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May 29, 2013

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510-6275

Dear Senator Grassley:

I am the former Assistant Inspector General for Communications and Congressional Liaison for the Department of Defense Inspector General (DoD IG) and have spent almost 25 years leading efforts to encourage senior IG managers to be responsive to your oversight initiatives that have, on occasion involved the most senior leadership.

I request your assistance as Ranking Member of the Senate Judiciary Committee to initiate a review to examine the validity of findings made against me by Special Agents of the Department of Transportation, Inspector General (DoT IG) in a report dated November 6, 2012. I believe the investigation served as a pretext for reprisal and was part of an effort by Ms. Lynne Halbrooks, Principal Deputy Inspector General and Henry Shelley, General Counsel, to remove me from my position because of my cooperation with your office and my efforts to protect the integrity of the mission of the Director of Whistleblowing and Transparency (who is also the DoD Ombuds for Whistleblowing), and the mission of the congressional liaison staff. In addition, I request your assistance to review the validity of the findings contained in a Settlement Agreement between my former agency and complainants against me mediated by the Office of Special Counsel (OSC) that relied on misinformation contained in the same report by the Department of Transportation. I am also sending a letter to Chairman Levin of the Senate Committee on Armed Services who also has a direct interest in the integrity of the DoD IG.

Immediately prior to being served a Notice of Proposed Removal by Ms. Halbrooks, I was at the center of tense on-going policy disputes regarding how the DoD IG should respond to your efforts to conduct oversight of the DoD IG. Your Floor statement of November 14, 2012, regarding the Defense Finance and Accounting Service (DFAS), in which you state "I am getting the run around from the inspector general at the Department of Defense," and "I am getting tired of being jerked around" was a watershed moment resulting in recommendations to the Principal Deputy Inspector General by senior leaders in Audit to craft statute to block you from

conducting oversight. I vigorously opposed those proposals and the prior decision by Ms. Halbooks to not respond to an extensive series of questions you had sent as part of your oversight efforts regarding DFAS.

In addition, your oversight of the Dawood National Military Hospital Kabul and my strong recommendations to reveal the culpability of the DoD IG Front Office in the death of a young allied Afghan military veteran was strongly opposed by Ms. Halbooks. At issue was not only the death of a young Afghan military veteran but also the proper operation of the Defense Hotline that was denied urgent actionable health and safety information. I strongly felt the Inspector General Act of 1978, as amended, required full and candid cooperation with your oversight efforts.

Another of your oversight efforts, in which I strongly urged cooperation, regarded accountability with respect to the decline of military reprisal investigative proficiency. Your concern had focused on a matter involving a Navy lieutenant who was the victim of retaliation. The result was that the Military Reprisal Investigations unit was completely reorganized. Despite your direct questions, Ms. Halbooks made a decision that avoided answering the question of culpability within the senior leadership for the failure that had occurred.

At the same time, there were serious policy disputes regarding requests from Chairman Peter King, House Committee on Homeland Security, to the IG DoD to conduct reviews regarding alleged leaks of classified information regarding the movie, *Zero Dark Thirty*, as well as a request from Chairman Levin, Senate Committee on Armed Services, regarding the use of Navy Service personnel in the movie *Act of Valor*.

In regard to *Zero Dark Thirty*, Ms. Halbooks directly challenged me regarding whether I was the source or whistleblower for Marisa Taylor, McClatchy News, in the December 17, 2012, article titled "Bin Laden film leak was referred to Justice; leaker top Obama official." Ms. Halbooks challenged me as a perceived whistleblower because the article mirrored concerns that I had consistently expressed to Ms. Halbooks during the course of the IG DoD, investigation that the report be quickly concluded in order to avoid allegations that the IG DoD had politicized the issue prior to the 2012 General Election by not issuing a timely report and that the IG needed to interview all appropriate senior officials.

In regard to the book *Act of Valor*, I had objected to the legal counsel of the General Counsel, Mr. Henry Shelley, also a Captain in the Naval Reserves, to avoid a direct response from the DoD IG to Chairman Levin but rather allow the Department to make a response on behalf of the DoD IG. I had also objected to Mr. Shelley providing the Navy the results of the DoD IG investigation into actions by ADM Stavridis before the findings had been issued by the DoD IG. I believed both actions by Mr. Shelley to be a conflict of interest between his status in the Navy Reserves and his position as General Counsel of the DoD IG.

In regard to my responsibilities and obligations to ensure the integrity of the DoD IG in responding to Congress, I met my obligation under Executive Order 12674 to report corruption by disclosing to your office on September 14, 2012, the following matters:

- Lynne Halbrooks --- despite having been provided information by me outlining failures in the Front Office that resulted in the starvation death of a young Afghan allied military veteran at Dawood Military Hospital--- refused to report that information to you during the course of an IG investigation that was designed to respond to your oversight of DoD IG actions regarding Dawood.
- Lynne Halbrooks and Henry Shelley intending to delay the issuance of a report in response to a request from Chairman King in regard to the disclosure of classified information to Hollywood movie producers regarding the film *Zero Dark Thirty*. I disclosed the intent of Ms. Halbrooks and Mr. Shelley to delay issuance of the report until the departure of the then Secretary of Defense, who was a subject of the report, from office.
- Lynne Halbrooks and the DOD IG Office of Professional Responsibility refusing to act on my request to initiate an investigation into the actions and conduct of my Deputy toward a female employee that the female employee described as "angry and aggressive" to include her feelings that her "personal space was being invaded" and that the actions of the male manager led to a situation where the female employee "felt scared and uncomfortable."

The effort to target me in reprisal for cooperation with your office was triggered by a chain of events when Ms. Lynne Halbrooks, Principal Deputy Inspector General and Mr. Henry Shelley, General Counsel, served on two separate interview panels and then, in an obvious conflict of interest, Ms. Halbrooks Chaired and Mr. Shelley served on the subsequent higher level Executive Resources Board that voted to select and approve the candidate they had already recommended to be my Deputy.

I believe their effort to impose on me a Deputy for their choice was designed to remove me as the first level supervisor for the Director of Whistleblowing and Transparency, whose Position Description I had crafted in 2010, in part, to facilitate oversight by Congressional offices. Both Ms. Halbrooks and Mr. Shelley knew of my strong support for whistleblowing and that the Director of Whistleblowing & Transparency worked with and protected sources within the DoD IG who worked with your office. The whistleblowers assisted by the Director provided information that was derogatory regarding the management climate and actions of senior management to include Ms. Halbrooks. As the first level supervisor I could give both material support and protect the Director from reprisal through the rating process. In addition, their effort was designed to remove me as the first level supervisor for the congressional liaison staff who supported my efforts to have a transparent and cooperative relationship with your office as you conducted your oversight efforts.

The first interview panel for my Deputy was convened on Friday, July 29, 2011, and the second interview panel was convened on November 28 and 29, 2011. I was a member of both panels. In the normal course of business, however, I would have been allowed to lead the panels and chose members of the interview panel who would then assist me in making a selection. The selection of my Deputy by Ms. Halbrooks and Mr. Shelley was a failure. The new Deputy failed to assist me in administering OCCL. The effect of the subsequent actions by Ms. Halbrooks and Mr. Shelley was to circumvent my supervisory authority. The actions by Ms. Halbrooks and Mr. Shelley to be part of the interview process, recommend a candidate who did not meet the specific qualification standards of the position and then serve as approving officials of their own recommendation is to my knowledge without precedent.

In the course of the investigation, however, when asked about the selection process, both Ms. Halbrooks and Mr. Henry Shelley provided testimony to the DoT investigators that denied the existence of the first selection panel on July 29, 2011, during which Ms. Halbrooks took control of the interview process and decided not to select any candidates even though both candidates had extensive experience. In fact, favored a particular candidate to be my Deputy. Then Ms. Halbrooks was the deciding official in the January 14, 2013, Notice of Proposed Removal who ruled on her own veracity in determining whether she had influenced the selection process. The testimony provided by Ms. Halbrooks and Mr. Shelley contributed to the basis of two separate findings in the DoT report that called for my removal. The existence of the first panel is irrefutable with clear documentation.

The result of their efforts was the selection of a Deputy for me who openly opposed my policies and initiatives. Examples include the Deputy, after having met with senior leadership to include Ms. Halbrooks and Mr. Shelley, convening a meeting with my supervisory staff and telling them that "senior leadership" considered them to be "broke" and instructed them on the expectations of "senior leadership" and ignored my role as the supervisor of the office. The views expressed by the Deputy were in complete contradiction to my own views. The Deputy, also without my knowledge, told my congressional liaison staff to stop direct interaction with me and to report information regarding their actions only to him. In effect, the Deputy was attempting to take control of my efforts to cooperate with your office. Members of the liaison staff had worked with me on a daily and direct basis for up to 20 years.

I repeatedly raised concerns to Ms. Halbrooks especially regarding behavior by the Deputy that showed anger and aggression toward a female employee that was documented by the female employee in a five page memo on March 23, 2012. Previously on March 9, 2012, the Deputy had a loud verbal altercation with the female employee that was memorialized in memos from the female employee, the Deputy and other witnesses to the incident. The account by the Deputy was contrary to the description of events prepared by the other witnesses and was troubling to me due to its questionable veracity. I requested an investigation into the actions of the Deputy on April 1, 2012, and was subsequently repeatedly rebuffed by Ms. Halbrooks. I also informed Ms. Halbrooks that based upon my observations that the Deputy she had

selected had misrepresented his experience during the interview process and the matter of the veracity of the Deputy needed to be investigated. Ms. Halbrooks rebuffed my request to initiate an investigation although I considered it vital to the proper management of my office.

During conversations of how to respond to actions by my Deputy, Ms. Halbrooks repeatedly raised the subject of her efforts to be nominated to be the next DoD IG. The attempts by Ms. Halbrooks to be nominated were known and included reaching out to at least one Non-Governmental Organization to support her candidacy. Ms. Halbrooks stated that she wanted the issue regarding my Deputy to be handled by the Ombuds, which is an off-record process that produces little or no formal documentation, because she did not want her judgment to be questioned while attempting to be nominated by President Obama to be confirmed by the Senate as Inspector General, Department of Defense.

The focus by Ms. Halbrooks on her nomination to be the DoD IG, resulted in her not offering counsel to me, or providing remedial action to address insubordination and anger management issues involving the Deputy. Ms. Halbrooks also did not respond to my concerns that: 1.) the Deputy had made prior physical contact with me; 2.) the decision of the Deputy to refuse continued mediation with me through the Ombuds process; 3.) the ongoing pattern of the Deputy to refuse to have proactive communication with me, and 4.) the unwillingness of the Deputy to engage in projects that I had assigned to him. Ms. Halbrooks refused to make appropriate management decisions and address the performance issues of the Deputy she had selected.

I categorically dispute the findings of both the DoT IG and OSC reports and challenge the legal and investigative sufficiency of both reports and request a review to examine the validity of the findings. I challenge whether I was afforded the same due process and legal sufficiency review as any other senior official in DoD who is under administrative investigation. Being a member of an Inspector General office should not remove me from the protections, policies and procedures that are offered to all other senior officials who are employees within the DoD. My concerns regarding the legal and investigative sufficiency of both reports titled *Administrative Investigation Sufficiency Checklist Issues Regarding the Conduct of the DoT and OSC Investigations*, is attached for your review and consideration.

I state for the record that Ms. Halbrooks and Mr. Henry Shelley provided false and misleading testimony in regard to their efforts to select a Deputy for me, and their statements can be incontrovertibly proved to be false. The findings of OSC report are based on a conspiracy theory that I as a second level approving official approved "fully satisfactory" ratings to two employees because I suspected them of being the source of allegations against me and another supervisor in a report prepared by Office of Professional Responsibility. In fact, I had never read the report nor knew the precise contents of the report nor were there any administrative actions reflected in my rating or official record. During the course of the OSC interview I could not even remember

being interviewed by OPR for the report. I never gave any consideration to the speculative origins of the allegations that initiated the report.

I believe there is a clear pattern of events that point to: the selection of my Deputy; the creation, in effect, of a secondary chain of reporting; the conduct of an outside investigation by the DoT IG, and the severity of the actions that were proposed against me as reprisal for my strong support for Whistleblowing and Transparency and of the congressional oversight conducted by your office. The false testimony by Ms. Halbrooks and Mr. Shelley tries to shield their involvement in triggering events directly relevant to the proposed actions against me. The failure of the DoT IG investigation to even conduct cursory fact checks of the testimony of Ms. Halbrooks and Mr. Shelley shows the deeply flawed nature of their investigation.

I am available to speak with you, or your staff, to discuss these issues.

Sincerely,



John R. Crane

Administrative Investigation Sufficiency Checklist
Issues Regarding the Conduct of the DoT and OSC Investigations

In order to determine both the investigative and legal sufficiency of the work products issued by the Department of Transportation (DoT) and the Office of Special Counsel (OSC), a review regarding whether the following requirements were satisfied should be initiated:

- [] Were the Kalkines and Garrity warnings properly administered and executed?
 - [] Are the standards to which the facts are applied identified and stated in the report?
 - [] Are the standards correct?
 - [] Were interviews conducted in private protecting protecting PII?
 - [] Was known documentary evidence shared with the subjects(s) or did the investigators employ entrapment through "gotcha" tactics ?
 - [] Were inconsistencies in testimony identified and resolved with the witnesses?
 - [] Where conflicting testimony exists, is the presentation of evidence in the report balanced between the two?
 - [] Were representations made by investigators that witnesses would be reinterviewed as the investigation progressed? Did those interviews take place. If not, why not?
 - [] Did investigators meet with subject(s) when the subject(s) provided additional explanatory information and the subject(s) expressed willingness to discuss the new information?
 - [] Are witnesses statements assessed based on the demonstrated quality of the memories of the witnesses?
 - [] Are citations provided in the report?
 - [] Are contentious facts corroborated with two or more independent sources?
 - [] Are self-interested statements presented without corroborating testimony discounted?
 - [] Is polygraph evidence restricted to the known limits of the technology?
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- [] Are findings the product of articulated reasoning within the four corners of the report, or do the investigators simply present conclusions without justification ?
 - [] For reprisal allegations, are all four elements and the three prongs of the fourth element established? If "knowledge" is not present, is "constructive knowledge" adequately justified?
 - [] When conclusions are selected from alternative readings of the evidence, is the decision adequately explained and justified, or were viable alternatives left unexplored?
 - [] Were tentative conclusions shared with the target(s) and were comments obtained?
 - [] To afford the subject(s) equivalent due process vis à vis their peers, was the process used by the DoDIG in the conduct of senior official cases followed by the DoT and the OSC?
 - [] Was the legal sufficiency obtained at the DoT IG?
 - [] Was legal sufficiency obtained at DoD IG?
 - [] Were the standards followed contained in the CIGIE Silver Book, the Standards for Investigations, and were other applicable DoT and DoD IG regulations and standards met?
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