

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

October 15, 2013

Justin V. Shur
Molo Lamken LLP
600 New Hampshire Ave, N.W.
Washington, D.C. 20037

Dear Mr. Shur:

The Committee is in receipt of your October 4, 2013, letter¹ sent on behalf of your client, Mr. Robert Brenner, responding to the Committee's September 9, 2013, letter.² While the Committee is pleased that your client has decided to cooperate with our inquiry, the response was incomplete. As you are aware, details surrounding the fraudulent conduct of John C. Beale were released on September 27, 2013, following his guilty plea to government theft of \$886,186, and criminal forfeiture of \$507,207.³ Moreover, the recent House Committee on Oversight and Government Reform hearing held on October 1, 2013,⁴ revealed additional facts that warrant further examination into your client's relationship with John C. Beale. Accordingly, this letter expands on the Committee's initial inquiry and asks for clarification on your client's incomplete responses. Please instruct your client to respond truthfully to each itemized question with a corresponding itemized response.

1. In response to question 2, you indicated that the first time Mr. Beale represented to Mr. Brenner that he was working for the Central Intelligence Agency (CIA) was at some point after 2011.⁵ However, the EPA Office of Inspector General (OIG) has indicated that Beale first assumed this false persona in 1994, when he was under Brenner's direct supervision.
 - a. Accordingly, please indicate when Brenner first heard the "rumor" that Beale was a CIA agent. Please indicate the source of the "rumor."
 - b. During the period Brenner supervised Beale in the 1990's, did Beale ever have unexplained absences from work? Please explain.

¹ Letter from Mr. Justin Shur, Counsel to Mr. Robert Brenner, to Kristina Moore, Senior Counsel for Oversight, S. Comm. on Env't. & Public Works (Oct. 4, 2013) [hereinafter Letter from Mr. Shur].

² Letter from the Hon. David Vitter, Ranking Member, S. Comm. on Env't. & Public Works, to Mr. Robert Brenner (Sept. 9, 2013) [hereinafter Letter from Sen. Vitter].

³ *United States v. Beale*, No. 1:13-cr-00247-ESH (D. D.C. filed Aug. 23, 1987); see also Press Release, U.S. Dep't of Justice, *Former EPA Senior Policy Advisor Pleads Guilty to Theft in Scheme that Cost Government Nearly \$900,000* (Sept. 27, 2013), <http://www.justice.gov/usao/dc/news/2013/sep/13-339.html>.

⁴ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013).

⁵ Letter from Mr. Shur, *supra* note 1.

- c. Did Brenner ever question Beale about the “rumors” that he was a CIA agent before Beale represented to Brenner in 2001 that he was part of the clandestine service?
 - d. At exactly what period in their friendship did Beale first represent to Brenner that he served in Vietnam? Did your client ever suspect that this was not the case? Please explain.
2. In response to question 3, you state that Brenner supervised Beale from in or around 1988 through in or around 2000 and for a period of time in 2001.⁶ Please provide the dates and corresponding employee titles held by Brenner and Beale during this period of time.
3. In response to question 4, you failed to provide the number of employees that worked with Mr. Brenner in the Office of Policy, Analysis and Review (OPAR) for the years of 1989 to 2000.⁷ Accordingly, I reiterate my request that Mr. Brenner provide the number of employees he worked with during this period of time. This should reflect the number of individuals serving with Brenner at one time; as well as the total number of individuals who Brenner worked with while at OPAR.
4. In response to question 5, you provided a list of assignments that Beale performed, yet you declined to list Brenner’s own work product, pursuant to question 4.⁸ It is not clear at all to the Committee why your client can recall Beale’s assignments, but not his own. Accordingly, I reiterate my request that Brenner provide a list of all assignments in which he substantively participated in – either as a lead or contributing staff member - from 1989 through his retirement in 2011.
5. In response to question 6, you indicated that Brenner had not taken steps to preserve all communications and correspondence between himself and Beale since 1990.⁹ Please instruct Mr. Brenner to preserve all communications immediately, and list any action taken by Brenner, or someone on his behalf, to destroy any records that would be responsive.
6. In response to question 7, you indicated that Beale informed Brenner about an investigation into his activities by the OIG in Fall of 2012.¹⁰ However, the OIG did not begin to investigate Beale until February 2013.¹¹ Accordingly, please recount in as much detail as possible what Beale said to Brenner about the investigation in the Fall of 2012. This response should include who Beale indicated was investigating him, why he was being investigated, and why he was informing Brenner of the investigation.

⁶ Letter from Mr. Shur, *supra* note 1.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Secret Agent Man? Oversight of EPA’s IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov’t Reform, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan, Asst. Inspector Gen. for Investigations) [hereinafter Statement of Patrick Sullivan].*

7. In question 8, the Committee asked for a list of the individuals at EPA with whom Brenner discussed the Beale investigation.¹² Your response indicated that Brenner had discussions with *several* former and current EPA employees, but otherwise failed to identify who these individuals were.¹³ Please list the individuals currently or formerly employed by the EPA with whom Brenner has spoken to about the Beale investigation. Please describe the nature of these conversations; the approximate date of each of these conversations; and who initiated them.

8. According to the EPA OIG, Brenner recommended a retention incentive bonus for Beale on two occasions – once in 1991 and again in 2000.¹⁴ The bonus was only approved for three years at a time, however, Beale continued to receive the 1991 bonus through 2000 and the 2000 bonus through February 2013.¹⁵
 - a. Was Brenner ever made aware that Beale’s 1991 bonus did not end, per its authorization, in 1994? If so, please explain how and when Brenner was made aware that Beale continued to receive the bonus beyond its authorized time frame.
 - b. Was Brenner ever made aware that Beale’s 2000 bonus did not end, as authorized, in 2003? If so, please explain how and when Brenner was made aware that Beale continued to receive the bonus beyond its authorized time frame.
 - c. In Brenner’s position as Director of the Office of Policy, Analysis and Review, was he responsible for reviewing the salaries of the individuals under his supervision? As Beale’s supervisor from 1988 to 2001, was Brenner able to review Beale’s salary? Did Brenner review Beale’s salary?
 - d. As Beale’s supervisor from 1988 to 2001, was Brenner aware of his aggregate annual salary? Did he ever have knowledge that Beale was receiving a 25% bonus from 1994 through 2000?
 - e. What events prompted Brenner to resubmit Beale’s bonus request in 2000? Did Brenner discuss the bonus with Beale prior to submitting his request in 2000? Did Brenner know that the earlier retention incentive bonus had expired just prior to his second submission?
 - f. Please indicate the specific justification that supported your 2000 request that Beale receive a retention incentive bonus.
 - g. In Brenner’s tenure at EPA, how many times did he authorize a retention incentive bonus for the employees he supervised and what are the names of each of these employees?
 - h. Over the course of 33 years at EPA, has Brenner ever received a retention incentive bonus? If so, when did Brenner receive such bonuses and who recommended him to receive the bonus?

¹² Letter from Sen. Vitter, *supra* note 2.

¹³ Letter from Mr. Shur, *supra* note 1.

¹⁴ Statement of Patrick Sullivan, *supra* note 11.

¹⁵ *Id.*

9. In 2004, at which point Brenner was not Beale's supervisor, he nominated Beale for a Superior Accomplishment Recognition Award, which was accompanied by a \$2,250 payment.¹⁶
 - a. Did Beale ever suggest that your client nominate him for the award?
 - b. Please identify Beale's specific accomplishments that warranted this nomination.
 - c. Was Brenner aware of the payment that accompanied the award?
 - d. Had your client nominated any other EPA employee for this award?

10. In 2005, at which point Brenner was not Beale's supervisor, he nominated Beale for the Meritorious Executive Rank Award, a category of the Presidential Rank Award, which carried a \$28,201 payment.¹⁷
 - a. Did Beale ever suggest that your client nominate him for this accolade?
 - b. Please identify Beale's specific accomplishments that warranted this nomination.
 - c. Was Brenner aware of the payment that accompanied the award?
 - d. Had your client nominated any other EPA employee for this award?

11. In your October 4, 2013, response, you indicated that from 1988 through 2000, and for a period of time in 2001, Brenner was responsible for approving Beale's time and attendance sheets, as well as travel and other related requests, but that he delegated these responsibilities to administrative staff.¹⁸
 - a. Did Brenner ever give his administrative staff instructions specific to Beale? If so, what were the instructions?
 - b. Did Brenner ever review the decisions related to time and attendance and travel vouchers made by his administrative staff? Please explain the manner in which such review was conducted.
 - c. Did Brenner ever approve Beale's lodging accommodations? Did these accommodations ever exceed the government per diem?
 - d. Did anyone ever share with Brenner any concerns they had about Beale's time and attendance, travel vouchers, or his claim to be a CIA agent? If so, please detail the concerns, who raised them and when they were raised.

12. In August 2000, just two months after Beale had been authorized for the incentive retention bonus, your client recommended Beale for a promotion to Deputy Assistant Administrator for the Office of Air and Radiation, the same title held by your client at that time.¹⁹ Along with the promotion, Beale was given Senior Leader status, which elevated his base salary to approximately \$180,000.²⁰
 - a. Did Brenner discuss the promotion with Beale prior to making his recommendation?
 - b. Please identify Beale's specific accomplishments that warranted this promotion.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Letter from Mr. Shur, *supra* note 1.

¹⁹ Statement of Patrick Sullivan, *supra* note 11.

²⁰ *Id.*

13. While your letter implies that Brenner did not supervise Beale after 2001, did your client continue to approve or make recommendations to influence any of Beale's administrative submissions? Administrative submissions would include Beale's time and attendance, travel vouchers, airfare, and pay. If so, please describe the items that your client continued to facilitate on Beale's behalf.
14. When Brenner supervised Beale from 1988 through 2001, did Beale represent to Brenner he had a bad back?
 - a. If so, what actions did your client take to verify this claim?
 - b. While at EPA, did your client ever approve travel vouchers for Beale's first class airfare?
 - c. In the time your client spent with Beale personally and professionally, did he ever see Beale display the symptoms of a bad back? If so, please describe.
15. When Brenner supervised Beale from 1988 through 2001, did Beale represent to your client that he had malaria?
 - a. If so, what actions did your client take to verify this claim?
 - b. Was Malaria listed on Beale's Military Service Record (DD Form 214)?
 - c. Did your client ever verify that Beale did in fact have a DD – 214?
 - d. In the time he spent with Beale personally and professionally, did he ever see Beale display the symptoms of malaria? If so, please describe when and where these instances occurred.
16. In Brenner's testimony before the House Committee on Oversight and Government Reform, your client testified that he did in fact receive an \$8,000 discount on a new Mercedes Benz, a discount that was brokered by Patrick M. Raher (Raher), a partner at the law firm Hogan Lovells LLP.²¹ Moreover, he indicated that he knew Raher from the time Raher served on EPA's Clean Air Act Advisory Committee (CAAAC).²²
 - a. Please provide an accounting of the exact nature of Brenner's relationship with Raher. This account should include when Brenner first became acquainted with him, level of interaction with him while he was a member of the CAAAC, and after he left Federal service. Please also include any projects Brenner on worked with Raher.
17. In the House Committee on Oversight and Government Reform hearing, it was revealed that not only did your client own a vacation property with Beale, which he sold back to Beale for a 300% profit on or around 1999; but that that Beale is currently residing as a guest in Brenner's residence.²³ Public records also indicate that Beale lived with Brenner at his Arlington, Virginia residence in 1995.²⁴

²¹ *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Mr. Robert Brenner).

²² *Id.*

²³ *Id.*

²⁴ Search for Property Records of John C. Beale, LEXIS, <https://advance.lexis.com/>; Search for Property Records of Robert Brenner, LEXIS, <https://advance.lexis.com/>.

- a. Please list the month and year for every occasion, lasting two weeks or more, in which Beale lived with your client.
 - b. Did Beale ever pay rent to Brenner on these occasions?
 - c. Did Beale and Brenner jointly own any other assets? If so, please specify each asset currently or previously owned by your client and Beale, including the period of ownership.
18. The EPA OIG reported that in September 2011, a joint retirement party was held on the Potomac River on the "Celebrity Yacht" for Beale, Brenner, and a third individual.²⁵
- a. Who was the third individual?
 - b. Who paid for the retirement party?
 - c. Did your client believe that Beale was retiring from the agency at this time?
 - d. What representations had Beale made to your client about his future retirement plans?
19. Please provide the Committee with all documents and correspondence in your client's possession that refers or relates to the following items:
- a. Beale's employment at EPA, including but not limited to bonuses paid to him, work assignments, and any documents that refer or relate to Brenner's supervisory responsibility over Beale;
 - b. Brenner's work at the EPA;
 - c. Any property jointly owned at any time by Beale and Brenner; or
 - d. Your client's purchase of a Mercedes Benz in 2010.

Please ensure that your client provides a detailed response to these questions no later than October 29, 2013. If you have any questions, please contact Kristina Moore, Senior Counsel for Oversight, at 202-224-6176.

Sincerely,



David Vitter
Ranking Member
Environment and Public Works

²⁵ Statement of Patrick Sullivan, *supra* note 11.