

From: John Crane johnrcrane@icloud.com 

Subject: OSC Loss of Independence/Objectivity and Violation of 18 U.S.C. 1512(b) - Also See: DI-18-4945; DI-18-4904; DI-18-4945/DI-18-5016

Date: 11 June 2019 at 10:55

To: HKerner@osc.gov

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Mr. Kerner,

As you know, I have already filed an OSC-12 Disclosure regarding wrongdoing and violation of statute within your office (**DI-18-4945**). I am informing you of your documented loss of statutory independence in regard to the CIGIE and its Integrity Committee and your violation of 18 U.S.C. sec. 1512(b).

As you also know, several other whistleblowers have observed the same wrongdoing and violation of statute and have also filed OSC-12 Disclosures of Wrongdoing with you. [See: DI-18-4904; DI-18-4945/DI-18-5016]

You have an obligation to:

- 1.) immediately notify the Chief Executive of the OSC inability/reluctance to comply with the OSC statute to demand investigation of the disclosures in my OSC-12 Disclosure of Wrongdoing (**DI-15-2333**) that you referred to Scott S. Dahl, Chair, Integrity Committee after having made a substantial likelihood finding under 5 U.S.C. sec. 1213(b);
- 2.) notify the Executive Chair of the CIGIE, Margaret Weichert (Deputy Director, OMB, Acting Director, OPM), of the threat to safeguarding the merit system caused by the failure of the U.S. Special Counsel to protect federal employees.

I look forward to your immediate response on actions taken to address the failure to safeguard the merit system, protect the due process rights of federal employees, and the loss of OSC agency independence and objectivity.

Very respectfully,

John



Crane Kerner IC
Letter...19.pdf



Enclosure 1.pdf



Enclosure 3.pdf



Enclosure 4.pdf

11 June 2019

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Honorable Henry J. Kerner
U.S. Office of Special Counsel
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SUBJECT: DOCUMENTED LOSS OF STATUTORY INDEPENDENCE AND OBJECTIVITY WITHIN THE OFFICE OF THE U.S. SPECIAL COUNSEL/ COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY (CIGIE) INTEGRITY COMMITTEE (IC) CHAIRED BY SCOTT S. DAHL SPECIFICALLY RELATED TO INVESTIGATORY OBSTRUCTION [18 U.S.C. § 1512(b)] OF U.S. SPECIAL COUNSEL DISCLOSURE OF WRONGDOING (DI-15-2333)

U.S. Special Counsel Kerner,

1. On 09 February 2015, I submitted my OSC-12 Disclosure of Wrongdoing (**DI-15-2333**) to the U.S. Special Counsel, **Carolyn N. Lerner**, for a statutory **45-Day** determination that I properly disclosed information that reflected a substantial likelihood that there was a violation of law, rule, or regulation or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety. [See: enclosure 1]
2. Despite the fact that I submitted over 211 pages of documentation clearly identifying Senior Leader Misconduct, that included Whistleblower Reprisal and criminal violation(s) of Title 18, involving Department of Defense (DoD) Principal Deputy Inspector General (**PDIG**) **Lynne M. Halbrooks** and DoD IG General Counsel, **Henry C. Shelley Jr.:**
 - The Office of U.S. Special Counsel (OSC), as an independent federal investigative and prosecutorial agency charged with safeguarding the merit system and protecting federal employees failed to safeguard the merit system or protect my due process rights as a federal employee.
 - the U.S. Office of Special Counsel (OSC) delayed making a determination on my OSC-12 Disclosure of Wrongdoing (**DI-15-2333**) submitted on 09 February 2015, until notification by your office on 19 April 2017, or **789** days after the statutory **45-**

day window for making a substantial likelihood determination under 5 U.S.C. § 1213(b) had closed. [See: enclosure 2.]

- the U.S. Office of Special Counsel (OSC) materially degraded the quality of the evidentiary base (witness statements/documentation), needed for conducting a statutorily directed agency head **60-day** formal investigation into a credible report (**DI-15-2333**) of agency wrongdoing within a subordinate independent and objective unit: DoD Office of Inspector General (OIG)
- gross mismanagement and/or abuse of authority reflected in the overall handling of OSC-12 Disclosure of Wrongdoing (**DI-15-2333**) clearly reflects the inability/reluctance of the OSC to either safeguard the merit system or protect the rights of federal employees while obstructing the federal investigative process. [See: 18 U.S.C. 1512(b)]
- violation of federal law to knowingly use intimidation or corruptly persuade another person, or to attempt to do so, or engage in misleading conduct toward another person with intent to; influence, delay, or prevent testimony in an official proceeding; withhold a record, document, or other object, from an official proceeding; alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding.
- the U.S. Special Counsel has been specifically notified of the serious nature of the corruption existing within the OSC and conflicts of interest associated with being subjected to the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Integrity Committee (IC). [See: **DI-18-4904/DI-18-4945/DI-18-5016**.]

3. As you are aware, no OSC or federal employee has the right to intentionally obstruct federal investigations and willingly violate federal statute, in order to avoid legitimate investigation into members of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Chair, **Michael E. Horowitz**.

4. The U.S. Special Counsel/Deputy U.S. Special Counsel currently fall under the authority of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), Chair, **Michael E. Horowitz**, and the Integrity Committee (IC), chair **Scott S. Dahl** which presents an unacceptable conflict of interest and loss of investigative independence [See: *Integrity Committee Policies & Procedures*, 2.C. *Persons within the IC's Authority*, p. 1].

5. In addition, the U.S. Special Counsel is also bound by the Policies and Procedures of the Integrity Committee (IC) Chair, **Scott S. Dahl**, in regard to investigation, as a member of the Allegations Review Group. The U.S. Special Counsel thus is a decision-making authority regarding initiating investigations against **Scott S. Dahl**. In turn, **Scott**

S. Dahl, is a decision-making authority to initiate investigations against the U.S. Special Counsel, but also is a decision-making authority in regard to the conduct of the investigations into the U.S. Special Counsel. The authority of **Michael E. Horowitz** and **Scott S. Dahl** are clearly a conflict of interest in regard to the ability of the U.S. Special Counsel to perform his mission. [See: *Integrity Committee Policies and Procedures*; 3.F. Allegation Review Group, p. 2; 6.B. Review and Referral by the Allegation Review Group, p. 4; 6.E. Action by OSC on referred allegations, p. 5.]

6. This conflict of interest is clearly reflected in the collective actions taken by the U.S. Special Counsel (**DI-15-2333**) to circumvent statute to avoid agency head notification and to negate timely investigation of fellow members of the CIGIE: DoD Principal Deputy Inspector General (**PDIG**) **Lynne M. Halbrooks** and DoD IG General Counsel, **Henry C. Shelley Jr.**

7. In your response of 11 October 2017, the U.S. Special Counsel clearly demonstrates the fact that the ability to safeguard the merit system and protect federal employees has been subordinated to shielding members of the CIGIE from legitimate investigation and independent oversight. [See: enclosure 3] It is clear that:

- all members of the CIGIE are federal employees and are equally subjected to the merit system;
- the statutory authority of the U.S. Special Counsel to safeguard the merit system and protect federal employees is not subordinated to the Inspector General Act of 1978 (IG Act), as amended, allowing for “special” treatment of inspector general personnel.

8. The claim(s) made in your response of 11 October 2017, that the U.S. Special Counsel is unable/reluctant to override CIGIE Integrity Committee (IC) Chair, **Scott S. Dahl** in his decision to “not investigate” a substantial likelihood finding by the OSC [5 U.S.C. § 1213(b)] of agency wrongdoing, as you acknowledge, countermands the U.S. Special Counsel statutory ability to demand legitimate investigation of misconduct by any federal employee subjected to the merit system.

Your office noted to me: “As we have discussed with you, this case highlights the challenges OSC faces in addressing allegation of misconduct by inspector general and their high-level employees under the statutory framework of § 1213.” [See: enclosure 3.]

Previously, on May 18, 2017, your office stated: “On May 15, 2017, the IC contacted OSC to confirm receipt of our referral and confirmed that it would review the allegation pursuant to its statutory authority” Subsequently, **Scott S. Dahl** reversed his decision and chose not to investigate countermanding your statutory authority. [See: enclosure 4.]

9. Summary of OSC misconduct: as a direct result of gross mismanagement and/or abuse of authority, the OSC Leadership Team (**Carolyn N. Lerner, Mark Cohen, Adam Miles, Anne Wagner, Louis Lopez, Tristan Leavitt, and Carol Gorman**), violated federal statute, while conspiring to delay issuance of a statutory **45-day** substantial likelihood finding (**DI-15-2333**), in an effort to materially degrade the quality of the evidentiary base (witness statements/documentation), required for the Secretary of Defense (SecDef)/Agency Head to perform the statutory **60-day** formal investigation into credible report of agency wrongdoing, within an independent and objective subordinate unit: DoD Office of Inspector General (OIG). [See: 5 U.S.C. § 1213]

10. I demand that the U.S. Special Counsel: (1) immediately notify the Chief Executive of the OSC inability/reluctance to comply with the OSC statute to demand investigation; (2) notify the affected agency head [SecDef] of the credible report of senior leader wrongdoing within an independent and object unit assigned to the DoD; (3) notify the respective Congressional oversight committee leaders of the inability/reluctance of the U.S. Special Counsel to safeguard the merit system and protect federal employees in cases concerning allegations of wrongdoing against fellow members of the CIGIE; (4) demand that the CIGIE Integrity Committee (IC), under the direction of **Scott S. Dahl**, comply with federal statute and conduct a legitimate investigation into fellow members of the CIGIE; (5); notify the Executive Chair of the CIGIE, Margaret Weichert, of the threat to safeguarding the merit system and the failure of the U.S. Special Counsel to protect federal employees; and (6) that the U.S. Special Counsel/Deputy U.S. Special Counsel be immediately removed from the “authority” of the CIGIE, Chair, **Michael E. Horowitz**, and Integrity Committee, Chair, **Scott S. Dahl**.

11. I look forward to your immediate response on actions taken to address this failure to safeguard the merit system, protect federal employees, and the loss of agency independence and objectivity.

Very Respectfully,

John R. Crane

John R. Crane

cc:

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February 9, 2015

Ms. Carolyn Lerner
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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 cursive script, reading "Thomas Devine", written in dark ink. The signature is positioned above a horizontal line.

Thomas Devine
Counsel for Mr. Crane

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600



April 19, 2017

Mr. John Crane
c/o Tom Devine
Legal Director
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, DC 20006

Re: OSC File No. DI-15-2333

Dear Mr. Crane:

The Office of Special Counsel (OSC) has reviewed the allegations you disclosed in the above-referenced matter. With your consent, we forwarded those allegations to the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE).

We identified you as the source of the information, so that you may provide relevant information to investigators. As the originator of the complaint, you can provide additional information and an explanation of your allegations.

Please contact me at (202) 254-3677, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Gorman".

Karen Gorman
Chief, Retaliation and Disclosure Unit

U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600



October 11, 2017

Mr. John Crane
c/o Tom Devine
Legal Director
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, DC 20006

Re: OSC File No. DI-15-2333

Dear Mr. Crane:

We are writing to report to you on the resolution of your disclosures to OSC, made initially in February 2015, and supplemented since that time.

You were the Assistant Inspector General for Communication and Congressional Liaison at Department of Defense (DoD), Office of Inspector General (OIG). In that role, you oversaw the whistleblower outreach program and were the senior official in charge of FOIA and Privacy Act functions. You were also the OIG's FOIA Appellate Authority.

You disclosed that senior DoD OIG officials, particularly former Acting Inspector General Lynn Halbrooks and OIG General Counsel Henry Shelley, engaged in an abuse of authority when they departed from prior OIG practice and determined not to publicly release a report of investigation. You alleged they did this in order to protect a senior DoD official who was the subject of the investigation. You also alleged that, between 2011 and 2014, Ms. Halbrooks and Mr. Shelley: (1) directed an investigative team to depart from normal investigative practices; (2) abruptly canceled scheduled subject interviews; (3) improperly met with subject officials during the investigation; (4) removed key findings or information from the final report; and (5) delayed release of the report for improper reasons. Finally, you alleged that senior OIG employees: (1) applied improper standards to civilian reprisal investigations; (2) failed to correct identified deficiencies in military reprisal programs; (3) abused their authority in numerous investigations; and (4) abused their authority by removing investigative independence in civilian reprisal investigations.

In your disclosure, you alleged that the actions of senior OIG officials represented a continuation of a pattern of conduct that Senator Charles Grassley identified in a November 2014 report to then-DoD Inspector General Jon Rymer. Your disclosures to OSC overlapped substantially with the concerns raised by Senator Grassley. Although the report addressed many of the issues raised in your disclosures, it left open some questions about the propriety of certain of the actions and decisions of senior DoD OIG officials.

Under 5 U.S.C. § 1213(b), whenever the Special Counsel receives information alleging a disclosure of information from an employee who reasonably believes the information evidences a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, she is required to review the information and determine whether there is a substantial likelihood that it discloses such wrongdoing. If so, she is required under 1213(c)(1) to transmit the information to the appropriate agency head and require that the agency head conduct an investigation and submit a written report. Under 5 U.S.C. § 1213(g)(2), if the Special Counsel receives information, but does not make a substantial likelihood determination under 1213(b), the Special Counsel may transmit the information to the head of the agency for a response, with the consent of the employee.

OSC generally does not refer allegations if a prior investigation already addressed the whistleblower's disclosures. However, as stated, Senator Grassley's report identified **unresolved** questions. In addition, your supplemental disclosures included the new information concerning the OIG's failure to release a report of investigation derivative of the issues identified in Senator Grassley's report.

Because your disclosures involved the DoD OIG, they posed a unique jurisdictional issue. Transmitting the allegations to the Secretary of Defense and requiring DoD to investigate its OIG would have compromised the independence of the OIG. Under the Inspector General Act of 1978 (IG Act), allegations of misconduct by inspectors general and their senior staff are within the jurisdiction of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE).¹ Thus, to ensure that an impartial and thorough review or investigation was conducted, on April 19, 2017, then-Special Counsel Carolyn Lerner forwarded the allegations to the CIGIE IC pursuant to OSC's § 1213 authorities.

The IC notified OSC that it reviewed this matter, requested and received a response from Mr. Shelley, and that the matter is now closed.

Unfortunately, the IC's decision not to investigate countermanded the Special Counsel's statutory determination that the allegations warranted investigation. As we have discussed with you, this case highlights the challenges OSC faces in addressing allegations of misconduct by inspectors general and their high-level employees under the statutory framework of § 1213. We believe Congress has expressed a clear intent for the IC to review allegations concerning such officials, and since OSC received your allegations, Congress enacted the IG Empowerment Act of 2016 to establish a process aimed at ensuring the efficient resolution of jurisdictional issues between OSC and the IC. Nevertheless, the IC's processes and procedures and those in 5 U.S.C. § 1213 are not consistent, and without an investigation, OSC is obviously unable to reach a determination, as required by § 1213(e)(2), regarding the reasonableness of any findings.

¹ Under the Inspector General Empowerment Act of 2016, OSC and the IC must consult and coordinate to ensure that jurisdictional issues between OSC and the IC are resolved efficiently and effectively.

Mr. John Crane
October 11, 2017
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Pursuant to OSC procedures, OSC will take no further action in connection with these allegations. However, your file remains open pending receipt of an investigative report from the Department of Justice OIG regarding other allegations you made, which OSC previously referred for investigation under § 1213. We will continue to provide you with updates on the status of that matter.

Please contact me at (202) 254-3677, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Gorman", with a long horizontal flourish extending to the right.

Karen Gorman

Chief, Retaliation and Disclosure Unit

U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
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May 18, 2017

Mr. John Crane
c/o Tom Devine
Legal Director
Government Accountability Project
1612 K Street, N.W., Suite 1100
Washington, DC 20006

Re: OSC File No. DI-15-2333

Dear Mr. Crane:

The Office of Special Counsel (OSC) has reviewed the allegations you disclosed in the above-referenced matter. You made initial disclosures to OSC in February 2015, and supplemental disclosures since that time.

Under 5 U.S.C. § 1213(b), whenever the Special Counsel receives information alleging a disclosure of information from an employee who reasonably believes the information evidences a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, she is required to review the information and determine whether there is a substantial likelihood that it discloses such wrongdoing. If so, she is required under 1213(c)(1) to transmit the information to the appropriate agency head and require that the agency head conduct an investigation and submit a written report. Under 5 U.S.C. § 1213(g)(2), if the Special Counsel receives information, but does not make a substantial likelihood determination under 1213(b), the Special Counsel may transmit the information to the head of the agency for a response, with the consent of the employee.

Because your disclosures involve the Defense Department's Office of Inspector General (DOD OIG), rather than transmit the allegations to the Secretary of Defense, we forwarded the allegations to the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) under these authorities. Our intent in referring the allegations to the IC is to ensure that an impartial and thorough review or investigation is conducted, as appropriate, without compromising the independence of the DoD OIG by referring such matters to the agency head.

On May 15, 2017, the IC contacted OSC to confirm receipt of our referral and confirmed that it would review the allegations pursuant to its statutory authority. We will provide you with additional updates as appropriate.

As we have further discussed with you, the preliminary release of information about the referral could adversely impact the conduct of a fair and impartial investigation and/or the ability of an investigator to secure relevant evidence. We appreciate your recognition of this concern.

Mr. John Crane
May 18, 2017
Page 2 of 2

Please contact me at (202) 254-3677, if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen P. Gorman", with a long horizontal flourish extending to the right.

Karen Gorman
Chief, Retaliation and Disclosure Unit