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### Analysis of Disclosures, Agency Investigation and Report, and Whistleblower Comments

#### OSC File No. DI-05-0995

#### Summary

Maryann Zelenak, Engineer, disclosed to the Office of Special Counsel (OSC) a potential violation of law by employees and former employees at the U.S. Department of the Air Force, Space Battlelab, Schriever Air Force Base, Colorado Springs, Colorado. Specifically, Ms. Zelenak alleged that Col. Ron Oholendt, former Space Battlelab Commander, and Lt. Col. Allan Cassady, former Space Battlelab Chief of Concept Evaluation, violated 18 U.S.C. § 207 by engaging in illegal post-employment communications with federal employees in an attempt to influence the Space Battlelab to fund a project in which they had previously participated personally and substantially as government employees. She also alleged that Col. Patrick Rhodes, then Space Battlelab Commander, and other federal employees were aware of the illegal nature of these communications, yet allowed them to continue. The agency investigation did not substantiate Ms. Zelenak's allegations.

#### The Whistleblower's Disclosures

Ms. Zelenak, who consented to the release of her name, has a master's degree in engineering and has worked for the Air Force since 1986. From January 2000 until May 2005, she worked at the Air Force Space Battlelab as a liaison between the Space Battlelab and the Air Force Research Laboratory in Dayton, Ohio. She currently works as the Second Deputy to the Space Control Product Line at Kirtland Air Force Base, Albuquerque, New Mexico.

Ms. Zelenak's disclosures pertain to information she learned during her employment at the Space Battlelab. Ms. Zelenak explained that the Space Battlelab provides funding to private contractors to conduct military utility demonstrations. According to the website maintained by the Space Battlelab, the Space Battlelab's mission is "to identify innovative solutions with existing technologies that meet the warfighter needs in space operations and use."

Ms. Zelenak alleged that Col. Ron Oholendt, former Commander of the Space Battlelab, violated post-employment ethical rules set forth in 18 U.S.C § 207. According to Ms. Zelenak, Col. Oholendt served as the Space Battlelab Commander from the Summer of 2000 until June 2003, when he retired from federal service. Shortly after his retirement, Col. Oholendt began working for government contractor SAIC, and is currently employed by a second contractor Multimax. Ms. Zelenak alleged that, after he retired from federal service, Col. Oholendt communicated on several occasions with officials at Space Command and the Space Battlelab

regarding a matter he was personally and substantially involved in during his tenure as Commander of the Space Battlelab.

Title 18, United States Code, Section 207, Subsection (a)(1) prohibits, on a permanent basis, any former officer or employee of the executive branch from

knowingly mak[ing], with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter –

- (A) in which the United States or the District of Columbia is a party or has a direct and substantial interest.
- (B) in which the person participated personally and substantially as such officer or employee, and
- (C) which involved a specific party or specific parties at the time of such participation.

Ms. Zelenak advised that, when Col. Oholendt was the Space Battlelab Commander, the Air Force entered into a contract to implement a project known as Razorview. Razorview is a Space Battlelab demonstration that uses electro optical sensors to track space debris in low earth orbit. For Razorview, the government contracted with SAIC, who, in turn, subcontracted the work to the Australian company Electro Optic Systems (EOS). In 2000, the Space Battlelab began to conceive a plan to develop the Active Short Pulse Energy Network (ASPEN), an Advanced Concept Technology Demonstration proposal that builds upon Razorview.<sup>1</sup> Whereas Razorview was confined to a single location, ASPEN would extend Razorview technology to multiple locations around the world in order to establish a global electro optical sensor network to conduct space surveillance and assess potential ballistic missile threats.

According to Ms. Zelenak, Col. Oholendt was personally and substantially involved in Razorview and ASPEN during his tenure as Space Battlelab Commander. For example, Ms. Zelenak stated that, in Spring 2003, she attended a meeting during which Col. Oholendt attempted to convince Maj. Gen. Douglas Fraser, who at the time was the Space Warfare Center Commander, of the merits of ASPEN. She also stated that, on several occasions, Col. Oholendt communicated directly with Ben Greene, Chief Executive Officer of EOS, and other Australian government and contractor employees about Razorview's capabilities. In addition, Ms. Zelenak stated that she personally facilitated dialogue between Col. Oholendt and the Air Force Research Lab about ASPEN.

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<sup>1</sup> The project was first named "Razorview II," then was subsequently renamed "ASPEN," "Dragonfire," and is presently known as "Vigilant Light." Because the project was known as "ASPEN" during most of the time period relevant to Ms. Zelenak's disclosure, it will hereinafter be referred to as "ASPEN."

Ms. Zelenak alleged that, after Col. Oholendt retired from federal service, he continued to communicate with government officials about ASPEN, initially on behalf of SAIC, and later on behalf of Multimax. She claimed that, in Fall 2004, Col. Oholendt, who was then employed by Multimax, met with Brig. Gen. Tom Sheridan, Director of Requirements, Headquarters Air Force Space Command, and other Space Command officials with the intent to influence them to fund ASPEN.

In addition to the permanent post-employment restriction outlined at § 207(a)(1), the statute also provides a two-year restriction, at § 207(a)(2), prohibiting individuals from communicating with government officials within two years after termination of federal employment regarding particular matters which were pending under their official responsibility, but in which they did not participate personally and substantially. If there is insufficient evidence to establish that Col. Oholendt was “personally and substantially” involved in ASPEN as a federal employee, then Ms. Zelenak contended, in the alternative, that Col. Oholendt violated the two-year post-employment restriction.

Ms. Zelenak further alleged that a second former Space Battlelab employee, Lt. Col. Allan Cassady, similarly engaged in illegal communications with government officials about ASPEN. Lt. Col. Allan Cassady worked at the Space Battlelab as the Chief of Concept Evaluation, during which time he was personally and substantially involved in ASPEN. In fact, Ms. Zelenak stated that, at Lt. Col. Cassady’s retirement ceremony on May 30, 2003, he was recognized as the “principle architect” of ASPEN. She also stated that he was heavily involved in the Space Battlelab’s attempts to obtain foreign comparative test money for ASPEN. Shortly after his retirement from federal service, Lt. Col. Cassady was hired by Multimax as the Program Manager of ASPEN. In this capacity, Lt. Col. Cassady communicated with government employees in order to set up meetings about ASPEN, and he attended meetings with government employees where ASPEN was marketed.

In December 2003, Ms. Zelenak sent Col. Patrick Rhodes, then Space Battlelab Commander, and other Space Battlelab officials an e-mail notifying them of the potential ethical problems associated with Col. Oholendt’s communications about ASPEN. However, she stated that they failed to correct the situation and, in fact, continued to meet with Col. Oholendt about ASPEN. Ms. Zelenak alleged that, in doing so, they violated the Standards of Conduct for Employees of the Executive Branch. These regulations provide that federal employees “shall act impartially and not give preferential treatment to any private organization or individual,” “shall disclose waste, fraud, abuse, and corruption to appropriate authorities,” and shall avoid the appearance that they are violating the law or the standards of ethical conduct. 5 C.F.R. § 2635.101.

#### **Department of the Air Force Investigation and Report**

Col. Larry Chodzko, Commander, Space Warfare Center, appointed James P. Blanton, Jr., Deputy Director, Space Warfare Center, to investigate Ms. Zelenak’s allegations. Mr. Blanton conducted the investigation from December 8, 2005, until February 2006, at Schriever Air Force Base and Peterson Air Force Base in Colorado and Kirtland Air Force Base

in New Mexico. He interviewed Ms. Zelenak, Col. Oholendt, Col. Rhodes, Lt. Col. Cassady, and numerous other witnesses, and he reviewed pertinent documentation. Mr. Blanton concluded that the investigation did not substantiate Ms. Zelenak's allegations.

According to the agency report, Col. Oholendt testified that, in 2003, he presented concepts for applied technology development to Col. Rhodes. Col. Oholendt stated that, after the presentation, Col. Rhodes informed him that his offering might be in violation of post-government service employment activities. According to Col. Oholendt, he immediately contacted the Staff Judge Advocate, 50 SW/JA, telephonically and by letter for a legal opinion. In a letter of January 9, 2004, the Staff Judge Advocate rendered the opinion that Col. Oholendt's activities did not violate 18 U.S.C. § 207. The letter states, in pertinent part,

From our communications (your request and our telephone conversation), it is my understanding that you developed the ASPEN concept while on active duty. You stated that the concept did not involve any specific party (such as a DOD Contractor) during your time you were both a government employee and working on the concept. Therefore, it is my opinion that you would not violate 18 USC 207 by representing a DOD contractor attempting to influence the Government to pursue the idea.

Col. Oholendt advised that he provided a copy of the Staff Judge Advocate's opinion letter to Col. Rhodes, and Col. Rhodes was satisfied that his actions were permissible.

Col. Oholendt also presented the investigator with a legal memorandum from the law firm Cohen Mohr that addresses the issue. In the memorandum, Cohen Mohr concluded that Razorview, ASPEN, and ASPEN Plus are not the same particular matters involving specific parties. The memorandum asserts that ASPEN never constituted a "particular matter involving a specific party" under 18 U.S.C. § 207 because "no acquisition was ever contemplated or formulated in connection with implementing ASPEN."

The investigation also did not substantiate Ms. Zelenak's allegations concerning Lt. Col. Cassady. Lt. Col. Cassady testified that, when he worked for the Space Battlelab as a federal employee, his involvement in Razorview was limited to obtaining operational performance data to support development of advanced operational concepts at the program level. He stated that he was not directly involved in evaluating the Razorview concept nor in awarding the contract to Electro Optic Systems. Lt. Col. Cassady advised that he was hired by Multimax in December 2005 to develop an Advanced Concept Technology Demonstration (ACTD) proposal for U.S. Northern Command. He explained that the ACTD proposal, which involved a missile defense system comprised of electro optical sensors, was substantially different from Razorview. He described the difference between the two programs in the following terms:

The Razorview system searched for known objects from the Space Track Catalog with elements sets recently updated from radar. The proposed system for USNORTHCOM required larger optics, larger laser capability to search for objects with real-time cueing and limited quality track data, simultaneous tracking and

with real-time cueing and limited quality track data, simultaneous tracking and characterization of multiple objects, and provide [sic] discrimination data.

Lt. Col. Cassady also explained that, as a Multimax employee, his contact with the Battlelab was strictly limited to obtaining technical information for U.S. Northern Command, and he was not involved in any discussions with the Battlelab about the funding of projects. Lt. Col. Cassady also presented the investigator with an opinion letter from the Office of the Staff Judge Advocate indicating that he was not in violation of 18 U.S.C. § 207 and a copy of the legal memorandum from the Cohen Mohr law firm arguing that ASPEN does not constitute "a particular matter involving a specific party." Based on the foregoing, the agency concluded that Lt. Col. Cassady's activities were not in violation of post-employment prohibitions.

The investigation also failed to uncover any wrongdoing on behalf of Col. Rhodes, who served as the Space Battlelab Commander when Ms. Zelenak raised these allegations, but has since retired. Col. Rhodes testified that, upon receiving an e-mail from Ms. Zelenak raising ethical concerns about Col. Oholendt's behavior, he immediately directed an investigation. Chris Sanders, SWC TSSOS Program Manager, conducted the investigation, and reported back to Col. Rhodes that he did not substantiate the allegations. Col. Rhodes also related that, because Multimax provided technical support to the Battlelab, he decided that he would no longer award demonstrations to Multimax to avoid showing them favoritism.

The agency report concludes that the investigation did not uncover any wrongdoing by Col. Oholendt, Lt. Col. Cassady, Col. Rhodes or any other current or former Space Battlelab employees. The report also notes that the ASPEN proposal and follow-on proposals were never approved, and no government funds were expended on these proposals.

### **The Whistleblower's Comments**

Ms. Zelenak commented on the agency report. She challenged the validity of Col. Rhodes's claim that he did not select Multimax for any Battlelab demonstrations. She asserted that, in fact, Multimax was selected to perform two near space demonstrations entitled Combat Skysat and Gunsmoke.

Ms. Zelenak also claimed that the agency investigator should have examined whether there was any relationship between ASPEN and the Air Force Fence, an on-going program of record. She maintained that, in fact, ASPEN was designed to replace the Air Force Fence. Ms. Zelenak stated that the acquisition announcement for the Air Force Fence was published in March 2005, and, therefore, the program was in existence at a time which "overlaps the period of allegations of violations involving specific matters associated with Ron Oholendt and Alan Cassady." She argued that, consequently, ASPEN may in fact constitute a particular matter involving specific parties under 18 U.S.C. § 207, even though the agency did not reach this conclusion.

Ms. Zelenak asserted that the agency should not have assigned Mr. Blanton to conduct the investigation due to a conflict of interest. The agency report states that Mr. Blanton

forwarded Ms. Zelenak's concern regarding a potential conflict of interest to an attorney at headquarters, AFSPC/JA, and to the Office of the Inspector General. Because these organizations did not find the existence of an operational conflict of interest, Mr. Blanton proceeded with the investigation.

Ms. Zelenak also raised several new questions and issues in her comments, which fall outside of the scope of the present investigation.

### **Conclusion**

Based on the representations made in the agency report and Ms. Zelenak's comments, I have determined that the agency report contains all of the information required by statute and the findings of the agency head appear to be reasonable.