

August 16, 2018

John R. Crane
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Mr. Henry Kerner
U.S. Office of Special Counsel
1730 M Street, NW #300
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SUBJECT: *A Review of Allegations that Department of Defense Office of Inspector General (DOD IG) Personnel Destroyed Audit Documents in Violation of DOD IG Policy, Oversight and Review Division, Report No. 18-02, April 2018*

RE: OSC File No. DI-15-2333

Mr. Kerner,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I look forward to your response.

Very Respectfully,

John R. Crane

Copy to:
Tristan Leavitt