


From: John Crane crane_haughton@earthlink.net 
Subject: Demand for Positive or Negative 45-Day "Substantial Likelihood" Determination (DI-18-4945) In Compliance with Statute
Date: 7 December 2018 at 21:19
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



Mr. Kerner,

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

As you are aware, an OSC-12 45-day "substantial likelihood" determination is made, within 45 days of receipt of an OSC-12 Disclosure, to ensure the evidence base (witness statements and documentation) is protected while investigators substantiate or non-substantiate credible allegations of wrongdoing reported to the U.S. Special Counsel by a federal whistleblower.

Enclosures:



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



Enclosure 1 -
OSC F...-18.pdf



Enclosure 2 -
OSC Di...18.pdf



Enclosure 3 -
Crane...18.pdf

December 07, 2018

John R. Crane

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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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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.

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

[OSC e-Filing](#)[Log Out](#)[Go to Complaint Dashboard](#)[About](#)[Instructions](#)[Help/FAQs](#)[Contact](#)

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

July 9, 2018

John R. Crane
P.O. Box 7185
McLean, VA 22106
202-372-5321
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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
P.O. Box 7185
McLean, VA 22106

Mr. Henry Kerner
U.S. Office of Special Counsel
1730 M Street, NW #300
Washington, DC 20036

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 401 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