

April 25, 2017

The Honorable James N. Mattis
Secretary
Department of Defense
1300 Defense Pentagon
Washington, DC 20301

Dear Secretary Mattis:

Whistleblowers are central to helping the Department of Defense root out of waste, fraud, and abuse. The undersigned organizations have long held concerns that, despite the importance of whistleblowers, those who retaliate against them all too frequently go unpunished or are even rewarded. Two recent incidents seem to further the troubling trend that the Department of Defense will not hold those who retaliate against whistleblowers accountable.

Dr. George Ellard

Last May an External Review Panel made up of Inspectors General for the Justice Department, Treasury, and the Central Intelligence Agency (CIA) substantiated allegations that National Security Agency (NSA) IG Dr. George Ellard had illegally retaliated against a whistleblower. Convened under whistleblower protections established by Presidential Policy Directive 19 (PPD-19), the panel reached that conclusion based on its own inquiry, including witness interviews and the evaluation of evidence. This finding would be troubling for any senior Department official, but is particularly serious for an official required by law to receive and independently investigate whistleblower disclosures.¹

While the finding against Dr. Ellard is deeply troubling, the panel's conclusion also appeared to be a promising sign that systems offering intelligence and national security whistleblowers "an effective and safe means to report problems without being forced to confront the fear of reprisal" were working.²

By law Inspectors General must be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations."³ Following a substantiated finding of retaliation, PPD-19 allows the panel to recommend corrective actions and requires the agency head to inform the panel of what action has been taken within 90 days.⁴ It is our understanding that NSA agency head Admiral

¹ Inspector General Act of 1978, 5a USC Secs. 7(a)-(c); Inspector General Reform Act of 2008, Public Law No. 110-409, Sec. 13 (b)(2).

² Adam Zagorin, "NSA Watchdog Removed for Whistleblower Retaliation," Project On Government Oversight, December 15, 2016. <http://www.pogo.org/blog/2016/12/intelligence-community-landmark.html>

³ Inspector General Reform Act of 2008, Public Law No. 110-409, Sec. 2.

⁴ Presidential Policy Directive 19 (PPD-19), "Protecting Whistleblowers with Access to Classified Information," October 10, 2012, Sec. C. https://www.va.gov/ABOUT_VA/docs/President-Policy-Directive-PPD-19.pdf

Michael Rogers fulfilled those requirements by restoring the whistleblower to his job and issuing a proposed notice of termination to Dr. Ellard.⁵

Dr. Ellard appealed the decision. Unfortunately it appears that your predecessor, Secretary of Defense Ashton Carter, failed to make a determination on the appeal. Given Dr. Ellard's duties and the seriousness of the findings, we hope you will act in a timely manner to review the high-level panel's finding against Dr. Ellard, and take the appropriate disciplinary action.

Admiral Brian Losey

Three separate Department of Defense Inspector General (DoD IG) investigations found that Navy Rear Admiral Brian Losey retaliated against staff members he suspected of reporting that he improperly used taxpayer funds for personal travel. He was cleared of the travel-spending allegations, but drew up an "enemies list" of those he believed might have turned him in. "If you continue to undermine my authority as a commander, I'm going to bury each one of them," one witness said Losey told his staff. "I'm going to come after them, and I'm going to [make] it very unpleasant."⁶ The case drew the attention and concern of Senators Charles Grassley (R-IA), Claire McCaskill (D-MO), Ron Wyden (D-OR), Barbara Boxer (D-CA), Tammy Baldwin (D-WI), Ron Johnson (R-WI), Mark Kirk (R-IL), and Ed Markey (D-MA), ultimately leading to Senate Armed Services Committee Chairman John McCain (R-AZ) and Ranking Member Jack Reed (D-RI) to urge then-Navy Secretary Ray Mabus to deny Admiral Losey's promotion, which he did in March of last year.⁷

Unfortunately it appears the Navy secretly reversed that decision, giving Admiral Losey a retroactive promotion, back pay, and a bigger pension. An investigation by *The Washington Post* found Losey had petitioned to appeal the decision, and that appeal went through a "suspicious[ly]" expedited board correction process—taking only 7 weeks rather than the typical 10 to 18 months—and was approved by the Board for Correction of Naval Records. One of Secretary Mabus's final acts as Secretary was to

⁵ Andrew Bakaj and Mark Zaid, "New Case Proves Intelligence Community Whistleblowers Have Protections," *Just Security*, February 23, 2017. <https://www.justsecurity.org/38054/case-proves-intelligence-community-whistleblowers-protections/>

⁶ Craig Whitlock, "Powerful admiral punishes suspected whistleblowers, still gets promotion," *The Washington Post*, October 21, 2015. https://www.washingtonpost.com/world/national-security/powerful-admiral-punishes-suspected-whistleblowers-still-gets-promotion/2015/10/21/8a9e757e-7342-11e5-8248-98e0f5a2e830_story.html?utm_term=.7cf52bbe553e

⁷ Craig Whitlock, "Leaders of Senate Armed Services Committee urge Navy to torpedo promotion of Special Ops Commander," *The Washington Post*, February 5, 2016. https://www.washingtonpost.com/news/checkpoint/wp/2016/02/05/key-senators-urge-navy-to-block-promotion-for-admiral-in-charge-of-special-operations/?utm_term=.27121f6d2178; Craig Whitlock, "Promotion denied for Navy admiral accused of punishing whistleblowers," *The Washington Post*, March 17, 2016. https://www.washingtonpost.com/news/checkpoint/wp/2016/03/17/promotion-denied-for-navy-admiral-accused-of-punishing-whistleblowers/?tid=ss_tw&utm_term=.a4fb78c7d5b5

reopen the case and increase Losey's rank from a one-star to a two-star admiral, increasing his pension by \$16,700 per year.⁸

It is extraordinarily rare for DoD IG to substantiate whistleblower retaliation. Last fiscal year, the office only substantiated 3 percent of the nearly 1,400 retaliation cases they closed.⁹ This low substantiation rate helps create a belief that senior officials can act against whistleblowers with impunity. The appearance of special treatment of Admiral Losey is likely to further that belief. We urge you to review this case to determine if the Navy took the appropriate action.

Conclusion

The privilege of leadership comes with a great obligation not to betray the public's trust. But far too often senior officials seem to get a pass for misconduct. In the early days of your time as Secretary of Defense you have the opportunity to set the tone for the rest of the Department that, no matter a person's rank, retaliation will not be tolerated.

Sincerely,

Demand Progress

Expose Facts

Government Accountability Project

International Association of Whistleblowers

James Madison Project

Katz Marshall Banks

Multiracial Activist

National Medical Malpractice Advocacy Association

Project On Government Oversight

Public Citizen

The Rutherford Institute

⁸ Craig Whitlock, "Navy promotes SEAL commander in defiance of Congress," *The Washington Post*, March 31, 2017. https://www.washingtonpost.com/investigations/navy-promotes-seal-commander-in-defiance-of-congress/2017/03/31/ef4e1912-13c7-11e7-833c-503e1f6394c9_story.html?utm_term=.30ebf1a77ec4

⁹ Department of Defense Inspector General, *Semiannual Report to the Congress: October 1, 2015 to March 31, 2016*, p. 37. http://www.dodig.mil/pubs/sar/SAR_FY2016_1ST_HALF_FINAL_v3_508.pdf; Department of Defense Inspector General, *Semiannual Report to Congress: April 1, 2016 to September 30, 2016*, p. 33. <http://www.dodig.mil/pubs/sar/SAR-FY2016.PDF>