAC had submitted its own recommendations on fighting wildlife trafficking to the task force the month before.) Hayes told us that his students developed and recommended potential strategies for combating wildlife trafficking, but their presentation did not influence the WHAC's work, and he did not receive any additional compensation as a result of their participation in the meeting. Hayes further clarified that the WHAC did not use any of the students' recommendations in its submission to the task force. During our first interview of Keable, he explained that he saw no problem with Hayes' students presenting before the WHAC, as they were presenting the information in a public forum.

SOL's Failure To Communicate and Coordinate on Matters Concerning Hayes' Involvement With the WHAC and the Alliance

During our investigation, we interviewed attorneys from SOL and several other DOI officials who knew about Hayes' connection to the Alliance and who reviewed a draft of the Secretary's

letter supporting it. Many of the officials we spoke to stated that they had assumed the Ethics Office would have reviewed the Secretary's letter, as well as Hayes' involvement with the Alliance, to identify and prevent potential conflicts of interest. All of the interviewees acknowledged, however, that the Ethics Office did not conduct such a review. If it had done so, any potential ethics issues may have been identified.

Ted Boling, Deputy Solicitor, Parks and Wildlife, explained that after he reviewed a draft of Secretary Jewell's letter, he forwarded it to SOL's Office of General Law for further vetting. While Boling said that he considered General Law the "gatekeeper" of the Ethics Office, he acknowledged that he did not specifically ask for an ethics review of the letter.

Boling stated that he believed SOL's attorneys should be versed in ethics issues so that they could identify potential concerns and refer them to the Ethics Office during the internal review process. As an example, he cited his review in September 2015 of a draft invitation for a White House meeting involving the Alliance that Hayes had coordinated with Letty Belin and other DOI personnel. During the review and approval process (known within DOI as the "surname" process) for that invitation, Boling said, he recognized that Hayes' involvement and the invitation's use of DOI's logo might pose ethical concerns, so he referred the invitation to the Ethics Office.

We interviewed a deputy director with the Office of the Executive Secretariat and Regulatory Affairs who said that he was responsible for reviewing Secretary Jewell's letter to Hayes. He explained that Belin had drafted the letter and that he had received several emails between Belin, SOL, and other DOI employees who were helping to review the letter. He said that he did not request a separate Ethics Office review of the letter, but that Boling's signature on the letter's internal review form signaled SOL's completed review of its content. He said that he did not know about the 2-year post-Government communication ban imposed on former senior appointees, and he did not realize there was a connection between the Alliance and the WHAC. When we interviewed Belin, she said she mistakenly believed that the Ethics Office had previously reviewed Hayes' involvement with the Alliance.

Another Executive Secretariat official said that she was responsible for processing the documents for Hayes' WHAC appointment in August 2013. She said that she learned of the Secretary's letter to Hayes a few months after it was issued, but if a draft of the letter had been assigned to her for review, she would have immediately referred the matter to the Ethics Office because of Hayes' previous employment at DOI. The official said that she saw the letter on the Alliance's website, and later discussed it and Hayes' creation of the Alliance with Designated Agency Ethics Official Melinda Loftin. The official said that she did not know what, if anything, Loftin did with the information the official provided.

Loftin and her deputy acknowledged that they discussed the Secretary's letter with the Executive Secretariat official, but Loftin admitted that she did not review the letter further until September 2015, when concerns about Hayes' involvement with the Alliance were brought to her attention during the review of the aforementioned invitation to the White House meeting. Keable recalled discussing the Alliance with Loftin and her deputy in September 2015, and said that SOL initially did not understand that the Alliance was associated with the WHAC. He also indicated

that this matter was referred to us because the Ethics Office did not have “investigatory” resources.

COORDINATION WITH OTHER OFFICES AND ONGOING REVIEWS

On November 10, 2015, we provided our investigative findings to Loftin and her deputy. After reviewing the information, they stated that they would conduct a final ethics review and determination. As of the date of this report, we have not received their determination.

In addition, on December 3, 2015, we provided our investigative findings to two representatives from the U.S. Office of Government Ethics (OGE). They informed us that they did not have the authority to provide an official opinion on specific ethical concerns, and they deferred to Loftin, as DOI’s designated agency ethics official, for an opinion.

SUBJECT

David Hayes, former Deputy Secretary of the Interior.

DISPOSITION

We provided a copy of our report to DOI Chief of Staff Tommy Beaudreau for review and any action he deems necessary.