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[corrected]
March 26, 2008

Attorney General Michael B. Mukasey
U. S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001

Dear Attorney General Mukasey:

This letter concerns prosecutorial discretion and violations of law by the National Academy of Sciences that were brought to your attention in my earlier filing.[1]

The National Academy has a dual nature, as both a powerful government-chartered institution and as a self-governing scientific institution. After the original violations of law became known, and for many years thereafter, leading scientists preferred, and attempted to use, the self-correction processes of science itself (rather than to seek law enforcement assistance from the Department of Justice). These options were pursued across many routes and three Presidents of the National Academy of Sciences.

The purpose of this letter is to attest that the self-correction mechanisms have failed and have been exhausted.

I will illustrate the failure and the case for Department of Justice prosecution by contrasting the Department of Justice's known *Harvard* standard ("*impartial and unbiased scientific advice, both in fact and in appearance*") with three examples from the rules published by the National Academy of Sciences on its Website.[2] These rules are a remarkable compilation of high-minded language and, then, stunning evasions and lower standards.

1.) Permitting Conflicts of Interest and the Pursuit of Competitive Advantages by Insiders

A.) Original Violation

In the Luce et al. project, the National Academy recommended (to eight major funders of social science and other readers) a bold restructuring and decade-long reallocation of funds to change the future of all social science disciplines. The project was permeated by conflicts of interest (which are illegal under federal law)[3] and strategic behavior by insiders to secure competitive advantages for future financing. Detailed budgets, apparently totaling more than a hundred million dollars across the next 10+ years, were prepared and transmitted by insiders to secure priority "leading edge" funding for new or expanded programs from which they could benefit.

B.) The National Academy's Response

The National Academy responded by a tortured definition of "conflict of interest" to assert legal immunity for this type of misconduct: **"The term "conflict of interest" applies only to *current interests*... [not] to possible interests that may arise in the future...." Specifically: "[A] formal ... application [that one could make in the future] is not a current interest."** ("Policy on ... p. 4).[4]

This is egregious. And alarmingly defiant behavior by a powerful and government-chartered organization whose senior officials and legal counsel know that they have been complicit in serious and demoralizing violations of law and the expectations of the scientific community.[5]

2.) Hiding Known Bias and Conflicts of Interest from the Public and Federal Agencies

A.) Original Violation

Although the Luce et al. project was permeated by financial (and status) self-interest the National Academy did not disclose any conflicts in its Report. Later, senior officials of the National Academy also decided not to notify its government contractors of political and scientific biases and deficiencies identified by the Carnegie Commission or these conflicts of interest. (And, because of the nature and extent of the conflicts of interest, the senior officials knew that such disclosure was an ethical necessity and that it would have had material consequences - e.g., that the disclosure would have made the National Academy's recommendations uninterpretable and they would not have been paid for the Report.)

B.) The National Academy's Response

The National Academy has issued new rules that make matters worse. In its new rules it specifically prohibits itself from disclosing known conflicts of

interest (even under its tortured and limited definition) to the public and government contractors in its Reports. The public and the press also are denied access to the conflict of interest declarations that study group members are obligated to file (i.e., and thus the press may not obtain and monitor these filings for accuracy and completeness). The National Academy also exempts itself from honoring relevant legal duties and ethical obligations, i.e., taking any initiatives to notify its government contractors of known conflicts of interest - which may [or may not] be disclosed to government contractors only when the head of an agency initiates (i.e., and knows to initiate) a specific request.

The new rules: "[S]pecific conflict of interest information . . . will be held in confidence by the institution. . . . {S]uch information may be released, on a privileged basis, to the head of an agency sponsoring the program activity in which a committee is engaged, if that official so requests in writing and the Chair of the National Research Council concurs." (p. 7).

3.) Abuse of Secrecy to Hide Real Reasons and Illegitimate Bias

A.) Original Violation

To scientists, transparency and accountability are essential to the legitimacy of *scientific* institutions. But in the Luce et al. case the National Academy became infamous for making its real decisions behind closed doors and refusing to release any information about how and why important decisions were made. A wide range of discussions and leaks (outlined in my earlier filing) have established that many biasing considerations and impermissible arguments (e.g., discussions of political strategy and fear of Republican zealots) were unfair to individuals and shaped the national recommendations that outsiders were meant to understand as *scientific* recommendations. It also has become distressingly clear that the National Academy's competitive rankings and reallocation of funds to establish the shape of the new, en masse restructuring of the social sciences were not made by rigorous scientific methods that could withstand critical scientific scrutiny - i.e., and that the National Academy and its senior officials were abusing a right to administrative privacy.[6]

B.) The National Academy's Response

The National Academy actually reinforced secrecy and strengthened rules against disclosure. Its new rules forbid itself from disclosing information to the public or contracting agencies or the scientific community about how or why it really makes (or kills) recommendations of national importance or competitive funding advantages.[7]

Specifically: "The committee deliberates in meetings closed to the public . . . The public is provided with brief summaries of these meetings that include the

list of committee members present. All analyses . . . remain confidential" ("Our Study Process . . .," p. 4).

Following this section, the National Academy outlines a system of independent reviewers of draft reports (whose reviews will not be disclosed to the public or contracting agencies) and adjudication of resulting disputes. For current purposes, I will just say that this continues to be an unacceptable "trust us" shell game, especially since three Presidents of the National Academy have been personally complicit in political neutering and illegitimately restructuring the social sciences and the civic role of our universities. No organization's leaders and internal politics should be trusted on the basis of the high-minded assurances in its code of ethics. I believe the non-responses documented in this letter - concerning its serious breakdowns of integrity and credibility, and what is emerging as one of the most damaging episodes and scandals in the history of American science - make my point.[8]

An Additional Concern

- Ironically, one of the lessons that I draw (as a social scientist) is that many of the efforts to use rational persuasion and the self-correcting mechanisms of science have made matters worse. Thus, may I express my concern that the National Academy's new rules may be interpreted by the courts as providing "due notice" that, in its future performance under government contracts, it only is obligated to follow its own rules? The federal government's/Department of Justice's standard in the *Harvard* case may be unenforceable.

Yours sincerely,

Lloyd Etheredge

(Dr.) Lloyd S. Etheredge

Enclosures:

- The National Academies, "Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports." May 12, 2003. Published online at www.nas.edu
- The National Academies, "Our Study Process" No date. Published online at www.nas.edu

1. Letter to Acting Attorney General Peter D. Keisler on September 24, 2007 and enclosure: "Breach of Contract, Conspiracy, Fraud, and Coverups Affecting NSF Programs." A reference copy with appendixes is online at www.policyscience.net. Also: a followup letter addressed to you on March 12, 2008.

2. National Academy of Sciences, "Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports" May 12, 2003 (attached) and related

amendments and forms online at http://www.nationalacademies.org/coi/index.html. Also "Our Study Process" (attached) and online at http://www.nationalacademies.org/studycommitteprocess.pdf.

3. The intent of current federal law is compactly described in "Policy on Committee Composition . . ." p. 2: The 1997 Federal Advisory Committee Act, 5 U.S.C. App. Subsection 15(b) (1) requires the National Academy to "make its best efforts to ensure that . . . no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed . . ."

4. The new definition may provide a useful insight into the internal politics of the Academy: Its new definition gives ethical and legal permission for powerful Academy insiders to operate as interest group representatives and use the prestige of the National Academy to shape national and agency budgets on behalf of themselves and their fields, which I believe some of them (e.g., Duncan Luce and his friends) still wish to do.

5. At this point I believe that further efforts to rewrite these rules would be futile. And even if demanded by the Department of Justice only would effect, at best, a cosmetic change.

6. The Academy also refused to release the detailed budget recommendations that it prepared and endorsed; critical communications from its own members and other scientists received after the Report was released; and related records from the input to its later oversight processes and meetings.

7. The scientific community operates with the null hypothesis. By this standard, there is no direct evidence to support the conclusion that unbiased and impartial decisions have been made. The best appearance that the National Academy's method can achieve is "Maybe."

I do not want to be misunderstood: many National Academy Reports probably are reliable - i.e., those that do not involve future allocations or competitive advantages for money and status; or that do not affect the rate of innovation or competitive scientific challenges to Establishment paradigms; or that do not involve issues of current or potential political or societal controversy or change; or that do not involve actual or implied criticism of any agency of the Executive branch. There also may be limitations in many areas of social, economic, and foreign policy where the internal politics of the National Academy's election process precludes memberships by a critical mass of specialists in many areas in which government agencies seek advice. (International politics is one such area: national capacities for rigorous quantitative studies of world politics, and other research beyond the water's edge, were damaged by the National Academy's original endorsing and committed stonewalling in the Luce case, although perhaps negligently and inadvertently, because there were no insiders with these interests.)

8. This independent review process ("Our Study Process . . .", p. 4) has its own loopholes. Independent reviewers are assigned to evaluate "that the findings are supported by the scientific evidence and arguments presented" and they do not review and evaluate the scientific basis for rejecting the recommendations that are not included. This also means that if, in the future, 600+ scientists trust the National Academy and discuss the research programs they want to pursue (e.g. the Luce et al. project) the National Academy still provides no independent review of the due process, objectivity, political independence/courage, and fairness of its competitive rankings - i.e., since most of the (disfavored) research programs are not mentioned. And - in light of the earlier breakdowns - this means that the National Academy has been unwilling to establish mechanisms to deter the egregiously unfair behavior and breakdowns of scientific integrity that its senior officials covered-up (and may have approved) in the Luce et al. case.