


From: John Crane johnrcrane@icloud.com 
Subject: Demand for Positive or Negative 45-Day "Substantial Likelihood" Determination (DI-18-4045) In Compliance With Statute
Date: 10 December 2018 at 08:52
To: HKerner@osc.gov
Cc: eepstein@osc.gov, awagner@osc.gov, llopez@osc.gov, Ullman, Susan sullman@osc.gov, dodarog@gao.gov, BerrickC@gao.gov, farrellb@gao.gov, Gary A Bianchi bianchig@gao.gov, ayersj@gao.gov, emory.rounds@oge.gov, mark.lambert@opm.gov, jessie.liu@usdoj.gov
Bcc: John Crane johnrcrane@icloud.com



Mr. Kerner,

Attached is my follow-up demand for you to make a positive or negative **45-day** "substantial likelihood" determination, as per statute, on OSC-12 Whistleblower Disclosure (**DI-18-4945**) disclosing information concerning wrongdoing occurring within the Office of the U.S. Special Counsel (OSC).

I have waited over **140 days** for you to fulfill your statutory obligation in regard to OSC-12 Whistleblower Disclosure (**DI-18-4945**) submitted on 20 July 2018.

As you are aware, the **45-day** "substantial likelihood" determination is to ensure the evidence base (witness statements and documentation) is protected while investigators substantiate or non-substantiate credible allegations of wrongdoing to the U.S. Special Counsel by a federal whistleblower.

I look forward to your response.

John

See attachments:



OSC-12 Request
for 45...ion.pdf



Enclosure 1 -
OSC 12...18.pdf



Enclosure 2 -
OSC 12...15.pdf




Enclosure 3 -
OSC L...18 .pdf



Enclosure 4 -
Crane...18.pdf




Enclosure 5 -
Leavitt...18.pdf

December 07, 2018

John R. Crane

P.O. Box 7185

McLean, VA 22106

202-372-5321

Johnrcrane@me.com

Honorable Henry J. Kerner

U.S. Office of Special Counsel

1730 M Street, NW #300

Washington, DC 20036

**SUBJECT: OSC-12 WHISTLEBLOWER DISCLOSURE OF CRIMINAL
WRONGDOING BY THE LEADERSHIP OF THE U.S. OFFICE OF SPECIAL
COUNSEL (DI-18-4945)**

Mr. Kerner,

1. I have waited over 140 days for you to fulfill your statutory obligation and make a positive or negative 45-day “substantial likelihood” finding on OSC-12 Whistleblower Disclosure (**DI-18-4945**) submitted on 20 July 2018, by a federal whistleblower reflecting information I firmly believe evidences systemic wrongdoing occurring within the Office of the U.S. Special Counsel (OSC). [See: enclosure (1).]
2. As you well know, the inability/reluctance of the U.S. Special Counsel to hold federal personnel within the Office of the U.S. Special Counsel (OSC), accountable to statutory legal standards is the basis of Whistleblower Disclosure (**DI-18-4945**) [See: 5 USC § 1213(a)(1)(A).]
3. The failure to properly perform the statutory 45-day “substantial likelihood” determination process, within 45 days of receipt of a whistleblower disclosure, once again, points to the critical loss of independence and objectivity required within the OSC to properly safeguard the merit system and protect federal whistleblowers. [See: 5 USC § 1213(b).]
4. On 15 August 2018, I met with your Principle Deputy Special Counsel, **Tristan Leavitt**, after he reached out to me, to discuss the failure of OSC to properly demand investigation into OSC-12 Whistleblower Disclosure (**DI-15-2333**) submitted on 9 February 2015, under the supervision of the OSC leadership team consisting of: **Carolyn N. Lerner, Mark Cohen, Adam Miles, Anne Wagner, and Louis Lopez**. [See: enclosure 2.]

5. Both OSC-12 Whistleblower Disclosure (**DI-15-2333**), and my letter to you of 9 July 2018, that demonstrate OSC misconduct in regard to OSC-12 Whistleblower Disclosure (**DI-15-2333**), and the implications of the OSC misconduct on statutory requirements to safeguard the merit system and protect federal whistleblowers were discussed with Tristan Leavitt. [See: enclosure 3].]

6. As you well know, Associate Special Counsel General Law Division (ASC GLD) Anne Wagner, as stated in my letter to you of August 16, 2018, delayed action on Whistleblower Disclosure (**DI-15-2333**) for 403 days before making a positive or negative 45-day “substantial likelihood” determination on a credible report of agency misconduct [Department of Defense (DoD)]. [See: enclosure 4).]

According to statute, the determination triggers mandatory agency head notification and demand by OSC for a formal 60-day agency head investigation. [See: 5 USC § 1213 (c)(1).]

OSC’s refusal to comply with statute included:

- Failure to immediately notify the agency head (**Charles T. Hagel**) of a positive OSC “substantial likelihood” determination on wrongdoing occurring within the Department of Defense (DoD) [See: 5 USC § 1213(c)(1)]
- Failure to preserve the evidentiary base (witness statements/documentation) severely degrading the overall quality of the agency head investigation [See: 5 USC § 1213(b)]
- Violation of the Whistleblower Protection Act (WPA) of 1989, as amended, insulting the merit system, and denying a federal whistleblower the right to present information of agency wrongdoing with the expectation of OSC compliance with law, rule, or regulation [See: 5 USC § 2302(b)]
- Violation of law, rule and regulation that govern the U.S. Office of Special Counsel to establish the federal whistleblower safe channel [See: 5 USC Part II, Chapter 12, Subchapter II: Office of Special Counsel]

7. Once again, Associate Special Counsel, **Anne Wagner**, in an arbitrary and capricious abuse of authority, has failed to comply with statute and make a 45-day positive or negative “substantial likelihood” determination on information in OSC-12 Whistleblower Disclosure (**DI-18-4995**), reflecting systemic misconduct occurring within the Office of the U.S. Special Counsel (OSC). [See: USC § 1213(b)]

8. Failure to act by Associate Special Counsel, Ann Wagner, on OSC-12 Whistleblower Disclosure (**DI-18-4945**) is clear and convincing evidence that continuing to allow Associate Special Counsel, **Ann Wagner**, to serve as an “independent and objective”

trier of fact is, not only a conflict of interest, but also the continuation of an effort to mask systemic OSC internal misconduct brought to your attention by numerous other federal whistleblowers.

9. I demand that you perform the duties of your office, comply with law, rule and regulation, and that you make a positive or negative 45-day “substantial likelihood” determination on OSC-12 Whistleblower Disclosure (**DI-18-4945**), that has since been supplemented at your request, with additional information regarding systemic wrongdoing occurring within the Office of the U.S. Special Counsel (OSC). [See: enclosure 5.]

V/r,

John R. Crane

John R. Crane

E-Filing form printed on 7/23/2018 9:10 AM

Form12 7/20/2018

Status Submitted

Original Entry Date 7/20/2018 4:13 PM

Last Modified 7/23/2018 9:01 AM

Case Number

User Information

John Crane

johnrcrane@me.com

A summary of the data you entered:

Name of the person seeking OSC action ("Complainant"): prefix
Mr.

Name of the person seeking OSC action ("Complainant"): First name
John

Name of the person seeking OSC action ("Complainant"): Middle name
Rudel

Name of the person seeking OSC action ("Complainant"): Last name
Crane

Name of the person seeking OSC action ("Complainant"): Suffix

Status: Other (For Other, please specify)

Contact Information: (Home or mailing address): Street
P.O. Box 7185

Contact Information: (Home or mailing address): Apt No

Contact Information: (Home or mailing address): City
McLean

Contact Information: (Home or mailing address): State
Virginia

Contact Information: (Home or mailing address): Zipcode
22106

Contact Information: (Home or mailing address): Country

UNITED STATES

Phone Number: International Number

False

Phone Number: Country Code

00000

Phone numbers: Home**Phone numbers: Home Ext****Phone numbers: Work****Phone numbers: Work Ext****Phone numbers: Cell**

(202) 372-5321

Phone numbers: Cell Ext**Phone numbers: Fax****Phone numbers: Fax Ext****Phone numbers: Other****Phone numbers: Other Ext****Email: Email**

johnrcrane@me.com

Title

Former SES DoD IG

Series

AA-0000

Grade

SES

Agency: Name

Department of Defense

Agency: Component Name

Office of the Inspector General

Agency: Street

4800 Mark Center Drive

Agency: Apt No

Agency: City
Alexandria

Agency: State
Virginia

Agency: Zipcode
22350-1500

Agency: Country
UNITED STATES

Outreach: For Other, please describe:

GAO-18-400 Actions Needed to Improve Processing of Prohibited Personnel Practice and Whistleblower Disclosure Cases

Outreach: Date (approximate):
6/14/2018

Are you filling as an attorney of the Complainant?
False

Attorney: prefix

Attorney: First name

Attorney: Middle name

Attorney: Last name

Attorney: Suffix

Attorney: Street

Attorney: Apt No

Attorney: City

Attorney: State

Attorney: Zipcode

Attorney: Country

Attorney Phone numbers: Work

Attorney Phone numbers: Work Ext

Attorney Phone numbers: Cell

Attorney Phone numbers: Cell Ext

Attorney Phone numbers: Fax

Attorney Phone numbers: Fax Ext

Attorney Phone numbers: Other

Attorney Phone numbers: Other Ext

Attorney Email: Email

Other sources(s) (please explain):

Please identify the U.S. government department or agency involved in your disclosure
Office of U.S. Special Counsel

Please identify the organizational unit of the department or agency involved
Disclosure Unit

Address of the organizational unit
1730 M Street, N.w., Suite 218, Washington, D.C. 20036-3600

Please identify the type of agency wrong doing that you are alleging
Violation of law, rule or regulation

Violation of law, rule or regulation (please specify):
law, rule or regulation

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please identify the type of agency wrong doing that you are alleging

Please describe the agency wrong doing that you are disclosing
I disclose, via Whistleblower safe channel, what I firmly believe is a violation of law, rule, or regulation [5 U.S.C. § 1213], occurring with full knowledge of the U.S. Special Counsel, occurring within the U.S. Special Counsel's Disclosure Unit (DU) , supervised by Director, Catherine A. McMullen and former Deputy Director, Karen Gorman.

As a result of inability/reluctance to comply with federal law, the U.S. Special Counsel's Disclosure Unit (DU) is subverting the Whistleblower Protection Act (WPA), insulting the Federal Merit System, and denying individual due-process rights.

By intentionally subverting reports of credible information reflecting agency wrongdoing (45-day "substantial likelihood" FINDINGS) and omitting agency head notification; the OSC directly impacts the ability of the agency head's Inspector General (IG) to properly substantiate or non-substantiate allegations of wrongdoing and make legitimate "substantial likelihood" DETERMINATIONS.

In an effort to prevent agency head notification of wrongdoing and creating legitimate investigative record, the rights of every Whistleblower using the OSC as a safe channel to report wrongdoing has been fatally compromised.

Nothing short of immediate Chief Executive notification and request for full criminal investigation into the systemic failure of the U.S. Office of Special Counsel under the leadership of U.S. Special Counsel, Carolyn N. Lerner; Principle Deputy Special Counsel, Mark Cohen; Acting U.S. Special Counsel, Adam Miles; Chief of Disclosure Unit (DU), Catherine A. McMullen; former Deputy Chief of Disclosure Unit (DU), Karen Gorman; and Chief of Complaints Unit (CU), Barbara J. Wheeler is in order.

Due to the nature of systemic failure of the U.S. Special Counsel, during the period June 2011- September 2017, an independent Reconciliation Commission, appointed by the Chief Executive, should be established to formally review all Whistleblower Disclosures submitted to the U.S. Special Counsel during that period.

Other Actions You Are Taking On Your Disclosure: Inspector General of department / agency involved

Other Actions You Are Taking On Your Disclosure: Inspector General of department / agency involved Date

Other Actions You Are Taking On Your Disclosure: Other office of department / agency involved

Other Actions You Are Taking On Your Disclosure: Other office of department / agency involved Date

Other Actions You Are Taking On Your Disclosure: Other office of department / agency involved Text

Other Actions You Are Taking On Your Disclosure: Department of Justice

Other Actions You Are Taking On Your Disclosure: Department of Justice Date

Other Actions You Are Taking On Your Disclosure: Other Executive Branch / department / agency

Other Actions You Are Taking On Your Disclosure: Other Executive Branch / department / agency Date

Other Actions You Are Taking On Your Disclosure: Other Executive Branch / department / agency

Text

Other Actions You Are Taking On Your Disclosure: General Accounting Office (GAO)

Other Actions You Are Taking On Your Disclosure: General Accounting Office (GAO)

Other Actions You Are Taking On Your Disclosure: Congress or congressional committee

Other Actions You Are Taking On Your Disclosure: Congress or congressional committee Date

Other Actions You Are Taking On Your Disclosure: Congress or congressional committee Text

Other Actions You Are Taking On Your Disclosure: Press / media (newspaper, television, other)

Other Actions You Are Taking On Your Disclosure: Press / media (newspaper, television, other) Date

Other Actions You Are Taking On Your Disclosure: Press / media (newspaper, television, other) Text

Other Actions You Are Taking On Your Disclosure: what is the current status of the matter?

I disclose, via Whistleblower safe channel, what I firmly believe is a violation of law, rule, or regulation [5 U.S.C. § 1213], occurring with full knowledge of the U.S. Special Counsel, occurring within the U.S. Special Counsel's Disclosure Unit (DU) , supervised by Director, Catherine A. McMullen and former Deputy Director, Karen Gorman.

As a result of inability/reluctance to comply with federal law, the U.S. Special Counsel's Disclosure Unit (DU) is subverting the Whistleblower Protection Act (WPA), insulting the Federal Merit System, and denying individual due-process rights.

By intentionally subverting reports of credible information reflecting agency wrongdoing (45-day "substantial likelihood" FINDINGS) and omitting agency head notification; the OSC directly impacts the ability of the agency head's Inspector General (IG) to properly substantiate or non-substantiate allegations of wrongdoing and make legitimate "substantial likelihood" DETERMINATIONS.

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during that period.

Consent

I consent to disclosure of my name

Signature

GAP/Devine

Status

Former Federal Employee

I know about the information I am disclosing here based on (check all that apply)

I have personal and/or direct knowledge of events or records involved

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Claims of prohibited personnel practices, including reprisal for whistleblowing, may be pursued by filing a complaint with OSC's Complaints Examining Unit (OSC Form 11, *Complaint of Prohibited Personnel Practice*). You can also alert OSC to possible wrongdoing in a federal agency through a whistleblower disclosure (OSC Form 12, *Whistleblower Disclosure*). A disclosure does not focus on resolving personnel decisions involving or against the filer or other individuals. An employee who believes he or she has suffered reprisal for whistleblowing may elect to file both OSC Form 11, *to report reprisal*, and OSC Form 12, *to disclose the underlying wrongdoing*.

You are currently on an OSC Unclassified Internet Site. As such, the information you are viewing is designed to convey only information pertaining to the filing of disclosures that do not contain classified information. You may not disclose classified information or file or submit a classified disclosure form via the Disclosure of Information form (OSC Form 12) on this web site. If your disclosure concerns both classified and unclassified information, you can submit unclassified information using the disclosure form and make arrangements to submit the classified information to OSC in accordance with governing laws and regulations.

If you are seeking to make a disclosure involving classified information, you can report this information to OSC using appropriate secure channels. If you have questions about how to disclose classified information to OSC or would like to make arrangements to submit a disclosure containing Secret or Top Secret classified information, you may contact OSC's Disclosure Unit at 1-800-572-2249 (unsecured line).

OSC Staff are available for assistance. You may contact the Complaints Examining Unit (CEU) Hotline at 1-800-872-9855 or the Disclosure Unit Hotline at 1-800-572-2249.

Form 12 Complete!

You have successfully filed a Form 12 with the OSC. You will receive an e-mail acknowledgement with your case number.

[Exit OSC Form 12](#)

page 12-2

Logged in as John Crane (johnrcrane@me.com)

Last Updated: 01/07/2010



GOVERNMENT ACCOUNTABILITY PROJECT

1612 K Street, NW, Suite #1100
Washington, DC 20006
(202) 457-0034 | info@whistleblower.org

February 9, 2015

Ms. Carolyn Lerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, #300
Washington, DC 20036

Re: : John Crane whistleblower disclosure

Dear Ms. Lerner:

Pursuant to 5 USC 1213, Mr. John Crane submits this whistleblowing disclosure to challenge illegality, abuse of authority, gross waste and gross mismanagement at the U.S. Department of Defense (DOD) Office of Inspector General (OIG). Mr. Crane began working at the DOD OIG in October 1988, and from 2004 until his February 13, 2013 resignation he served in a Senior Executive Service position as Assistant Inspector General for Communication and Congressional Liaison. As part of his duties, he oversaw the DOD OIG whistleblower program and supervised Daniel Meyer, who was both the Director of Whistleblowing and Transparency and the DOD Whistleblower Protection Ombudsman.

This disclosure presents evidence of a mission breakdown that continues to undermine the integrity of the DOD OIG whistleblower program. Those primarily responsible for the misconduct were Ms. Lynn Halbrooks, who has been the Principle Deputy Inspector General since 2009 and Mr. Henry Shelley, who has been the General Counsel since 2010, and is the Designated Agency Ethics Official. The misconduct peaked from 2011 to 2013 while Ms. Halbrooks served as Acting Inspector General and was seeking nomination for a permanent appointment.

In support of this statement, Mr. Crane submits two affidavits. A January 23, 2015 affidavit Att. 1, details how Mr. Shelley and Ms. Halbrooks betrayed the whistleblower program's mission in one of the agency's highest stakes cases, disclosures of systematic misconduct in the controversial Trailblazer program that is among the origins of illegal government surveillance. Mr. Crane charges that the OIG violated its confidentiality duties under the Inspector General Act, and engaged in retaliation by referring whistleblowers who worked within the OIG system to the Department of Justice (DOJ) for criminal investigation. The

referrals led to an Espionage Act prosecution of NSA whistleblower Thomas Drake that sought 35 years imprisonment. The January 23, 2015 affidavit also summarizes the origins of the breakdown, including conceptual flaws in applying the Whistleblower Protection Act (WPA) burdens of proof in retaliation cases; as well as refusal to refer any cases for investigation by the Civilian Reprisal Investigations (CRI) unit.¹

An October 14, 2014 affidavit, Att. 2, surveys the full scope of DOD OIG misconduct. Mr. Crane charges that Ms. Halbrooks and Mr. Shelley breached their duties through obstructing, censoring or blocking release of five high-profile whistleblower cases, and then reorganized the program to prevent future disclosures. Among the cases was a probe of alleged classified leaks by the then-Secretary of Defense while he served as Director of the Central Intelligence Agency. A DOD OIG investigation found misconduct by the Secretary, but the findings were subsequently removed by Ms. Halbrooks before the DOD IG report was issued. The actions substantiated by DOD OIG investigators would have been a far more serious offense than those alleged against Mr. Drake. Mr. Crane further charges that Ms. Halbrooks and Mr. Shelley similarly undermined the whistleblower program's integrity for investigations of internal affairs misconduct. He traces the motive that Ms. Halbrooks repeatedly expressed -- exposing misconduct through OIG reports would threaten her ability to gain necessary Administration support, including from the Secretary, for nomination as the permanent Inspector General. In numerous contexts, she ordered Mr. Crane to use the whistleblower program to suppress whistleblowing, and whistleblowers, especially with respect to Congress.

His disclosure provides further evidence that Ms. Halbrooks did not stop at covering up cases in her pursuit of the appointment. She also engaged in illegal lobbying activities in pursuit of the nomination. Finally, Mr. Crane's disclosure traces the tactic that Ms. Halbrooks adopted to shield her activities -- management by investigation -- or a steady stream of retaliatory surveillance and probes to identify and remove whistleblowers. Mr. Crane's specific charges are below.

** Long-term conceptual breakdowns in the DOD OIG whistleblower program.*

Misconduct by then Associate General Counsel Shelley immediately undercut the goals of a new Civilian Reprisal Unit created in 2003, responding to concerns by Senator Charles Grassley (R-IA). Most fundamentally, Mr. Shelley, the attorney responsible for the legal sufficiency oversight of OIG administrative investigations, refused to assign cases to CRI, depriving countless civilian whistleblowers of investigations. , Mr. Shelley had imposed the wrong legal burdens of proof on civilian reprisal investigations, replacing the Whistleblower Protection Act standards in Title 5 with the far more difficult Military Whistleblower Protection Act standards in Title 10.

1. Refusal to work with the Civilian Reprisal Investigations unit: In 2004 Mr. Shelley informed Mr. Crane that he would not refer cases to CRI, and refused to work professionally

¹ For clarity, a February 8, 2015 affidavit limited to issues involving the Drake case is enclosed as Attachment 5. Its text is identical to Attachment 1, except for removal of issues unrelated to Mr. Drake.

with Mr. Meyer throughout the latter's tenure at the OIG. The reason was grounded in personal animus against its director, Daniel Meyer. Shelley shared four reasons why he would not work with Meyer. First, Meyer was openly gay and Mr. Shelley believed that Mr. Meyer had engaged in homosexual conduct when Mr. Meyer had served as a naval officer. During the time when Mr. Meyer served in the Navy, homosexual conduct was an offense and punishable by both imprisonment and removal from service. Second, Meyer had been a whistleblower who had challenged Navy investigative findings following an explosion on the U.S. Iowa, and had subsequently worked for a whistleblower support organization. Third, Mr. Meyer was actively communicating as liaison with Senator Grassley's office in oversight of legal standards and related problems with investigations of civilian and military reprisal cases. Finally, Mr. Shelley believed that Mr. Meyer filed whistleblowing charges about Shelley's behavior as the "Dirty Santa" at an office Christmas party, in which a series of women sat on the lap of Mr. Shelley. He believed that the allegations cost his selection as agency General Counsel. In response, he continued redirecting civilian cases to the Military Reprisal Investigations (MRI) unit for processing. As seen below, the MRI unit acted under different legal standards. None of these reasons were valid to deprive complainants of an OIG investigation under civilian standards by the office with that responsibility. (Att. 1, at 5-7, 10-15)²

2. Substituting military burdens of proof for civilian standards in civil service cases: The CRI was established in direct response to Senator Grassley's concern that the OIG was relying on Title 10 Military Whistleblower Protection Act legal burdens of proof to rule on civil service cases that should be governed by Title 5 Whistleblower Protection Act standards. The latter only requires complainants to establish a *prima facie* case by proving that protected activity was a "contributing factor" to a challenged personnel action, and requires agencies to prove they would have taken the same action for independent reasons in the absence of protected activity. Under the military standard, employees must prove that whistleblowing was the predominant motivating factor in alleged retaliation, and the agency can prove its independent justification by a preponderance of the evidence. This severe handicap was exacerbated by DOD OIG interpretation of the standard to mean accepting at face value proffered agency management excuses as sufficient to meet the preponderance of the evidence standard. "Independent justifications" were accepted without even informing whistleblowers of what they would have argued was pretext. This illegally stacked the deck against whistleblowers, thwarting the cornerstone of the Whistleblower Protection Act of 1989 and made it unrealistic for whistleblowers to prevail when acting on their rights. (Att. 1, at 5-10, 20-21, 41-42)

Upon assuming leadership of the CRI in January 2004, Mr. Meyer learned that Shelley had been substituting military for civilian legal standards for over six years in whistleblower cases. Although then-Inspector General Joseph Schmitz formally corrected the false standard on paper, the practice has continued despite further congressional oversight, as evidenced by ongoing protests from public interest groups and a September 18, 2014 protest from the

² All references to affidavits enclosed as attachments also incorporates associated exhibits on cited pages.

Chairmen and Ranking Members of four DOD OIG oversight committees. (Att. 1, at 5-9, 15-16, 20-21, 41-42)

** Violating confidentiality duties and causing retaliatory criminal investigations of whistleblowers on the National Security Agency Trailblazer program. Perhaps the most chilling whistleblower retaliation in recent decades was the prosecution of Thomas Drake under the Espionage Act, in which the government sought 35 years imprisonment. Thomas Drake served as material witness in an investigation stemming from a September 2002 DOD OIG Hotline disclosure filed by four whistleblowers of gross waste, gross mismanagement and abuse of authority in the NSA Trailblazer program to analyze information received under mass domestic and foreign surveillance programs. The whistleblowers included former high-level NSA officials William Binney, J. Kirk Wiebe, Edward Loomis, and former House Permanent Select Committee (HPSCI) staffer Diane Roark. The disclosures also were supported by an anonymous NSA "senior executive" later identified as Thomas Drake. In a December 2004 report, OIG audit staff substantially corroborated their concerns.*

However, in December 2005 the Department of Justice opened a criminal investigation into the sources of a New York Times article exposing warrantless wiretapping.. Although the NSA and HPSCI whistleblowers had no involvement with the New York Times story, DOD OIG officials led by Mr. Shelley advocated referring them to the Department of Justice as suspects for the leak. DOD OIG criminally referred them, and all five subsequently suffered FBI raids on their homes. Mr. Drake was indicted on ten felony counts and the Department of Justice sought 35 years of incarceration, most of it under the Espionage Act. The Justice Department's case against Drake collapsed in the days before trial was set to begin, and the government dropped all felony charges in exchange for Drake's plea to a minor misdemeanor having nothing to do with classified information. Mr. Drake's life was devastated, however. Further, the chilling effect on the whistleblower community from working within institutional channels was severe. Mr. Edward Snowden has explained that the retaliation against NSA whistleblowers who worked within OIG channels was a reason he chose to make his landmark domestic surveillance disclosures through the media.

Throughout the process, Mr. Crane challenged systematic OIG misconduct in connection with the NSA disclosures. He warned that the leak prosecution of Drake was the most significant case of its kind since the attempted prosecution of Daniel Ellsberg for release of the Pentagon Papers, and that the OIG appeared to be deeply involved. He challenged whether legal confidentiality rights had been violated, as well as whether there had been retaliatory referral of witnesses for criminal investigation. He challenged the failure to act on whistleblower retaliation complaints that Mr. Drake filed against the OIG. He challenged associated destruction of relevant documents, refusal to address the documents destruction in response to an associated Freedom of Information Act (FOIA) request, and withholding exculpatory evidence for Mr. Drake. In every instance Mr. Shelley rebuffed Mr. Crane, eventually refusing to discuss the case with him. Ms. Halbrooks both as Principal Deputy and as Acting Inspector General, fully supported Mr. Shelle. dShe told Mr. Crane that he was not a "team player," said she would speed up the process to select a new "deputy" to help her control Mr. Crane, and threatened to remove his relevant investigative and FOIA authority. Consistent with a pattern throughout this disclosure, Ms. Halbrooks explained that controversy around the Drake case

would threaten her ambitions to be nominated as permanent Inspector General. Mr. Crane's specific concerns are listed below.

3. Refusal to investigate whether confidentiality duties had been breached: Immediately after the Department of Justice opened a January 2006 leaks investigation on the *New York Times* warrantless wiretapping story, Mr. Shelley advocated proactively revealing the confidential Hotline whistleblowers' identity to DOJ. Mr. Crane protested that this could violate the identity protection requirements in Section 7(b) of the Inspector General Act. After 2007 FBI raids of the whistleblowers, Mr. Crane inquired about OIG complicity and Mr. Shelley refused to respond. After Mr. Drake's December 2010 retaliation complaint, Mr. Crane again pressed for an investigation of retaliation issues and whether there had been an improper referral. Ms. Halbrooks and Mr. Shelley refused any formal process, explaining that the matter had to be "kept off the IG's desk." (Att.1, at 25-27, 30-32, 40)

4. Refusal to investigate or respond under the FOIA to a request whether documents had been illegally destroyed: In a June 2010 FOIA request, Mr. Drake's counsel at GAP filed FOIA requests on the Drake case, including whether any responsive documents had been destroyed and any surrounding circumstances. As the senior official responsible for FOIA requests, Mr. Crane wanted a full investigation of the issue and corresponding full disclosure to Mr. Drake. Halbrooks and Shelley repeatedly refused, and the issue's existence was not recognized in the agency response. They also ordered Mr. Crane not to release even a redacted version of the audit report before completion of the criminal trial, because the information could be viewed as favorable to Mr. Drake. If he did not cooperate, Ms. Halbrooks said she would remove his FOIA duties. (Att. 1, at 24-28, 36-38, 43-44)

5. Refusal to investigate Thomas Drake's retaliation complaint: In December 2010 Mr. Drake charged that the OIG had retaliated against him in connection with his disclosures by, *inter alia*, breaching confidentiality and referring him for criminal prosecution. Again, Halbrooks and Shelley refused to investigate initially, and stalled an investigation for over a year. They informed Mr. Crane that Mr. Meyer was reassigned from the CRI so that he couldn't investigate cases such as Drake's. Ms. Halbrooks also informed Mr. Crane that if he persisted in pursuing formal action, his relevant investigative duties would be removed. (Att. 1, at 30-35, 41-42)

6. Violation of confidentiality responsibilities to NSA whistleblowers: After Mr. Drake's December 2010 reprisal complaint, Mr. Shelley informally confirmed to Mr. Crane that the auditors had "fucked up" by failing to inform the whistleblowers of the limits of their confidentiality protection. There was no formal processing of the discovery, no accountability or corrective action, and Mr. Shelley refused to answer Mr. Crane's requests for specifics on the misconduct. (Att. 1, at 32-33)

7. Improper destruction of documents: After the same informal discussions with auditors, Mr. Shelley also confirmed to Mr. Crane that the auditors had "fucked up" by destroying underlying records for the Trailblazer audit, records that should have been maintained according to DoD policy and that were potentially exculpatory evidence in an ongoing criminal proceeding. Again there was no formal processing of the discovery, no accountability and no corrective action. Mr. Shelley refused to answer Crane's request for detailed facts. (Att. 1, at 32-33)

** Canceling the integrity of the DoD IG whistleblower program in relation to Congress. Ms. Lynne Halbrooks and Mr. Henry Shelley took actions that compromised and sought to transform the whistleblower protection program into its opposite – a vehicle to identify those who blow the whistle, and to silence their voices. They repeatedly demanded that Mr. Crane, as the Senior Executive supervisor of the Director for Whistleblowing and Transparency, identify confidential whistleblowers to them. More fundamentally, they demanded that he use the program to curtail congressional investigations of the DoD IG, and themselves, by stopping whistleblowing disclosures to Congress. Before forcing Mr. Crane's resignation they also implemented structural reorganizations to remove the whistleblower program's independence, and facilitated retaliation against the Director of Whistleblowing and Transparency, Mr. Daniel Meyer. Ms. Halbrooks repeatedly explained the reason to Mr. Crane: the whistleblower issues could threaten her pursuit of nomination as the DoD permanent Inspector General. For the most egregious examples, Mr. Crane seeks an independent investigation of violations of Executive Order (EO) 12731, abuse of authority, gross mismanagement, and gross waste of funds by Ms. Halbrooks and Mr. Shelley for each of the following cases:*

8. Zero Dark Thirty: This was an investigation into leaks of classified information to a Hollywood filmmaker in order to gain more favorable treatment for the Obama administration in a proposed movie depicting the Navy Seal operation that killed Osama bin Laden.

Examples of misconduct included -- orders by Ms. Halbrooks not to conduct an investigative interview with Secretary of Defense Leon Panetta contrary to normal investigative practice that allows the target of an investigation to provide exculpatory information; refusal to permit interviews of senior staff associated with the Secretary without prior approval by Ms. Halbrooks or Mr. Shelley, contrary to normal investigative practice; refusal to release the report until after Secretary Panetta left office; improperly meeting with key investigative targets, the Secretary and his Chief of Staff, to discuss media coverage of the investigation before the report was released; removal of references and findings concerning the Secretary and the Chief of Staff from the final report; instructions to stop congressional investigation of the case; and instructions to identify the confidential whistleblowers making disclosures to Congress. (Att. 2, at 14-15, 60-72)

9. Retired Military Analysts ("RMA"): This was an investigation into Pentagon contracts with retired military officers to act as expert analysts for television and other media reports on controversial Pentagon actions, allegedly seeking to influence public opinion through the appearance of independent support by surrogate experts while also providing those RMA's an unfair competitive market advantage for contracts on related matters. An initial DoD IG report of 2009 report was retracted due to concerns about its adequacy.

Examples of misconduct included -- deletion of key findings, departure from normal investigative methodology, refusal to include corrective action recommendations; and refusal to disclose or act upon a leak by Mr. Shelley of the draft findings to the *Washington Times* to facilitate a political attack on Senate Armed Services Committee Carl Levin and his staff; and instructions to Mr. Crane that his job as head of the whistleblower program was to curtail any congressional criticism of the report. (Att. 2, at 12-13, 48-60)

10. Dawood Military Hospital: This case involved allegations of neglect and abuse at a hospital treating wounded Afghani soldiers, to the extent that a patient died of starvation due to the inability of the family of the patient to bribe hospital staff.

Examples of misconduct included -- refusal by Ms. Halbrooks to conduct an interview with the chief whistleblower, himself a unit Inspector General; bypassing normal Hotline procedures to process information from the unit IG that could have saved the patient's life; and attempts by Ms. Halbrooks to withhold information requested from Congress in regard to the culpability of the Front Office in not immediately responding to critical health, and safety information regarding patient care at the hospital. (Att. 2, at 15-17, 72-85)

11. Audits: This case involved repeated demands by Senator Grassley to reform the audit program within the DoD IG based on numerous whistleblowing disclosures from DoD IG auditors. Those disclosures resulted in four oversight reports prepared by the staff of Senator Grassley into the integrity of the audit process. Issues included the failure by Ms. Halbrooks to hold accountable those who had caused the audit program to disintegrate.

Examples of misconduct included -- refusal to formally investigate allegations by Senator Grassley that the Deputy for Auditing may have "made false, and/or misleading statements to Congress"; refusal to provide substantive answers or identify responsible officials in response to congressional oversight questions leading Senator Grassley to state on the Senate Floor that "I am getting tired of being jerked around."; instructions that Mr. Crane should "shut down" congressional oversight, investigations and criticism of the audit program; and instructions that Mr. Crane identify the relevant confidential whistleblowers. (Att. 2, at 18-19, 95-101)

12. Military Reprisal Investigations: Congressional oversight investigations, particularly from Senator Grassley, the Government Accountability Office ("GAO") and internal DOD IG reviews all found severe weaknesses in the DoD IG Military Reprisal Investigation ("MRI") program in which Ms. Halbrooks and Mr. Shelley had played leadership roles. Ms. Halbrooks is responsible to supervise the MRI, and Mr. Shelley provides legal support. In 2012 Senator Grassley repeatedly demanded to know who were the "watch-dogs in-charge of MRI" and responsible for the program breakdown; and all oversight offices called for systematic corrective action.

Examples of misconduct included -- refusal to provide substantive responses to Senator Grassley's queries providing the information sought, including causes of the breakdown;

instructions that Mr. Crane identify relevant, confidential congressional witnesses; refusal to investigate formally or permit any other meaningful steps toward accountability or corrective action; and instructions to Mr. Crane that his duty was to stop further congressional oversight and investigation. (Att. 2, at 19-21, 101-110)

13. Reorganization to eliminate independence of whistleblower program: Ms. Halbrooks and Mr. Shelley abused discretion by reorganizing the program, to prevent the Director of Whistleblowing and Transparency, Mr. Daniel Meyer, from reporting to Mr. Crane and to eliminate Mr. Meyer's investigative independence, which Mr. Crane had shielded. Instead, Mr. Meyer had to report to Mr. Larry Turner, an official without substantive experience who acted as "babysitter" for Mr. Crane. Ms. Halbrooks and Mr. Shelley wanted to stop whistleblowing allegations against themselves, and the ensuing congressional investigations. Ms. Halbrooks, in particular, was concerned that allegations against her could impact her desire to become the permanent IG. (Att. 2, at 10)

Mr. Crane's disclosure demonstrates violations of EO 12731, which states, "Employees shall not use public office for private gain." The misconduct represented abuse of authority, because Ms. Halbrooks and Mr. Shelley arbitrarily sought to deprive the public of impartial, complete fact-finding. The motives were to reinforce her personal ambitions, and to further Mr. Shelley's bias against gay staff and whistleblowers. Their misconduct constituted gross mismanagement in each investigation, because each was a significant case for which the agency mission of full fact-finding as the basis for accountability was sacrificed. Their misconduct represented gross waste of funds, because each major, costly, time-consuming case failed to result in a professionally responsible report and resolution.

** Canceling the integrity of the whistleblower program with respect to internal misconduct. Ms. Halbrooks and Mr. Shelley also violated EO 12371, engaged in abuse of authority, and engaged in gross mismanagement by refusing to act on Mr. Crane's credible allegations of internal misconduct. The targets that they shielded included the Hotline Director and Mr. Turner, whom Ms. Halbrooks had imposed as Mr. Crane's babysitting deputy. Again, the motivation was that addressing alleged misconduct could raise questions about lapses in Ms. Halbrooks' management actions that would threaten her nomination to be the permanent DoD IG Inspector General. The misconduct violated the EO, because it was based on misuse of official authority to further Ms. Halbrooks' personal ambitions. It was abuse of authority, because it discriminated against the victims of internal misconduct, to further the ambitions of Ms. Halbrooks and the interests of managers excused from potential accountability.*

14. Refusal to investigate alleged sexual misconduct by a Hotline Director in response to a disclosure. In 2012, a female hotline caller alleged that in response to her disclosure, the then Director had her contact him at his private cell number and during the call told her to masturbate while he listened. Ms. Halbrooks refused to thoroughly investigate alleged sexual abuse of a caller by the Hotline Director, to the point of declining even to check the Director's cell phone

records. The response was so unprofessional that Senator Grassley sent a May 20, 2013 letter about how the issue was handled. (Att. 2, at 11, 35-36)

. 15. Refusal to investigate alleged potentially violent, hostile working environment by Mr. Turner. In 2012 Ms. Jennifer Plozai, who worked for Mr. Turner and Mr. Crane, reported the climax of bullying that she believed was degenerating into workplace stalking and possible violence. The abuse allegedly had intensified to shouting and close physical contact, leaving Ms. Plozai in fear of physical danger. Ms. Halbrooks refused to investigate the alleged workplace violence complaint against Mr. Turner, the deputy she had selected to monitor and report on Mr. Crane, despite four written witness statements corroborating the concern. She hypothesized that the conflicts were Ms. Plozai's fault, and further explained that opening an investigation could raise issues threatening to her appointment as permanent IG. (Att. 2, at 17-19, 85-95, 139-41)

** Improperly lobbying by Ms. Halbrooks in pursuit of her nomination as permanent Inspector General.* In her campaign to become Inspector General, Ms. Halbrooks did not limit herself to cover-ups of her own misconduct. She also instructed Mr. Crane to engage in improper lobbying to undercut the prospects of a perceived competitor for the permanent IG position; to support Secretary Panetta's efforts to advance his candidate for CIA Director, and to identify whistleblowers whose disclosures were threatening to her. Since her initiatives involved alleged misuse of public office for personal gain, if proven they constitute violations of EO 12731 and abuse of authority. Her demand for confidential whistleblower identities not only was abuse of authority by exposing them, but gross mismanagement for undermining the IG's mission duties to confidential whistleblowers. Two particularly egregious examples should be investigated.

16. Ms. Halbrooks instructed Mr. Crane to use government resources lobbying NGO's to support her nomination: In 2013 Ms. Halbrooks instructed Mr. Crane as part of his duties to lobby NGO's such as the Project on Government Oversight (POGO) to support her nomination as permanent DoD Inspector General. (Att. 2, at 12)

17. Ms. Halbrooks instructed Mr. Crane to use government resources lobbying Congress against a competitor for the permanent DOD IG nomination: In 2012 Ms. Halbrooks instructed Mr. Crane to lobby Senate Armed Services Committee staff director Peter Levine against the candidacy of Central Intelligence Agency ("CIA") IG David Buckley, whom she believed to be her competitor for the DoD IG nomination. Further, in order to gain favor with Secretary Panetta she instructed Mr. Crane to identify whistleblowers who by contacting the media were undermining Mr. Vickers, the candidate the Secretary was supporting to become the next CIA Director. (Att. 2, at 12, 45-47)

** Abuse of authority connected with harassment.* In response to whistleblowing disclosures and Mr. Shelley's anti-gay obsession, Ms. Halbrooks and Mr. Shelley carried out her threat to "manage by investigation." A steady campaign of retaliation investigations and associated harassment ensued. While most of the ensuing misconduct involved personnel actions, abuse of authority also took place without engaging in prohibited personnel practices. The more egregious examples are listed below for investigation under section 1213.

18. Abuse of process in selection of Mr. Larry Turner as Mr. Crane's deputy: In addition to undermining the whistleblower program's independence, Ms. Halbrooks and Mr. Shelley abused their authority through the process they used to hire Mr. Larry Turner as Mr. Crane's deputy and "babysitter." Specifically, Ms. Halbrooks and Mr. Shelley abused their authority by canceling the selection process without basis after the first interview despite Mr. Crane's confidence in a candidate to work as his assistant, and by Ms. Halbrooks and Mr. Shelley serving as both the proposing and deciding officials for the final selection of Mr. Larry Turner. Both actions were designed to discriminate against Mr. Crane and the whistleblower program by reducing its independence so it could not threaten Ms. Halbrooks. (Att. 2, at 4-5, 22-29)

19. False statements to the Department of Transportation ("DoT") Office of Inspector General ("IG"): In order to undermine Mr. Crane's credibility, Ms. Halbrooks and Mr. Shelley made knowingly false statements to the DoT IG. They denied the existence of the first interview process, and they asserted that Mr. Crane selected Mr. Turner as his top choice for the job. (Att. 2, at 7, 9-10, 41, 132-136)

20. DOT IG failure to follow professional investigative standards. At the request of Ms. Halbrooks and Mr. Shelley, the Committee of Inspectors General for Integrity and Efficiency ("CIGIE") responded to Mr. Crane's request for an investigation of Mr. Turner for allegedly making physical contact with Mr. Crane. The ensuing retaliatory investigation was a shameless witch hunt to create a false pretextual investigative record that would force Mr. Crane's removal, which it did. The retaliatory investigation itself and associated prosecutive referral both are jurisdictional as threatened personnel actions under the Whistleblower Protection Act. However, there was associated abuse of authority that is jurisdictional only under section 1213.

Before accusing Mr. Crane of false statements, the DoT IG investigative team failed to conduct a second interview to clarify initial responses as promised, failed to accept supplemental evidence as promised, and consistently violated all the other CIGIE standards for a responsible, professional investigation. (Att. 2, at 39-43)

21. Surveillance of IG staff to identify whistleblowers. While Mr. Shelley was Deputy General Counsel, he took part in a sweep of all DoD IG staff emails in an effort to identify whistleblowers. This was an abuse of authority that invaded the privacy of all DoD IG employees. The then Inspector General attempted to curb the abuse by signing out a directive stating that only the Inspector General had the authority to authorize the monitoring of e-mail. Ms. Halbrooks and Mr. Shelley had a subsequent Inspector General change the policy, so that Ms. Halbrooks and Mr. Shelley had authority to monitor e-mails. In that regard, starting in October 2010, Ms. Halbrooks and Mr. Shelley requested Mr. Crane to allow monitoring of all e-mails received by the Director for Whistleblowing and Transparency in order to identify whistleblowers within the DoD IG. Mr. Crane did not give his consent. (A22. 2, at 4). The actions violated the OSC's June 2012 directive against blanket surveillance.

Although the OSC does not have a published standard for "substantial likelihood" assessments to order a full investigation under 5 USC 1213(c), this case should qualify under any reasonable standard. Mr. Crane has made his disclosure under oath, supported his charges with

documentary evidence and statements from supporting witnesses, including from the Director of Whistleblowing and Transparency. His disclosures consistently were supported by oversight investigations conducted by the staff of Senator Grassley, now-Chairman of the Senate Committee on the Judiciary. Indeed, Senator Grassley's December 4, 2014 Senate floor statement (Attachment 3) and report (Attachment 4) are heavily based on Mr. Crane's disclosures. But the WPA disclosure channel is necessary, because to date there neither has been an adequate record, nor meaningful corrective action for severe misconduct. As Senator Grassley stated on December 4:

[T]he highly-sanitized [Zero Dark Thirty] report that was finally issued on June 14, 2013 – six months after it was finished ... is a second-class piece of work that is not worth the paper it is written on....The project was an unmitigated disaster spawned by a series of top-level missteps and blunders. All the wasted energy and blundering produced nothing better than internal confusion, turmoil, dissent, and even more alleged misconduct. Two years worth of hard work and money was poured down a rat hole.

Mr. Crane requests that the Special Counsel begin the process of developing an accurate, complete record for corrective action necessary to restore the credibility for the whistleblower mission of the DoD IG.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Thomas Devine", written over a horizontal line.

Thomas Devine
Counsel for Mr. Crane

July 9, 2018

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**SUBJECT: DISCLOSURE OF WRONGDOING WITHIN THE U.S. OFFICE OF
SPECIAL COUNSEL**

Mr. Kerner,

I waited over **403** days for the U.S. Office Special Counsel (OSC), Disclosure Unit (DU), under the supervision of Director, **Catherine A. McMullen**/Deputy Director, **Karen Gorman** to make an OSC 45-day “substantial likelihood” finding, as required by law [5 USC 1213(b)].

The inability/reluctance of the OSC’s Disclosure Unit (DU) to make a finding, within the legally mandated 45-day window, must be fully investigated and federal employee misconduct immediately addressed.

In my Disclosure (**DI-15-2333**), submitted to the OSC on **09 February 2015**, I delivered over **211** pages of evidence, specifically detailing Senior Leader Misconduct involving Department of Defense (DoD) Acting Inspector General **Lynne Halbrooks** and her General Counsel, **Henry C. Shelley Jr.**

Additionally, my Disclosure (**DI-15-2333**) included Senator **Charles E. Grassley’s** Oversight Review into Acting Inspector General (IG) and Principle Deputy Inspector General (PDIG) **Lynne Halbrooks’** gross mismanagement/abuse of authority on the DoD IG’s production of the Release of the Department of Defense (DoD) Information to the Media: Zero Dark Thirty (ZDT) Report.¹

Under the Whistleblower Protection Act (WPA), as amended, I also provided substantive first-hand information to Senate investigators who conducted Senator Grassley’s Oversight Review.

Senator Grassley’s Oversight Review substantiated the fact that **Lynne Halbrooks**, in her capacity as the acting DoD IG, did in fact, exercise Gross Mismanagement/Abuse of

¹<https://www.grassley.senate.gov/sites/default/files/judiciary/upload/Zero%20Dark%20Thirty,%202012-02-14,%20final%20report,%20Redacted.pdf>.

Authority while actively protecting her direct supervisor, former Central Intelligence Agency (CIA) Director and Secretary of Defense, **Leon Panetta**, from a full and fair DoD IG investigation.

Despite the fact that the OSC Disclosure Unit (**DU**) has not published a standard for making a 45-day “substantial likelihood” determination, there can be no reasonable excuse for not making a timely 45-day “substantial likelihood” determination when considering the gravitas of the evidence submitted by a Whistleblower to the OSC with a firm conviction that serious wrong doing had occurred.

This is clearly a case of **intentional misconduct** aimed at actively preventing formal agency head notification and development of an actionable investigative record: a clear and unmistakable violation of federal law.

The importance of my Whistleblower Disclosure, delivered via a safe channel, more than adequately demonstrated what I firmly believe evidenced violation of law, rule, and regulation; gross mismanagement; abuse of authority, and **substantial and specific danger** to public health and safety.

The first-hand information I provided to the OSC’S Disclosure Unit (DU) clearly reflected a **clear and convincing pattern** of Wrongdoing that demanded timely investigation.

The results of Senator Grassley’s Oversight Review, based upon my reliable, first-hand information, offers further credibility on my Whistleblower Disclosure that more than adequately reflects the obvious need for timely agency head notification and development of an investigative record [5 USC 1213(b)/(c)/(d)].

In the words of Senator Grassley discussing his Oversight Review findings:

“I undertook this inquiry because I received reports from whistleblowers (*John R. Crane*) who were concerned that PDIG Halbrooks deliberately suppressed the report for two reasons: (1) to protect senior officials from **disciplinary** action or **prosecution** and (2) in the process, to further her **candidacy** for nomination to be the next DOD IG.”

“Senior officials, including former Central Intelligence Agency (CIA) Director and DOD Secretary **Leon Panetta** and Under Secretary for Intelligence (USDI) **Michael Vickers**, were

accused of allegedly making unauthorized disclosures of highly classified information on the Osama bin Laden raid.”

“These alleged disclosures could have placed DoD Special Operations **personnel** and their families in **harm’s way**.”

“The convergence of these potential conflicts-of-interest **needed scrutiny**. My main concern was that she may have handled the conflicts in ways that could compromise the **integrity** and **independence** of the Inspector General’s Office (OIG).”

In point of fact: Senator Grassley’s Oversight Review revealed that **Lynne Halbrooks** exercised Gross Mismanagement/Abuse of Authority while protecting her direct supervisor, former Central Intelligence Agency (CIA) Director and Secretary of Defense, **Leon Panetta**, from full and fair investigation.

In a pattern of well practiced criminal conduct, the leadership team of the OSC consisting of: U.S. Special Counsel, **Carolyn N. Lerner**; Principle Deputy Special Counsel, **Mark Cohen**; Deputy Special Counsel, Policy & Congressional Affairs, **Adam Miles**; and the leadership of the Government Accountability Project (**GAP**), Executive Director **Louis Clark**, and GAP Legal Director, **Tom Devine** actively conspired to ensure that agency head notification was avoided in order to stop the creation of an agency investigative record in direct violation of 5 USC 1213(b).

This is nothing short of a direct assault upon the Whistleblower Protection Act (WPA), as amended, an insult to the Federal Merit System, and a direct violation of my due-process rights.

I am firmly convinced that I am not the only Whistleblower subjected to this outright criminal conspiracy.

There is no question that the OSC/GAP Leadership Team conspired with the DoD Inspector General, **Glenn A. Fine** and the DOJ Inspector General, **Michael E. Horowitz** to ensure that my Whistleblower Disclosure would not be properly processed in accordance with 5 USC 1213; in order to, avoid agency head notification and development of a legitimate investigative record.

To make matters worse, the DoD Inspector General, **Glenn A. Fine** and DOJ Inspector General, **Michael E. Horowitz**, conspired to use the Council of Inspectors General on

Integrity and Efficiency (CIGIE) to ensure that “Acting” Inspector General **Lynne Halbrooks** and her General Counsel, **Henry C. Shelley Jr.** were inappropriately shielded from accountability demanded of all federal employees under the federal merit system.

There is clear and convincing evidence to substantiate the fact that the collusion of **Glenn A. Fine/Michael E. Horowitz**, two senior level federal Inspectors General (IG) violated numerous laws, rules, and regulations, specifically related to the Inspectors General (IG) Act of 1978, as amended, and took action that clearly demonstrate an unforgivable compromise of the **integrity** and **independence** standard demanded of a presidentially nominated and Senate confirmed Federal Inspector General.

OFFICAL DISCLOSURE: I demand that an immediate criminal referral be made to the agency head, Department of Justice (DoJ), **Jefferson B. Sesssions III**, and that in your capacity as the U.S. Special Counsel, you immediately petition the MSPB for a Stay of Personnel Action pursuant to 5 USC 1214.

Very Respectfully,

John R. Crane

John R. Crane

August 16, 2018

John R. Crane
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Mr. Henry Kerner
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SUBJECT: *A Review of Allegations that Department of Defense Office of Inspector General (DOD IG) Personnel Destroyed Audit Documents in Violation of DOD IG Policy, Oversight and Review Division, Report No. 18-02, April 2018*

RE: OSC File No. DI-15-2333

Mr. Kerner,

1. On **June 12, 2018**, I received a letter from your office requesting written comment on the report of investigation conducted by the Department of Justice (**DOJ**), Inspector General (**IG**)/Chair, Council of Inspectors General on Integrity and Efficiency (**CIGIE**), **Michael E. Horowitz**.

As you are aware, the U.S. Special Counsel, **Carolyn N. Lerner**, Department of Defense (**DOD**) Inspector General (**IG**), **Glenn A. Fine**, and Department of Justice (**DOJ**), Inspector General (**IG**), **Michael E. Horowitz** collectively developed a plan to forgo Agency Head Notification (Secretary of Defense, **James N. Mattis**/U.S. Attorney General, **Jefferson B. Sessions**) required under 5 U.S.C. § 1213(b)/ 5 U.S.C. § 1212(a)(3).

Carolyn N. Lerner, **Glenn A. Fine**, and **Michael E. Horowitz**, also agreed to split Whistleblower Disclosure (**DI-15-2333**) into three separate uncoordinated efforts under the investigative control of **Michael E. Horowitz** in his capacity as both **DoJ IG** and as the Chair, of the **CIGIE**.

In my Disclosure (**DI-15-2333**), submitted to **Carolyn N. Lerner** on **09 February 2015**, I delivered over **211** pages of evidence, specifically detailing Senior Leader Misconduct that included allegations of Whistleblower Reprisal and criminal violation(s) of Title 18 involving **DoD** Principal Deputy Inspector General (**PDIG**) **Lynne M. Halbrooks** and **DoD IG** General Counsel, **Henry C. Shelley Jr.**

The criminal allegations evidenced that on or about **15 February 2011**, **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, made false representations to **William M. Welch II**, Senior Litigation Counsel, Public Integrity Section, DOJ, claiming that potentially exculpatory evidence requested by the **Federal Public Defender** representing **Thomas A. Drake** in a Federal prosecution case

was destroyed as part of a routine DoD IG classified record purge, ref: U.S. Special Counsel ltr dtd 18 March 2016.

RESULT: On 18 March 2016, after 403 days, **Carolyn N. Lerner** elected to complete the then mandatory 15-Day determination process and positively concluded there was a “**substantial likelihood**” that the disclosure presented violations of laws, rules, or regulations [5 U.S.C. § 1213(b)].

2. I cannot, however, in good faith consider a response to the **Michael E. Horowitz** report: *Allegations that Department of Defense Office of Inspector General (DOD IG) Personnel Destroyed Audit Document in Violation of DOD IG Policy*, without addressing the systemic failure of the U.S. Special Counsel to safeguard the Federal Merit System, protect my due-process rights, and uphold the Whistleblower Protection Act (**WPA**).

When **Carolyn N. Lerner** took 403 days to make a “**substantial likelihood**” finding on Disclosure (**DI-15-2333**), the investigative evidence base (witness statements/documentation) had already been allowed to significantly degrade.

If **Carolyn N. Lerner** had complied with 5 U.S.C. § 1213, the “**substantial likelihood**” finding would have occurred on or before **24 February 2015**, well before **Lynne M. Halbrooks** resigned from Federal service being replaced as **PDIG** by former **DOJ IG**, **Glenn A. Fine**.

The actions of **Carolyn N. Lerner**, **Glenn A. Fine** and **Michael E. Horowitz**, shielded IG misconduct from Agency Head accountability, violated Federal statute governing the U.S. Special Counsel, violated my due-process rights under the **WPA**, and evidenced Senior Leader Misconduct and Inspector General Abuse of Authority, ref: 5 U.S.C. § 1213.

This action also questions the independence and objectivity associated with having the U.S. Special Counsel and U.S. Special Counsel Principal Deputy fall under the authority of **Michael E. Horowitz** in regard to investigation of wrongdoing (5 U.S.C. § 1213), ref: CIGIE Integrity Committee Policy and Procedures 2018 (w/correction 1), section 2(C), p. 1, dtd 13 April 2018.

In this example, both **Carolyn N. Lerner** and **Michael E. Horowitz** agreed to violate statute and compromise the U.S. Special Counsel mandate to safeguard the Federal Merit System and protect the due-process rights of a Federal whistleblower. In effect, because of the lack of independence and objectivity there was no check on misconduct.

3. To date, there has been no responsible action on the second and third parts of Disclosure (**DI-15-2333**) reported to U.S. Special Counsel, **Carolyn N. Lerner**, on **09 February 2015**:

- **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, in regard to the suppression of DoD IG criminal investigative findings in the compromise of **Top Secret** information by Secretary Leon Panetta in regard to Operation Zero Dark Thirty (**ZDT**) to kill Osama bin Laden.
- **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, in regard to Whistleblower Reprisal and Senior Official Misconduct/Abuse of Authority.

On October 11, 2017, Acting Special Counsel, **Tristan Leavitt**, reported to me that the **CIGIE Integrity Committee (IC)**, Chaired by the Department of Labor (**DOL**) **IG**, **Scott S. Dahl**, declined to investigate criminal allegations against **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, in regard to **ZDT**.

The U.S. Special Counsel noted that “the ICs decision countermanded the Special Counsel’s statutory determination that the allegations warranted investigation.”, ref: OSC ltr dtd **11 October 2017**.

And, the U.S. Special Counsel noted, “this case highlights the challenges OSC [Office of Special Counsel] faces in addressing allegations of misconduct by inspectors general and their high-level employees under the statutory framework of 5 USC § 1213.”, ref: OSC ltr dtd **11 October 2017**.

4. **Carolyn N. Lerner**, as noted, after 403 days, completed the then mandatory 15-Day determination process and positively concluded there was a “**substantial likelihood**” that the disclosure presented credible violations of laws, rules, or regulations [5 U.S.C. § 1213(b)].

Michael E. Horowitz then took over 761 days to issue a report that contained readily available official record information from **11 June 2015** that **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, did in fact, make false representations concerning the destruction of official DoD IG records, to **William M. Welch II**.

United States District Court Judge **Richard D. Bennett**, who presided over the **Thomas A. Drake** case, in response to receiving my affidavit of **09 February 2015**, contacted Judge **Stephanie A. Gallagher**, United States Judge Magistrate, and requested an investigation of whether the statement by **William M. Welch II** to Judge **Richard D. Bennett** of **February 15 2011**, was accurate concerning the representation that, “most of the hard copy documents related to the audit (DoD IG) were destroyed before the defendant was charged, pursuant to a standard (DoD IG) document destruction policy.”

Judge **Stephanie A. Gallagher** on **13 May 2015**, referred the matter for investigation to the Public Integrity Section of the DOJ.

On **11 June 2015**, **Raymond N. Hulser**, Chief, Criminal Division, Public Integrity responded via letter to Judge **Stephanie A. Gallagher** informing her **William M. Welch II**, “confirmed that the representation that the government made in its February 15, 2011, letter to Judge Bennett regarding the destruction of records related to Mr. Drake’s whistleblower claim was based on representations that were made to the trial team by the DoD OIG.” The representations from **Lynne M. Halbrooks** and **Henry C. Shelley Jr.** were, in fact, false.

DoD IG Audit records were known by **Lynne M. Halbrooks** and **Henry C. Shelley Jr.**, to be located in secure DoD IG spaces located at Fort Meade.

There is no credible reason why **Michael E. Horowitz** would require 761 days to complete his investigative report. The delay by **Michael E. Horowitz** allowed **Henry C. Shelley Jr.** to retire from Federal service prior to the investigative report being delivered to the U.S. Special Counsel.

The evidence was readily available and clear so **Michael E. Horowitz** could easily have met the 60-day requirement as per 5 U.S.C. § 1213.

5. The result of the actions by **Carolyn N. Lerner**, **Michael E. Horowitz**, **Scott S. Dahl**, and **Glenn A. Fine** has been that investigations, required by 5 U.S.C. § 1213 into (**DI-15-2333**) have been compromised as the evidentiary investigative base (documentation/witnesses) has been allowed to degrade. The degradation challenges the ability of investigators either to substantiate or non-substantiate allegations.

This failure ultimately rests with the action(s)/inaction(s) of **Carolyn N. Lerner** who had the sole responsibility to *safeguard* the Federal Merit System and *protect* the Federal whistleblower while serving as a Whistleblower Protection Act (WPA) safe channel.

It was, and remains, the responsibility of the U.S. Special Counsel to ensure prompt and actionable investigation and to hold the **CIGIE** accountable to fulfill its own mission to support the laws governing the effectiveness of the Federal Merit System.

6. In the face of “**substantial likelihood**” findings of serious criminal misconduct by senior DoD IG leaders, **Michael E. Horowitz**, in his capacity as the DOJ IG elected to use the limited authorities of the Inspector General Act of 1978, as amended, and did not make a referral to the U.S. Attorney General for criminal investigation of fellow senior level Inspector General personnel.

This decision ensured that testimony from **Lynne M. Halbrooks** and **William M. Welch II** could not be compelled for inclusion into the DOJ criminal investigative record.

The deeply conflicted action(s) of **Carolyn N. Lerner** and **Michael E. Horowitz** not only violate U.S.C. 5 § 1213, but also run counter to 5 U.S.C. § 1212(a)(3) that states; “the Office of Special Counsel shall receive, review, and, where appropriate, forward to the **Attorney General** or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.”

There is no doubt that a “**substantial likelihood**” finding by the U.S. Special Counsel satisfies the legal demand for prompt formal Federal Agency Head notification and the demand for the Agency Head to develop a timely investigative record (witness statements/documentation) needed to substantiate allegations of agency wrongdoing that allows the Agency Head to take proactive steps to mitigate the identified risk to the interests of the American people.

7. The actions of **Carolyn N. Lerner**, **Glenn A. Fine**, **Michael E. Horowitz** and **Scott S. Dahl**, have been to, in effect, give the **CIGIE** the status of a super-empowered class of Federal employees within the Executive Branch who exist outside the oversight or statutory requirements

of 5 U.S.C. § 1213 while ignoring the laws, rules, and regulations that govern the conduct of all other Federal employees codified under the Federal Merit System.

The above actions directly violate the **CIGIE** mandated framework for managing, operating, and conducting the work of the Offices of Inspector General (**OIGs**) and violate the **CIGIE** demand for IGs to follow the Standards for Ethical Conduct for Employees of the Executive Branch (Ethical Standards) and the Federal conflict of interest laws, ref: *CIGIE Quality Standards for Federal Offices of Inspector General*, Section 2(B), p. 8, dtd August 2012.

The aforementioned powers assumed by members of the **CIGIE** are also in direct conflict with the **CIGIE** demand that, “The Office of Inspectors General (**OIGs**) have a special need for high standards of professionalism and integrity in light of the mission of the Inspectors General under the Act”, ref: *CIGIE Quality Standards for Federal Offices of Inspector General*, Section 1(A), p. 3, dtd August 2012.

8. The investigative report, prepared by **Michael E. Horowitz**, does not comply with the basic **CIGIE** Quality Standards for Investigation (QSI) and clearly lacks investigative independence due to the following personal and external impairments:

- personal impairments: (1) Official, professional, personal, or financial relationships that affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way; (2) Preconceived opinions of individuals, groups, organizations or objectives of a particular program that could bias the investigation; (3) Previous involvement in a decision-making or management capacity that would affect current operations of the entity or program being investigated; (4) Biases, including those induced by political or social convictions that result from employment in, or loyalty to, a particular group (**CIGIE**) or organization (U.S. Special Counsel)
- external impairments: (1) Interference in the assignment of cases [inappropriate partition of OSC-12 Disclosure (**DI-15-2333**) into parts]; (2) Influence on the extent and thoroughness of the investigative scope, the way in which the investigation is conducted, the individual(s) who should be interviewed; the evidence that should be obtained; and the content of the investigative report.

9. As a result of the systemic failure of **Carolyn N. Lerner** to protect my due-process rights under both the Federal Merit System and the **WPA**, along with the impropriety and loss of independence and objectivity displayed by **Carolyn N. Lerner**, **Michael E. Horowitz**, **Scott S. Dahl**, and **Glenn A. Fine**, I request the following:

- that the U.S. Special Counsel comply with the statute governing the U.S. Special Counsel’s “**substantial likelihood**” finding determinations [5 U.S.C. § 1213(b)] and make proper Agency Head Notification (Secretary of Defense, **James N. Mattis**/U.S. Attorney General, **Jefferson B. Sessions**) regarding whistleblower Disclosure (**DI-15-2333**);

- that the U.S. Attorney General, **Jefferson B. Sessions**, be requested to initiate an independent investigation into criminal misconduct by DoD IG, **Lynne M. Halbrooks** and DOD IG General Counsel (GC), **Henry C. Shelley Jr.**, and

- that an immediate independent investigation be undertaken by the U.S. Special Counsel into allegations of multiple violations of the Whistleblower Protection Act (WPA) by the following members of the Federal Inspector General community: **Michael E. Horowitz**, **Glenn A. Fine**, and **Scott S. Dahl**, ref: 5 U.S.C. § 7515(b)(1)(B).

I look forward to your response.

Very Respectfully,

John R. Crane

Copy to:
Tristan Leavitt

From: **Leavitt, Tristan** TLeavitt@osc.gov
Subject: RE: Comment on Horowitz Report to U.S. Special Counsel
Date: 1 August 2018 at 09:44
To: John Crane johnrcrane@me.com
Cc: Ullman, Susan SULLman@osc.gov, Kerner, Henry HKerner@osc.gov

John,

Thank you for your email. You expressed many of the same thoughts from your letter to me in person when we met last Wednesday, and I hope that meeting was helpful to you.

Unfortunately, OSC's statutory process does not involve responding to investigative requests from complainants as part of providing comments on a report. However, OSC has no objection to granting the extension for your comments to August 15, 2018. Although the deadline for comments is a timeframe that, like the referral deadline timeframe, is established in statute (5 USC 1213(e)(1)), OSC considers complainant comments an important part of the process. (OSC also advocated for the public posting of the complainant comments to be made a statutory requirement, a recommendation that was included in the OSC reauthorization enacted into law on December 12, 2017, and is now found at 5 USC 1219(a)(1)(C).)

As I indicated when you and I met, Congress established the 1213 process to provide complainants the closure of having a spotlight shined on their allegations when the report and the complainant comments are sent to the President and the Congress. Now Congress has ensured the public will also get to see any whistleblower comments. This is the key way whistleblowers are able to make their voice heard. I would again encourage you to make the most of the comment process. The sooner you provide your comments, the sooner the statutory process in Section 1213 can be completed and the President and Congress can be notified of your allegations.

Kindly,
Tristan

Tristan Leavitt
Principal Deputy Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036
(202) 804-7000

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From: John Crane <johnrcrane@me.com>
Sent: Tuesday, July 31, 2018 1:35 AM
To: Kerner, Henry <HKerner@osc.gov>
Cc: Leavitt, Tristan <TLeavitt@osc.gov>; Ullman, Susan <SULLman@osc.gov>
Subject: Comment on Horowitz Report to U.S. Special Counsel

Mr. Kerner,

I cannot in good faith consider a response to the systemic investigative failures contained within the Michael E. Horowitz report: *Allegations that Department of Defense Office of Inspector General (DOD IG) Personnel Destroyed Audit Document in Violation of DOD IG Policy* without also addressing the systemic failure of the U.S. Special Counsel to protect my due-process rights, and to address the failure to uphold the Whistleblower Protection Act (WPA).

In that regard, I request an extension until August 15, 2018, to decide whether a response allowed by 5 U.S.C. § 1213(e)(1) to the written report by **Michael E. Horowitz** has been rendered moot due to the degradation of the evidentiary base (documentation/witnesses) that was allowed by the U.S. Special Counsel and **Michael E. Horowitz**.

I am making specific requests for information of the U.S. Special Counsel to help me make my decision.

I look forward to a prompt response.

Sincerely,

John