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Mary L Kendall
Deputy Inspector General
Office of Inspector General/Department of the Interior
1849 C Street, N.W., MS 4428
Washington, D. C. 20240

Dear Ms. Kendall:

I am writing in the hope that you will reconsider my concerns and disclosures as described in a letter to your office dated January 14, 2013, and then again in a subsequent letter dated August 13, 2013.

Since those letters were written, my wife and I did "win" our Whistleblower case filed with the Office of Special Counsel, and as part of the Settlement Agreement, there was nothing that can "be construed as a confidentiality provision"--- so we can talk about it and reference it. (We also were given the choice to work as Interpretive Park Rangers in any National Park we wanted, and so last summer we worked at Yellowstone NP in the Old Faithful district.)

Meanwhile, you had responded to both of my letters, but in your letters you cleverly danced around the basic problem I was describing with nothing more than legal disclaimers. Simply stated, my original complaint with your office was that the Office of the Inspector General and the Department of Interior were not doing enough to recommend or pursue punishment and/or discipline for those guilty of practicing "prohibited personnel practices." And nothing has changed.

The Associate Inspector General for Whistleblower Protection, Laurie Larson-Jackson, does what is required for victims in cases involving violations of the Whistleblower Protection Act (and the WPEA) and parts of the Civil Rights Act. She informs victims of their options, and she helps them pursue those options by giving them contact information for CORE PLUS and the Office of Special Counsel. But usually nothing else is done, and hardly anything is done to cure the problem, discipline the retaliators, or punish those who have clearly broken federal laws and regulations concerning "prohibited personnel practices." In contrast to what is described on the OIG's website, the OIG's Whistleblower section rarely conducts "informal or formal inquires to determine if reprisal is threatened or actual"; and consequently it can't and it doesn't advise "the appropriate Assistant Secretary or Bureau Director to intervene or alert them to the possible consequences of retaliation."

Simply stated, when a "crime" or law has been broken, there are both "victims" and "criminals" (or perpetrators), and American laws and traditions try to help victims while punishing "criminals" and those who violate laws. The Office of the Inspector General can and should be involved both in helping victims *and* in recommending the discipline of those violating laws and regulations. But currently how it responds to disclosures of "waste, fraud, and abuse" and to violations of federal laws and regulations is very different from how it responds to Whistleblower cases.

For instance, as I have experienced personally, the Office of the Inspector General does investigate alleged violations of federal laws and regulations; and when violations have been confirmed, it recommends prosecution and punishment to the proper authorities. For instance, after writing the OIG in 2009 to report "waste, fraud, and abuse" at Mesa Verde NP, an investigation was conducted, and eventually a summary was sent to "the Colorado Office of the United State Attorney for review and prosecutorial consideration of the guilty Superintendent." Nothing more was done, however, since earlier that year Larry Wiese, the former Superintendent at Mesa Verde NP, quickly retired 10 days after I had filed a FOIA request, and he no longer was a federal employee.

In contrast, in most Whistleblower cases and some Civil Rights violations, your office is doing virtually nothing. For the current Whistleblower laws and regulations to work, people have to know that they will be punished if they violate them. Employees have to know that if they commit a "prohibited personnel practice" there will be consequences. To be sure, if people know that speed limits are never enforced, or that violators are never punished, or if they never hear of penalties being assessed for speeding, then posted speed limits will become meaningless and pointless. And if virtually all those who commit "prohibited personnel practices" know that those laws and regulations are not being enforced, that cases are rarely prosecuted, and that violators rarely are disciplined, then few will pay attention to the laws, and some of the basic guarantees of the Whistleblower Protection Act, the No-Fear Act, and the Civil Rights Act will be rendered hollow and irrelevant.

Simply stated, all too often, your office is **not** recommending punishment or discipline for those who have broken Whistleblower laws, various sections of the Civil Rights Act, and all kinds of "prohibited personnel practices;" you are **not** reporting these kinds of violations or alleged violations to the appropriate supervisors and authorities; and consequently, you are **not** doing very much to deter future violations. Instead, as soon as a Whistleblower cases are disclosed to the Office of the Inspector General or the Associate Inspector General for Whistleblower Protection, you try to pass them on and "wash your hands" of them; and then you try to hide behind the argument that you can't report wrong doing or recommend punishment and/or discipline for violators---or do virtually anything---once the Office of Special Counsel is involved. That is not correct, and that argument is neither supported by law or regulation, nor by the Office of Special Council.

What's interesting is that in some cases the Office of Inspector General has done exactly what it should do and what I am suggesting it should do regularly and more often. Consequently, the legal and regulatory authority to do what I am suggesting is in place and can be used. For instance, in a July 11, 2013 memorandum you sent to the Secretary of the Department of Interior, you addressed a number of issues in a Fish and Wildlife Service case. In that case, your office referred the allegations of reprisal to your Associate Inspector General for Whistleblower Protection; she monitored and assisted the FWS in its investigation. And as you wrote, "during the entire process, our AIG-WBP has maintained contact with the complainants, the investigating parties, and FWS senior management." A year later your office got involved again because the FWS had done little in response to their findings: they did not reimburse the employees for their loss of pay, they did not return the employees to their original assignments, and no "formal and permanent action" was taken "against the offending supervisors." Later in the memorandum, you wrote, "The actions taken against the complainants send a strong and negative message to FWS employees who have a duty to report lack of integrity or misconduct pursuant to the DOI science policy or even to raise issues of concern at the lowest possible level."

In that particular case, the Office of the Inspector General and its Associate Inspector General for Whistleblower Protection did investigate, it monitored the FWS investigation, it pursued the need for permanent action (e.g. punishment and discipline) against the offending supervisors, and it upheld the need to make right what been done to the victims. In addition, you went on to comment on the "negative message" that is sent when cases are not resolved and when no formal and permanent action is taken against offending retaliators. All of that is what most people think the Office of the Inspector General should be doing.

Incidentally, the concerns you highlighted in that memorandum were shared years earlier in the Inspector General's Report on Conduct and Discipline issued on June 24, 2004 by Inspector General Earl E. Devaney. In that report, he wrote:

> "We found a number of shortcomings – both real and perceived – in the Department's conduct and discipline process. Among our findings is a clear perception by employees that there is a significant amount of misconduct that is not being reported and that discipline is administered inconsistently and unfairly throughout the Department."

> And "rather than upholding and advancing the standards of conduct DOI-wide and promoting action to correct misconduct, we believe the current DOI conduct and discipline process perpetuates inaction, which, in turn, erodes employee confidence."

I believe the responses of the Office of the Inspector General and its Associate General Counsel for Whistleblower Protection to Whistleblower violations are sending a strong and negative message to those who are victims of "prohibited personnel practices." And the message is clear: don't expect to be protected from prohibited personnel practices, and don't expect supervisors who are violating laws classified as "prohibited personnel practices" to be punished or disciplined. What's being communicated is that few will ever be punished or disciplined for committing a "prohibited personnel practice."

In our case, for instance, even though Superintendent Cliff Spencer was reminded by our immediate supervisor, Linda Martin, that he would be committing a very obvious violation of the Whistleblower Protection Act, and even though we reminded him of that in a phone conversation with him, he still ordered Linda Martin not to re-hire us. Apparently he felt he could violate the Whistleblower Protection Act….because in the National Park Service, few are punished or disciplined for violating it.

In contrast, last summer at Yellowstone NP, a Dutch family was flying a drone over the Grand Prismatic Spring and the drone eventually crashed into it. At first no one could identify the family since all we knew was the father's name and nationality. Nevertheless, for days the Superintendent and Chief Ranger were almost obsessed with trying to find the complete name and address of the family, and with making them an example. They wanted them prosecuted and fined….because they felt an example had to be set so others would know the Park Service was serious about its new prohibitions related to flying drones in the park. That makes sense because if no one is ever punished for violating certain laws or regulations, many will disobey them.

Again…that's the problem. A quick internet search on any search engine makes it seem like only a handful of Whistleblower cases in the Department of the Interior have been resolved since the Robinson-Bruno case in 1999, and they all have had to be resolved with help from the Office of Special Counsel or from other non-governmental groups and law firms; and the process usually has taken years and years. And in virtually every case, your office not only didn't help, it seems to be part of the problem---and just part of the massive government infrastructure that works against the Whistleblower to delay, frustrate, and discourage cases constantly throughout the process.

Meanwhile the statistics of the "Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: National Park Service" and also those reported for the FWS confirm many of my concerns. Complaints based on "Reprisal" have been the highest for years in both agencies, processing time has been far too long, and according to the reports, there's a lot of "zeros" ---or just "zeros---for the final results.

Our case is a typical example of why I am complaining and filing this formal complaint and disclosure. Our case was very simple, the Whistleblower and Title 7 violations were very clear, the evidence and supporting testimony were easy to obtain, and proving a "prohibited personnel practice" had occurred was easy for the Office of Special Counsel. (If you want to review our case, it's described in detail at www.schundler.net).

But…our case went to the OSC because Laurie Larson-Jackson didn't do anything and wouldn't do anything; she initially raised doubts about whether seasonal employs were covered by the Whistleblower Protection Act which she should have known. And she kept questioning whether FOIA disclosures qualified for a WPA case even though I told her and wrote her that I had also written a formal letter to the Office of Inspector General's Office in 2009 to report "waste, fraud, and abuse", and that the OIG had conducted a formal investigation at Mesa Verde NP based on that letter. (To wit: I have attached copies the "Basis of

our Complaint" and a "Chronology of Events" which were sent to Laurie Larson-Jackson on February 7, 2011---both of which clearly outlined the legal basis of our case.)

Sadly Ms. Larson-Jackson never made one call to Mesa Verde NP to confirm or verify any of our statements. And I am still convinced that if she had just called, and confirmed with our immediate supervisor, Linda Martin, that she had planned to re-hire us but then had been ordered not to re-hire us by Cliff Spencer, the new Superintendent at Mesa Verde, and if Ms. Larson-Jackson had talked with the new Superintendent advising him that maybe he should reconsider his decision……if Ms. Larson-Jackson had made those two phone calls, I am convinced our case would have been resolved in a few days, a lot of paperwork and time would not have been wasted by everyone involved in the case, and not a few federal lawyers would have had much more time to do more important things. And a clear message would have been sent that the OIG-WBP does care and will intervene, and that violations will not be ignored. Instead, Laurie Larson-Jackson acted like she just wanted to wash her hands of our case, and get rid of it and off her desk.

Furthermore, she probably did not report our formal complaint to the Regional Director of the Intermountain Region (the Superintendent's immediate supervisor)….or let him know that a formal complaint had been filed with her office and was about to be filed with the OSC.

Others have had the same experience. For instance, this is what a well-known Whistleblower wrote me about his experiences with Laurie Larson-Jackson: "We used many of the same people and were disappointed in similar ways. Laurie Larson-Jackson is useless and does nothing to protect the whistle-blower or to get the case properly investigated, mediated or settled…and, of course, nothing in regards to holding Agency personnel accountable."

Quite frankly, the problem in the Department of Interior is not unlike that of the military several years ago. When asked why women in the military didn't report rapes or sexual harassment more often, several women essentially said, "The problem is this. If we report being raped, less than 5% of the rapists will ever be prosecuted. But almost 100% of those who report a rape or sexual harassment will suffer retaliation of some kind."

Why don't more federal employees report "waste, fraud, and abuse"? Because all too many know that they will suffer retaliation, and that it will take years to be resolved if they try to fight for their legal rights, and that the violators will not be punished or disciplined.

Those perceptions could change. But to do so, the Office of the Inspector General would have to take a much more aggressive approach in helping the victims of retaliation quickly and effectively, and in recommending punishment and discipline for the perpetrators of retaliation.

Consequently please consider this letter a formal letter of complaint. And if you need a person against which the complaint is focused, let's consider this a formal letter of complaint against Laurie Larson-Jackson for not doing all that she could, or thereby, for abusing her power and authority to do more.

Respectfully submitted,

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