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October 23, 2017

HAND DELIVERED

The Honorable Richard Burr
Chairman, Senate Select Committee on Intelligence
The Honorable Mark Warner
Vice Chairman, Senate Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

RE: Christopher R. Sharpley - Nominee, Inspector General, Central Intelligence Agency

Dear Chairman Burr and Vice Chairman Warner:

My firm, along with John Tye, Executive Director of Whistleblower Aid (www.WhistleblowerAid.org), jointly represent Andrew P. Bakaj, a former official with the Central Intelligence Agency's ("CIA") Office of Inspector General ("OIG"). On October 17, 2017, Christopher R. Sharpley, CIA's Acting Inspector General, testified before the Senate Select Committee on Intelligence ("SSCI" or "Committee") in his confirmation hearing to become Inspector General. I am writing out of concern that Mr. Sharpley was, in the best possible light, less than candid with the Committee in his testimony. Accordingly, we believe that it is important for the Committee to be made aware of what we view as discrepancies in Mr. Sharpley's testimony so that SSCI members can render an informed decision in considering whether to vote the nomination out of Committee.

Specifically, we are concerned that Mr. Sharpley was not candid about an active and ongoing whistleblower reprisal investigation where he is explicitly named in the complaint as a subject. Furthermore, Mr. Sharpley's representation that he developed a whistleblower reprisal investigation program to increase the "confidence" for CIA whistleblowers coming forward to make protected disclosures is contradicted by a filing known as an "Urgent Concern" Mr. Bakaj filed with the Intelligence Community Inspector General ("ICIG") in 2015. A copy of the Urgent

Concern is included as Exhibit “1”. We believe these concerns are significant, particularly since Mr. Sharpley represented something very different to the Committee in sworn testimony.

Andrew P. Bakaj

For full disclosure, Mr. Bakaj is not only a client, but also serves as Special Of Counsel to my law firm.

As background, CIA OIG identified Mr. Bakaj as a “subject matter expert” in matters concerning whistleblower reprisal investigations. Accordingly, David Buckley, then-CIA Inspector General, directed that Mr. Bakaj establish a program within CIA to comply with Presidential Policy Directive 19 (“PPD-19”). Per Mr. Buckley’s direction, Mr. Bakaj led CIA, the Intelligence Community, and the Federal Government in drafting regulations and guidance creating a whistleblower reprisal investigation program. Ultimately, Mr. Bakaj drafted the CIA Agency Regulation implementing PPD-19, as well as developed the CIA OIG manual and handbook on conducting CIA OIG whistleblower reprisal investigations. Furthermore, Mr. Bakaj began developing an outreach program per the requirements within PPD-19.

Prior to his transition to CIA OIG in October 2012, Mr. Bakaj was a Senior Investigator with the Department of Defense’s Office of Inspector General (“DoD OIG”) where he developed the legal and investigative framework in conducting the Federal Government’s first investigations involving security clearance actions as a pretext for reprisal. Effectively this program established the foundation for PPD-19. As such, at the request of the DoD OIG’s Assistant and Deputy Inspectors General, Mr. Bakaj briefed the SSCI and the House Permanent Select Committee on Intelligence concerning the Defense Intelligence Community reprisal investigation program.

Accordingly, Mr. Bakaj is not only, as discussed further below, a complainant in an active whistleblower reprisal investigation in which Mr. Sharpley is a named subject, but is also a leading expert in this area of law and investigation, particularly within the Intelligence Community.

The Intelligence Community should have notified the Senate Select Committee on Intelligence of an active investigation involving Mr. Sharpley.

Respectfully, we are concerned that the ICIG may not have filed the required Congressional Notice of an active and ongoing investigation involving Mr. Sharpley as a presidential nominee before the Committee. We believe that such notification would have undoubtedly resulted in direct questions addressed to Mr. Sharpley by Committee members, especially in light of his testimony that is contrary to the facts we know exist. Thus, this case alone could have altered how the Committee approached the problematic nature of Mr. Sharpley’s confirmation.

Mr. Sharpley is the subject of an ongoing whistleblower reprisal investigation, and CIA OIG engaged in misconduct in conducting a local agency review of themselves when the Council of the Inspectors General on Integrity and Efficiency directed the ICIG otherwise.

In testimony before the Committee, Mr. Sharpley stated the following to a question posed to him by Senator Dianne Feinstein:

Senator, I'm unaware of any open investigations on me, or the details of any complaints about me . . . if there are complaints, if there are investigations out there, I'm unaware of it . . .

Christopher S. Sharpley, Testimony before the Committee on October 17, 2017

In June 2015, Mr. Bakaj filed a whistleblower reprisal complaint with CIA OIG specifically naming Mr. Sharpley as a subject. At the time Mr. Bakaj filed the complaint, Mr. Sharpley was serving as the CIA Acting Inspector General as Mr. Buckley had recently resigned his appointment.

Per the CIA Agency Regulation Mr. Bakaj drafted, he was required to file his complaint with his employing agency. A copy of the complaint is included as Exhibit "2". Expecting that CIA OIG would conflict itself out of the matter, Mr. Bakaj concurrently filed his complaint along with a full legal analysis with the ICIG. Mr. Bakaj withheld the full analysis from CIA OIG because he did not trust CIA OIG, and he expected the matter to be properly elevated to the ICIG within short order. A copy of the comprehensive whistleblower reprisal analysis is included as Exhibit "3".

By letter dated July 14, 2015, The Integrity Committee ("Integrity Committee") of the Council of the Inspectors General on Integrity and Efficiency ("CIGIE") informed Mr. Bakaj that his allegations concerning Deputy Inspector General Sharpley and others were referred to the Integrity Committee by both CIA OIG and ICIG. The Integrity Committee determined that the allegations did not meet the threshold for it to further investigate allegations of administrative misconduct. It should be noted, however, that the investigative misconduct analysis was conducted under the statute governing CIGIE rather than under PPD-19. Thus, the letter states:

Your reprisal complaint was properly submitted to the [ICIG]. We have provided the [ICIG] with a courtesy copy of this letter so that they are aware of the [Integrity Committee's] disposition of this matter and may take any appropriate action in reviewing and investigating your allegations.

Letter from CIGIE to Mr. Bakaj, a copy of which is included as Exhibit "4".

The July 14, 2015, CIGIE letter copied the respective General Counsels to the CIA OIG and the ICIG. This fact is important because, frankly, CIA OIG's next action is perplexing.

By letter dated October 23, 2015, CIA OIG issued Mr. Bakaj a letter informing him of their actions. The letter was signed by Jesse N. Roth, Assistant Deputy Inspector General, who is a direct report to Mr. Sharpley. Christine Ruppert, Counsel to Mr. Sharpley, is identified as the point of contact on the letter. The letter informs Mr. Bakaj of the following:

On July 14, 2015, the Integrity Committee of [CIGIE] closed your matter, asserting lack of jurisdiction. Upon return of the case, Counsel to the OIG initiated a file review at my request. This file review has been completed and the OIG has determined that your complaint did not satisfy the requirements for a whistleblower retaliation claim.

Letter from CIA OIG to Mr. Bakaj, a copy of which is included as Exhibit “5”.

Needless to say, this letter raises significant concerns.

First, the July 14, 2015, CIGIE letter directed the ICIG to “take any appropriate action in reviewing and investigating” the allegations. Yet, CIA OIG – and not ICIG – conducted a local agency review. This is contrary to CIGIE’s direction that ICIG, and not CIA OIG, take appropriate action.

Second, the fact that CIGIE’s letter indicated it was directed to ICIG no doubt reflects a recognition that CIA OIG is inherently conflicted out of investigating this matter in light of the fact Mr. Bakaj’s complaint specifically names Acting Inspector General Sharpley and the entire senior staff with the CIA OIG’s Investigations division as subjects. As such, Mr. Sharpley failed to recuse himself because he permitted Mr. Roth, a direct report, to make an investigative determination concerning allegations of whistleblower reprisal against himself (Mr. Sharpley). Moreover, the chief attorney for CIA IG, Ms. Ruppert, is named as the point of contact in this decision.

Even if Mr. Sharpley asserts that he had, in fact, recused himself, such a position holds neither logical nor legal water. Mr. Sharpley cannot defer to a subordinate to render an investigative finding that would either exonerate or find him culpable of wrongdoing.

In any event, whether or not Mr. Sharpley takes the position that he recused himself in this matter is frankly a moot point. The October 23, 2015, letter from Mr. Roth raises more legal and ethical questions than it provides answers. Ultimately, the letter calls into question Mr. Sharpley’s, Mr. Roth’s, and Ms. Ruppert’s good judgment, independence, and trustworthiness. With respect to Ms. Ruppert, it calls into question her ethical and legal judgment as it relates to her duty to her client.

Ultimately, what should have happened was for ICIG to take action and determine whether it can initiate a local agency review or, if it determined that it was also conflicted, to refer the complaint to another Agency for investigation. Instead, somehow CIA OIG permitted itself to do an investigation of itself.

Evidence establishes that Mr. Sharpley has knowledge of an open and pending whistleblower reprisal investigation where he is named as a subject in the complaint.

When Mr. Bakaj filed his complaint with CIA OIG, Mr. Sharpley had an obligation to determine whether or not a conflict of interest exists for himself and for CIA OIG. This makes sense as the July 14, 2015, letter from CIGIE explicitly states that CIA OIG referred the matter to CIGIE. In order for Mr. Sharpley to reach a decision, he must have been made aware of the contents of the complaint. If this is the case, it would be contrary to his testimony before the Committee where he asserts that he is “unaware” of the “details” of any open investigations or complaints about him.

When the July 14, 2015, letter from CIGIE was issued, Ms. Ruppert was copied as a recipient. Thus, when she received the letter she had an obligation to notify Mr. Sharpley, as he was the Acting Inspector General and her client. As stated, above, at this point a decision was made not to permit the ICIG to move forward as directed in the letter, but instead for CIA OIG to initiate a “file review” of itself.

The July 14, 2015, letter from CIA OIG prompted a response by me, as Mr. Bakaj’s attorney and on October 31, 2015, I sent Mr. Roth a letter, copying ICIG, that formally notified both CIA OIG and ICIG that Mr. Bakaj is appealing the decision directly to the ICIG. A copy of my letter to the CIA OIG is included as Exhibit “6.” Mr. Roth had an obligation to notify Ms. Ruppert of this letter, who had a duty to notify Mr. Sharpley, her client, of my client’s decision to appeal.

Following our appeal, the ICIG determined that a conflict of interest exists precluding its ability to independently investigate Mr. Bakaj’s complaint. As such, the matter was referred to Department of Homeland Security’s (“DHS”) OIG for a *de novo* investigation. On August 1, 2016, I requested a status report from Mr. I. Charles McCullough, III, then-Inspector General, ICIG, as my client had yet to be interviewed. A copy of this correspondence is included as Exhibit “7”. Subsequently, on November 22, 2016, Mr. Bakaj, with my participation, was interviewed for several hours by DHS OIG. I met further with one of the investigators in June 2017 at which time the investigation was continuing.

Thus, there can be no doubt that an ongoing whistleblower reprisal investigation exists where Mr. Sharpley is, in fact, named as a subject. While we are certainly not aware of what other investigative steps DHS OIG has taken, I do know that evidence requests as well as a request for the production of documents was submitted to CIA OIG. Presumably such requests would have been made to Ms. Ruppert, as CIA IG legal counsel, who would be obligated to inform her client of evidence requests in a pending investigation.

Thus, we believe Mr. Sharpley has direct knowledge of the contents of Mr. Bakaj’s complaint and is aware that there is a pending DHS OIG investigation into Mr. Bakaj’s complaint against him. As such, Mr. Sharpley’s testimony could be construed as untruthful.

If there is any additional information or questions the Committee would like specifically addressed, please do not hesitate to contact me. I can best be reached via e-mail or on my cell phone at [REDACTED]. We appreciate your consideration of this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark S. Zaid" with a stylized flourish extending to the right.

Mark S. Zaid

Enclosures

cc: The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Charles E. Schumer, Senate Minority Leader
The Honorable Charles E. Grassley, Chairman, Whistleblower Protection Caucus
The Honorable Ron Wyden, Vice Chairman, Whistleblower Protection Caucus
Intelligence Community Inspector General
Department of Homeland Security Office of Inspector General
John Tye, Executive Director, Whistleblower Aid
Andrew P. Bakaj, Esq.

EXHIBIT “1”

INTELLIGENCE COMMUNITY WHISTLEBLOWER PROTECTION ACT (ICWPA)

– COMPLAINT OF URGENT CONCERN –

TO THE

**CENTRAL INTELLIGENCE AGENCY (CIA)
OFFICE OF CONGRESSIONAL AFFAIRS**

AND

INTELLIGENCE COMMUNITY INSPECTOR GENERAL

CONCERNING THE

CIA OFFICE OF INSPECTOR GENERAL

This ICWPA/Urgent Concern complaint constitutes a protected communication pursuant to 50 USC §3032 and applicable Agency Regulation. Do not disseminate this document to CIA OIG.

I, **ANDREW P. BAKAJ**, GS-13, Special Agent/Investigator, an employee of the Central Intelligence Agency Office of Inspector General (CIA OIG), am filing a complaint of Urgent Concern via ICWPA protocols against the Honorable David Buckley, Inspector General, CIA OIG; Christopher S., Deputy Inspector General, CIA OIG; Robin W., Counsel to the Inspector General, CIA OIG; Howard C., Assistant Inspector General for Investigations, CIA OIG; Gordon (Michael) R., Deputy Assistant Inspector General for Investigations, CIA OIG; and Anthony C., Special Agent in Charge (Division Chief), Intelligence and Integrity Division, CIA OIG.

**BACKGROUND OF ANDREW P. BAKAJ
SUBJECT MATTER EXPERT IN
WHISTLEBLOWER REPRISAL INVESTIGATIONS**

As background, I am currently employed as a “Special Agent/Investigator” with the Central Intelligence Agency Office of Inspector General (CIA OIG). Prior to my transition to CIA OIG in October 2012, I was Senior Investigator, GS-14, with the Department of Defense Office of Inspector General (DoD OIG). While with DoD OIG, I assisted in leading the civilian whistleblower reprisal investigations team. Significantly, I developed the legal and investigative framework in conducting the Federal Government’s first investigations involving security clearance actions as a pretext for reprisal. To wit, at the request of the DoD OIG Assistant and Deputy Inspectors General, I briefed the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) concerning the Defense Intelligence Community reprisal investigation program.

In October 2012 President Obama issued PPD-19. This Directive mandates that the various intelligence agencies within the Intelligence Community issue internal regulations complying with PPD-19 no later than July 2013. Given my prior experiences at DoD OIG, CIA OIG identified me as the “subject matter expert” in matters concerning whistleblower reprisal investigations. Accordingly, the Inspector General personally directed that I establish such a program within CIA to comply with Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*, one of the regulations at the heart of my allegation. Per his direction, as CIA’s subject matter expert in whistleblower reprisal investigations, I led CIA, the Intelligence Community, and the Federal Government in drafting regulations and guidance creating a whistleblower reprisal investigation program. In doing so I worked with the Office of the Director of National Intelligence, the Department of Defense, and the Department of Justice. Throughout 2013, I met with the Intelligence Community Inspector General’s staff, specifically the ICIG’s General Counsel, to move forward on this matter. At the request of the ICIG, I briefed the Inspector General for the Intelligence Community’s PPD-19 working group on lessons learned and proposed ways forward in standing-up reprisal investigation programs to comply with the Directive. I include this background in my complaint so that those individuals charged with investigating it will understand that I am not filing this complaint lightly.

This complaint is filed pursuant to the Intelligence Community Whistleblower Protection Act (ICWPA) and Agency Regulation regarding Urgent Concerns. This complaint will detail, to the extent possible, violations occurring within the Central Intelligence Agency (CIA) Office of Inspector General (OIG). The ICIG has jurisdiction to receive such a complaint. (Pub. L. No. 111-259, 124 Stat. 2709 (Oct. 7, 2010)). CIA OCA has authority to receive such a complaint per Agency Regulation.

Summary:

CIA OIG has not complied with Presidential Policy Directive (PPD) 19, *Protecting Whistleblowers with Access to Classified Information* as well as applicable law. See 50 USC §3341 (*as amended*, 2014) (*2014 Intelligence Authorization Act*, Public Law 113-126, §601-2). Further, David Buckley, Inspector General, and senior OIG Investigations staff have directed that OIG employees violate 50 U.S.C. §3033 (g)(2)(E), their statutory obligation to cooperate with ICIG audits, inspections, and investigations. The result of such direction, beyond being a violation, adversely impacts CIA, and the Intelligence Community more broadly, and runs contrary to the mission of CIA OIG.

As stated above, in October 2012 PPD-19 required CIA OIG to develop a whistleblower reprisal investigation program. While the program was established within the timeframe promulgated by regulation, CIA OIG never intended to adhere to the program’s mandate in developing an actionable reprisal investigation program. In addition to questionable investigative practices concerning whistleblower reprisal, CIA OIG has actively reprisal against their own employees: both for making protected communications concerning violations of law as well as for participating in Equal Employment Opportunity (EEO) matters. Actions to uncover the identities of CIA OIG whistleblowers and intimidation tactics by senior officials have occurred as well. Finally, CIA OIG has systematically restricted CIA OIG personnel’s ability to disclose wrongdoing through appropriate channels or participate in ICIG inquiries, highlighting CIA OIG’s resultant mission failure. Such a restriction is in violation of 50 USC §3033.

Specific Complaint:

The classified nature of this disclosure precludes me from detailing with greater specificity the violations that I reasonably believe are occurring. However, I am able to provide the following information in an unclassified manner. The specific details must be discussed during an interview in an appropriate location with appropriate individuals.

1. In 2012, I was requested to conduct an analysis of an allegation of whistleblower reprisal by CIA Officials. Generally the analysis I conducted concluded that, among other things:
 - a. Sufficient information exists warranting full investigation into the allegations, that is: the complainant established, by a preponderance of the evidence, that he made a protected communication; that the action(s) taken against him constituted a reviewable action; and that the action occurred within a period of time subsequent to the disclosure/protected activity such that a disinterested third party would conclude that the personnel action(s) may be due to the protected disclosure/protected activity;
 - b. The actions of a former Assistant Inspector General for Investigations (AIGI) created a conflict, precluding CIA OIG from investigating the matter. Specifically, the former AIGI outlined to responsible management officials how best to take adverse actions against the whistleblower while the individual was making protected disclosures, resulting in a clear conflict of interest for CIA OIG to investigate the action once the complainant filed an allegation of reprisal;
 - c. That the succeeding AIGI, Howard C., failed to provide in a timely manner credible evidence that the matter was referred to the ICIG;
 - d. That no documentation, electronic or otherwise, existed to establish that proper coordination/referral occurred between CIA OIG and ICIG; and
 - e. That the closure of the investigation, without proper documented referral, calls into question whether CIA OIG (1) properly referred the matter to an outside entity; and (2) is intent on adhering to CIA OIG mission in conducting an unbiased and thorough investigation in compliance with the Quality Standards for Investigations per the Council of the Inspectors General on Integrity and Efficiency.
 - i. Notably: Howard C. refused to provide such evidence and only provided an e-mail, months later and after much prodding, memorializing specific events. Howard C. has a reputation among CIA OIG staff for being disingenuous. The lack of documentation supporting the referral calls into question the validity of the referral.
 - f. Documentation concerning this matter exists.
 - i. First, I drafted a memorandum for record, for myself, regarding my concerns. The document was saved electronically within my personal folder on the Agency computer system. I trust this memorandum will assist investigators in reviewing this matter.
 - ii. Second, the former Deputy Assistant Inspector General for Investigations (DAIGI) Constance R. will provide additional documentation and a more thorough analysis of the aforementioned matter. Specifically, I created a tabbed binder with evidence supporting concerns regarding this matter. Constance R. is aware of this binder.
2. In June/July 2013, Howard C. and Anthony C., Special Agent in Charge and my first-line supervisor, attempted to prevent a proper whistleblower reprisal investigation into a

significant matter. During the late summer/early fall of 2013, Anthony C., my new first-line supervisor, assigned me, as “lead” Agent, a case concerning alleged whistleblower reprisal. Shortly thereafter, the case was reassigned to another Agent, Heather S., and I was directed to be the “secondary” Agent working on the investigation. The purpose was, given my subject matter expertise in whistleblower reprisal investigations, to train another Agent on how to conduct such inquiries in order to broaden the depth of knowledge of reprisal investigations within the office. Anthony C. believed assigning the other Agent as “lead” and me as “secondary” made the most sense in accomplishing this goal.

- a. While I was assigned as “secondary” Agent, both Howard C. and Anthony C. would often call meetings regarding the matter when the primary Agent, Heather S., left for the day. Notably, during a meeting in Howard C.’s office, both Howard C. and Anthony C. speculated as to what may have transpired resulting in the action taken against the complainant. During the course of the discussion, both Howard C. and Anthony C. speculated, “that must have happened,” concluding that “x had in fact happened,” as the basis for the action. Effectively, the two were suggesting justification for the adverse personnel action taken against the complainant, and initially directed that no further investigation into the matter be conducted. I pushed back, stating that their comments were speculative and that their “theory” could only be tested by investigation. Howard C., in particular, was agitated by my assertion. I was subsequently taken off the matter as I prepared to attend the Federal Law Enforcement Training Center’s Criminal Investigative Training Program.
 - b. While I was able to prevent their assertion from having a material impact on the matter while I worked on it, this behavior troubled me deeply.
 - c. The actions of leadership in subsequent months only bolstered my concerns regarding the impartiality and professionalism of CIA OIG. Specifically, Anthony C. commented, on numerous occasions, that the contractor who was the complainant in this case had “made a lot of money” and that significant risks came with the job. For Anthony C., he stated that significant risks would include adverse actions, the matter at the heart of the individual’s reprisal complaint. Further, he stated that such risks were the cost of being a contractor and being handsomely compensated—the cost of doing business.
3. While developing the whistleblower reprisal investigation program, Howard C. would provide contradictory “guidance” that would water-down the investigative policies and procedures, often confusing my direct supervisor at the time, Michael Gr.¹ and I as to how Howard C. wanted us to proceed. Meetings were held that resulted in no meaningful ways forward, notably concerning contractors and the applicability of the reprisal investigation paradigm promulgated by PPD-19, stagnating the program while whistleblower allegations were being reported to CIA OIG. As a result, meaningful investigations could not take place.
 4. Prior to my suspension of access to classified information, I was assigned a contractor reprisal investigation. The guidance from my superiors, specifically Anthony C., was contrary to whistleblower investigative policies and procedures. Notably, the two-stage process of the reprisal investigative protocol was tossed aside in favor of meeting with responsible management officials and closing the matter with bare facts and speculation.

¹ Between May 2013 and April 2014, I had four (4) different first-line supervisors: Constance R., Anthony C., Michael Gr., and Patrick C.

Anthony C.'s desire to close cases quickly to make his team's metrics look good took precedence over the mission of the Office of Inspector General, and this matter is an example of that. This attitude permeated all investigations.

5. CIA OIG leadership directed me, and I have reason to believe are directing the CIA OIG staff, to violate 50 U.S.C. § 3033.
 - a. On April 10, 2014, I met with Mr. Buckley in his office concerning my protected communication at issue in my reprisal complaint. *See Andrew P. Bakaj reprisal complaint.* Mr. Buckley directed that:
 - The ICIG statute, 50 U.S.C. §3033, does not apply to CIA OIG;
 - That if the ICIG and his staff wish to speak to anyone within CIA OIG, they must first inform Mr. Buckley;
 - That I and all CIA OIG staff members are prohibited from cooperating with ICIG inquiries; and
 - That I and all CIA OIG staff members are prohibited from contacting the ICIG.
 - b. That same day I met with Howard C. who directed that:
 - I and CIA OIG staff are prohibited from contacting the ICIG;
 - That if they (ICIG), or even if the FBI call concerning an inquiry regarding the office, that I immediately inform my leadership of the inquiry and refuse to participate; and
 - That there are "things" happening between CIA OIG and the ICIG, and that I do not want to be involved in it.
 - c. That same day Michael R. directed that I not cooperate with ICIG inquiries and that I immediately inform leadership of inquiries the ICIG is conducting of the office.
 - d. On April 11, 2014, Robin W., Counsel to Mr. Buckley, directed that I not speak to, contact, or cooperate with ICIG inquires.
 - e. On the one hand, federal law, 50 U.S.C. §3033 (g)(2)(E) directs that I, as an employee within the Intelligence Community, cooperate with ICIG inquiries and that failure to do so can result in an adverse action, up to termination, being taken against me. On the other hand, CIA OIG leadership is directing that I and OIG staff ignore/violate the law, per CIA OIG office policy. A policy requiring CIA OIG staff to violate the Federal Code is both incongruous with the mission of an Office of Inspector General and further creates problems for an office charged with investigating allegations of whistleblower reprisal by restricting employee communication with an Office of Inspector General.
6. Between February and April 2014, a significant disclosure concerning a violation(s) of federal law, rule, and regulation was/were made to the Intelligence Community Inspector General. The gravity of the disclosure and the end result is significant, the details of which are classified and must be discussed during an interview in an appropriate location with appropriate individuals. What is significant is CIA OIG's reaction. Notably, the Inspector

General, Mr. Buckley, appointed an external Inspector General to conduct a “lessons learned review” of the matter. During the course of the “review,” it became clear that the purpose of the “review” was to identify the whistleblower(s) who disclosed the matter to the ICIG’s office. Notably, on one occasion, Christopher S., Deputy Inspector General, interrupted an individual while they were being questioned by an external OIG Agent. It became clear to that individual, and all involved, that Christopher S.’s action was to intimidate witnesses and that the purpose of the “review” was to uncover the identity of the whistleblower(s). Greater detail into this matter will be provided during the course of an interview.

- a. The events concerning this matter are significant. Up until my security clearance suspension, this was the most significant action against employees engaged in protected activity. Of note is the intimidation utilized by Christopher S. and the chilling effect it created within the office.
7. In April 2014, I and a fellow investigator had our security clearances suspended. (Please see *Andrew P. Bakaj whistleblower reprisal complaint*). The other investigator, to my knowledge, was a whistleblower concerning violations occurring within the office. While I have no direct knowledge of her activity, it was common knowledge among the staff. After significant deliberation during the course of my year on administrative leave, I concluded why I was removed.
- a. As I stated before, I was CIA’s subject matter expert in whistleblower reprisal investigations. After being directed to establish such a program within CIA OIG, I briefed leadership and employees on the program and proposed ways forward on developing the program. While briefing employees, numerous colleagues questioned me about various policies and procedures. At the time I took this to be curious interest by my colleagues. In time, it became evident that given issues of inappropriate investigative conduct within CIA OIG, those colleagues were “pumping” me for information as to how to properly disclose wrongdoing and what policies and procedures would be in place to protect them.
 - b. I believe CIA OIG has engaged in numerous violations. I believe that leadership was under the assumption that employees were disclosing the wrongdoing because of whistleblower protection information gathered from me. “Leadership” includes David Buckley, Christopher S., Deputy Inspector General, Howard, C., Gordon (Michael) R., and Anthony C. Accordingly, in their minds removing me would forestall other CIA OIG whistleblowers from disclosing wrongdoing. I believe this action has also had a chilling effect within the office.

Conclusion:

I reasonably believe that CIA OIG has engaged in action(s) that directly contradict PPD-19 and subsequent legislation. Notably, the reprisal actions taken against CIA OIG employees and direction to violate 50 USC § 333 underscores the contradictory nature of CIA OIG actions in relation to its mission. Please see my accompanying reprisal complaint, which complements this report of urgent concern, regarding reprisal actions against CIA OIG employees.

In conclusion, the situation within CIA OIG is a systemic mission failure that must be corrected.

Witnesses:

1. Constance R.
 - a. Former DAIGI and first-line supervisor
2. Frederick K.
 - a. Former Division Chief (retired)
 - b. Suffered age discrimination
3. Michael Gr.
 - a. Former first line supervisor
 - b. Resigned because of concern of questionable OIG investigative practice
4. Douglas B.
 - a. Suffered age discrimination
5. Barbara G.
6. Brett B.
7. Karen K.
 - a. Suffered age discrimination
8. Leigh R.
9. Sean M.
10. Paula L.
11. Joanna E.
 - a. Suffered age discrimination
12. Valerie C.
 - a. Reprised against; suffered age discrimination
13. Toni R.
 - a. Reprised against for EEO matter
14. Heather S.
15. Jonathan K.
 - a. Suffered inappropriate mental health/anger management referral following abuse by Anthony C.
16. Rosalind N.
17. Elizabeth V.
 - a. Grievance Officer and Office of General Counsel Attorney

THEREFORE, given the aforementioned, I request that your office initiate an investigation and that appropriate corrective action be taken to prevent such actions from happening in the future.

Andrew P. Bakaj

Date

EXHIBIT “2”

**WHISTLEBLOWER REPRISAL COMPLAINT
AGAINST THE CENTRAL INTELLIGENCE AGENCY
OFFICE OF INSPECTOR GENERAL**

I, **ANDREW P. BAKAJ**, GS-13, Special Agent/Investigator, an employee of the Central Intelligence Agency Office of Inspector General (CIA OIG), am filing a complaint against the Honorable David Buckley, Inspector General, CIA OIG; Christopher S., Deputy Inspector General, CIA OIG; Robin W., Counsel to the Inspector General, CIA OIG; Howard C., Assistant Inspector General for Investigations, CIA OIG; Gordon (Michael) R., Deputy Assistant Inspector General for Investigations, CIA OIG; and Anthony C., Special Agent in Charge (Division Chief), Intelligence and Integrity Division, CIA OIG.

My complaint asserts that because of my protected communication with the Office of the Director of National Intelligence Office of Inspector General (ICIG), the aforementioned reprisal against me through the following:

- an adverse clearance action (suspension of access to classified information);
- concurrent administrative leave, a significant change to duties and responsibilities impacting my federal career;
- lack of a performance evaluation; and
- constructive termination

These actions are in violation of the following:

- Intelligence Community Directive 120 (ICD-120), *Intelligence Community Whistleblower Protection* (incorporating Presidential Policy Directive-19, *Protecting Whistleblowers with Access to Classified Information*; 50 U.S.C. §3341; and 50 U.S.C. §3033 ((g)(3)(B)).
- Central Intelligence Agency Regulation, *Protecting Whistleblowers with Access to Classified Information* (incorporating Presidential Policy Directive-19, *Protecting Whistleblowers with Access to Classified Information*; 50 U.S.C. §3341; and 50 U.S.C. §3033 ((g)(3)(B));
- 50 U.S.C. §3033 (g)(3)(B); and
- 50 USC §3341 (*as amended*, 2014) (*2014 Intelligence Authorization Act*, Public Law 113-126, §601-2).

As a direct consequence of the aforementioned violations, I request that action be taken against the aforementioned and that I, Andrew P. Bakaj, the complainant in this matter, be made whole through the following actions:

- Favorable adjudication of my security clearance and a memorandum placed in my human resource and security files explaining that I had my clearance suspended and was placed on administrative leave in reprisal for engaging in protected activity;
- Retroactive promotion to GS-14 step 4;
- Student Loan Repayment Assistance Program (SLRAP) forgiveness;

- Per statute, monetary compensation of no less than \$300,000, which would include legal fees as well as compensatory and punitive damages; and
- Return of all personal property.

An analysis of the basis for the aforementioned requested remedies follow.

BACKGROUND OF ANDREW P. BAKAJ SUBJECT MATTER EXPERT IN WHISTLEBLOWER REPRISAL INVESTIGATIONS

As background, I am currently employed as a “Special Agent/Investigator” with the Central Intelligence Agency Office of Inspector General (CIA OIG). Prior to my transition to CIA OIG in October 2012, I was Senior Investigator, GS-14, with the Department of Defense Office of Inspector General (DoD OIG). While with DoD OIG, I assisted in leading the civilian whistleblower reprisal investigations team. Significantly, I developed the legal and investigative framework in conducting the Federal Government’s first investigations involving security clearance actions as a pretext for reprisal. To wit, at the request of the DoD OIG Assistant and Deputy Inspectors General, I briefed the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) concerning the Defense Intelligence Community reprisal investigation program. Given these prior experiences, CIA OIG identified me as the “subject matter expert” in matters concerning whistleblower reprisal investigations. Accordingly, the Inspector General personally directed that I establish such a program within CIA to comply with Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*, one of the regulations at the heart of my allegation.

In October 2012 President Obama issued PPD-19. This Directive mandates that the various intelligence agencies within the Intelligence Community issue internal regulations complying with PPD-19 no later than July 2013. Given my prior experiences at DoD OIG, CIA OIG identified me as the “subject matter expert” in matters concerning whistleblower reprisal investigations. Accordingly, the Inspector General personally directed that I establish such a program within CIA to comply with Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*, one of the regulations at the heart of my allegation. Per his direction, as CIA’s subject matter expert in whistleblower reprisal investigations, I led CIA, the Intelligence Community, and the Federal Government in drafting regulations and guidance creating a whistleblower reprisal investigation program. In doing so I worked with the Office of the Director of National Intelligence, the Department of Defense, and the Department of Justice. Throughout 2013, I met with the Intelligence Community Inspector General’s staff, specifically the ICIG’s General Counsel, to move forward on this matter. At the request of the ICIG, I briefed the Inspector General for the Intelligence Community’s PPD-19 working group on lessons learned and proposed ways forward in standing-up reprisal investigation programs to comply with the Directive. I include this background in my complaint so that those individuals charged with investigating it will understand that I am not filing this complaint lightly.

The irony that reprisal has occurred against CIA's leading expert in whistleblower reprisal investigations by the very individual charged with leading the investigative body to investigate such matters should be lost on no one. Nonetheless, I trust the below chronology of events and statements of law will assist the finders of fact with their investigation into this matter.

CHRONOLOGY OF EVENTS

On October 9, 2012, I reported for duty to CIA. This was my first day with CIA.

In October 2012, Mr. Buckley personally directed that I develop a CIA whistleblower reprisal investigation program to comply with Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*. Mr. Buckley directed that I "Lean Forward" in these efforts.

Between October 2012 and April 2014, I led CIA OIG, and CIA generally, in developing policies and procedures in conducting whistleblower reprisal investigations in compliance with PPD-19. This involved working with organizations and offices within CIA and those outside of the Agency, including the Office of Inspector General for the Intelligence Community (ICIG's).

Between May 21, 2013, and August 9, 2013, I was originally scheduled to attend the Criminal Investigator Training Program (CITP) at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA. Due to my grandmother's passing, my FLETC dates were postponed until October 2013.

Between May 2013 and April 2014, numerous significant organizational changes occurred within CIA OIG. Numerous leadership changes at various levels within Investigations took place which resulted in my having four (4) different supervisors within this time frame. Significant procedural and policy changes occurred as well, which included two versions of a revamped OIG Investigations Manual. This manual included revisions of the policies and procedures in conducting investigations into reprisal allegations within CIA.

During the late summer/early fall of 2013, Anthony C., my new first-line supervisor, assigned me, as "lead" Agent, a case concerning alleged whistleblower reprisal. Shortly thereafter, the case was reassigned to another Agent, Heather S., and I was directed to be the "secondary" Agent working on the investigation. The purpose was, given my subject matter expertise in whistleblower reprisal investigations, to train another Agent on how to conduct such inquiries in order to broaden the depth of knowledge of reprisal investigations within the office. Anthony C. believed assigning the other Agent as "lead" and me as "secondary" made the most sense in accomplishing this goal.

Between October 29, 2013, and January 25, 2014, I attended and graduated from CITP at FLETC in Glynco, GA. I did not return to Headquarters until the following week in February.

On April 4, 2014, Paul J. W., the Deputy Counsel to the ICIG, contacted me by secure telephone. The telephone call occurred around 10:30 am. Paul W. requested that we meet to discuss a matter; I did not know specifically the topic he wished to discuss. At the time, a great number of events were taking place concerning PPD-19, and I believed he wished to discuss any number of them. Paul W. and I met privately in the Agency cafeteria around noon. After some discussion, he informed me that he was conducting an inquiry and had questions; the matter was

confidential and I was not to discuss it. His inquiry pertained to the whistleblower reprisal investigation I worked on, noted above. Believing that I had an obligation to cooperate as he was representing an Office of Inspector General (OIG) with jurisdiction, I cooperated by answering the questions. I informed Paul W. that he should speak to his counterpart at my office to receive additional information. As we were concluding our discussion, I informed him that I wished to double-check myself when I returned to my office. After approximately 1 and ½ hours, I returned to my office where I checked the Investigations Division's case management system; I contacted Paul W. to state that my recollection was accurate and I reasserted that he should contact his counterpart at my office. Since then I have not reached out to Paul W. and he has not reached out to me.

On April 10, 2014, my supervisor, Anthony C., sent me a meeting invitation via Outlook Calendar; the meeting was scheduled for 2:00 pm. At approximately 1:55 pm, I walked to Anthony C.'s office; Anthony C. stated that we needed to go to the AIGI's (Michael R.'s) office. Michael R. informed me that the meeting pertained to a "management issue." He informed me that the office conducts regular audits of computer systems and tracks usage, etc. Michael R. stated an audit identified that on April 4, 2014, I had searched two terms and had "no need" to search those terms—including the term "whistleblower." He then asked, "why"? I immediately explained to Michael R. that Paul W. reached-out to me, that I cooperated with an inquiry, that I advised Paul W. to contact his counterpart in our office (our General Counsel, CIA OIG), and that I double-checked myself by running the database query. When I stated that I advised Paul W. contact our General Counsel, the Michael R. stated, "good answer." When I inquired if I had done anything wrong, Michael R. said "yes" because I should not have cooperated and that I should have immediately informed CIA OIG management. When asked why I did not inform management, I stated that because Paul W. informed me that the matter was confidential. I made it clear that I participated because I believed that I had a duty to do so, much as we (CIA OIG Special Agents/Investigators) expect our witnesses participate in our inquiries. Michael R. informed me that he was required to inform the Assistant Inspector General for Investigations (AIG-INV), the Deputy Inspector General, and the Inspector General. Anthony C., while present, was silent during the meeting. Michael R. told me, "we're cool" and thanked me for my candor. Following the meeting, I met with Anthony C. in his office. He stated that I did the right thing by being candid and said that "I had a lapse in judgment," but that everything will be okay. I informed him that I did not appreciate being placed in the position that I was in, but tried to do the right thing. Anthony C. stated that he "understood."

On April 10, 2014, I met with the Inspector General, Mr. Buckley, and Deputy Inspector General, Christopher S. in the mid-to-late afternoon in the Inspector General's office. This meeting occurred at my request. The reason I told them I wished to speak with them was because given what had transpired I wanted for my leadership to hear the facts directly from me and not through intermediaries. I further stated that if I had done anything wrong I apologize but that I was operating based on my knowledge, training, experience, and understanding of the role of the ICIG relative to the Intelligence Community and our office, CIA OIG. As I was beginning my discussion, the Deputy Inspector General excused himself because he needed to attend to an urgent phone call. I proceeded to tell the Inspector General what happened. Mr. Buckley stated that he had spoken with the ICIG and made it clear that anytime anyone from the ICIG's Office intended to speak with anyone in CIA OIG that he, Mr. Buckley, would be notified. Further, the Inspector General stated that anytime the ICIG needs to reach-out to anyone within CIA generally, the ICIG must coordinate through Mr. Buckley. Mr. Buckley further stated that the ICIG does not have jurisdiction over CIA

and that, as already described, the ICIG must clear any action through Mr. Buckley. As our conversation concluded, I suggested to Mr. Buckley that the jurisdictional lines between the two OIGs must be clarified to members of the CIA OIG staff. I asked whether I will be okay, and the Inspector General said that I have nothing to worry about. I subsequently met with the Deputy Inspector General for Investigations, Howard C., in his office privately and had a similar conversation. Howard C. stated that anyone, whether from the ICIG or the FBI, must first coordinate through leadership and is not to go directly to CIA OIG employees; that if they (ICIG), or even if the FBI, call concerning an inquiry regarding the office, I must refuse to participate and immediately inform my leadership of the inquiry. I asked if I should expect any action against me, Howard C. said “no,” unless I am not disclosing something at which point he ominously stated that the matter will be handled “appropriately” and that I should expect action. He further stated that he is “concerned” that this may adversely impact my Federal career, and not just within the Intelligence Community. Howard C. stated that my reputation will be sullied throughout the Inspector General community.

On April 11, 2014, I spoke with my Inspector General’s General Counsel, Robin W. in my office. Prior to letting me explain the situation, Robin W. advised me that in his role as Counsel to CIA OIG he has a reporting requirement, and that I should be cautious in what I say. I took that under advisement and proceeded to convey my thoughts just as I did with the Inspector General and others. Robin W. stated that I have nothing to worry about, and it was clear that he (Robin W.) was angry with Paul W.. According to Robin W., Paul W. had previously walked into our OIG spaces and stood outside Robin W’s door, demanding to speak with the Inspector General. Robin W. stated that he “has had it” with Paul W. and told me not to contact Paul W., and if contacted by him to inform my chain-of-command immediately. Later that afternoon, I met with the Inspector General’s Deputy General Counsel Renee L. I conveyed my thoughts much as I did with everyone previously. She stated to me (off the record) that the jurisdiction issue between the ICIG and my office is open to interpretation, and that whether the ICIG exceeded their authority in contacting me is, perhaps, an open question. Finally, later that day I spoke with my Agency Grievance Officer, Elizabeth V., regarding my concerns that a reprisal action may occur subsequent to the events that have transpired. She stated that if a reprisal action takes place, and that given my background I would be able to recognize it, that I should take appropriate action. She informed me that based on her knowledge, there are issues between the CIA OIG and the ICIG and that specifically a “war” existed between the two offices and that it was set to go “thermonuclear.” Elizabeth V. did not take notes but stated that our communication will be noted.

Between April 14 and April 18, 2014, I was on annual leave visiting friends in Chicago, IL.

Between April 11, 2014, and April 30, 2014, Howard C. informed the Investigations staff of his intent to gain access to CIA OIG Investigations employee’s polygraph, security, and personnel files. His stated reason was so that he could learn of any derogatory information concerning the employees per his obligations under *Giglio*. I believe the true intent was to gather information concerning CIA OIG employees to be used against them if and when necessary.

On April 30, 2014, I received a phone call at approximately 10:00 am. The individual informed me that I needed to drive to another location concerning a security matter. Upon my arrival the individual, Donna (LNU), with Special Activities Division informed me that the Inspector General, per his authority, suspended my access to classified information pending adjudication of my security clearance. Accordingly, I was placed on administrative leave indefinitely. The stated

reason for the action was my activity on an Agency computer system and concern that I may have mishandled classified information. As a consequence, I was required to surrender my badge/credentials. I was only provided oral notification of the action; I was provided no documentation. Further, I was required to sign a form acknowledging that I was being placed on paid administrative leave, that I must call my Agency point-of-contact daily to check-in, and that if I leave the Washington, DC metropolitan area that I must take leave. I requested to see the statement of reasons for the action being taken against me. She informed me there are none, and the document she was reading was simply her notes so she knew what to tell me. To date, I have not received any statement of reasons for my security clearance suspension.

On August 20, 2014, an investigator with the Special Investigations Branch (SIB), Office of Security, interviewed me concerning the security clearance action prompted by Mr. Buckley and CIA OIG leadership. The Investigator informed me of the allegation as provided to SIB by CIA OIG. Mr. Buckley asserted to SIB that I: (1) mishandled classified information when I cooperated with the ICIG inquiry on April 4, 2014; (2) that I misused government computers when I refreshed my recollection by double checking myself in the investigations case management system; (3) that I misused government computers in an instance in March or April 2014 where I looked up three case numbers in the OIG Investigation's database system; and (4) that in March 2014 I misused government computers when I copied a series of documents into another case folder. As I explained to the investigator, the first two pertain to my protected communication with the ICIG and the basis for me looking up the information was because I had previously worked on the reprisal investigation at issue in the ICIG's inquiry. Allegation number three (3) pertained to me looking up case numbers within CIA OIG's investigations database. I recall doing this because my search took place during the PAR (performance evaluation) season, and I was attempting to look-up cases I was involved in prior to my departure to FLETC. One of the significant deficiencies in CIA OIG's case management system is that once a case is closed, it is difficult to locate it within the system. I tried to remember three case numbers of matters I worked on so that I can write my PAR. The numbers I searched were guesses and nothing actually came up. As to number four (4), I did not recall copying the information presented to me. At that time, there were a significant number of changes that took place since my return to CIA OIG from FLETC. A number of changes pertained to drafting documents. To the best of my recollection, I was attempting to locate documentary exemplars that I could use as I drafted internal documents. I did this proactively so that I may provide my supervisor a workable draft work product as we pushed memorandums up the chain-of-command. During the interview, the investigator asked me a series of questions relevant to a reprisal investigation. They are (paraphrased): [(1) Do you believe that you have been targeted?; (2) What if I told you that you were and are targeted?; and (3) Part of the reason we are here is because those taking the action against you (notably Michael R.) did not believe you had justification to look-up the case in the database. Had he understood that you worked on that case, do you believe we would be here today?]] These questions give me great concern as it became clear that the investigator understood of the situation that I was placed in. Moreover, the investigator did NOT know that I attended FLETC between October 29, 2013, and January 25, 2014, which was relevant given that I was back at headquarters for less than three months before being sent home. The interview concluded with the investigator telling me that he found the interview odd as he was not accustomed to someone like me sitting before him: confident and eloquent. He characterized our conversation as an "enjoyable" one.

As of May 4, 2014, CIA OIG refuses to return personal property. The property includes: 1 Blacks Law Dictionary; 2 Blue Books for Legal Citation, 1 Red Book for citation, 1 McCormick on Evidence, and my personal rolodex.

Witnesses:

1. Constance R.
2. Frederick K.
3. Michael Gr.
4. Douglas B.
5. Barbara G.
6. Brett B.
7. Karen K.
8. Leigh R.
9. Sean M.
10. Paula L.
11. Joanna E.
12. Valerie C.
13. Toni R.
14. Heather S.
15. Jonathan K.
16. Rosalind N.
17. Elizabeth V.

STATEMENTS OF LAW

Reprisal

Pursuant to Intelligence Community Directive 120 (ICD 120), *Intelligence Community Whistleblower Protection*; Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*; and Title 50 U.S.C. §3341, *as amended (2014)*, **it is prohibited for responsible management officials to take an adverse personnel action and/or retaliatory security clearance and access determination action.**

Intelligence Community Directive 120 (ICD-120) §2(c)(3), *Intelligence Community Whistleblower Protection*, states that a protected communication includes “Cooperating with or disclosing information to an IG, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG.”¹ Moreover, 50 USC §3033, *Inspector General of the Intelligence Community* states:

The Inspector General [of the Intelligence Community] is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety . . .;²

No action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General [of the Intelligence Community] may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.³

The seminal question in a reprisal investigation is the following: was the protected communication a contributing factor in responsible management officials taking the action?

By law, reprisal investigations require a two-stage process. The first stage focuses on the protected communications, personnel actions, and acting official’s knowledge. The second stage focuses on whether or not the Agency would have taken, withheld, or threatened the actions absent the protected disclosure. The first stage of whistleblower reprisal analysis is held to a preponderance of the evidence. “Preponderance” of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a

¹ ICD-120 §2(c)(3).

² 50 U.S.C. §3033 (g)(3).

³ 50 U.S.C. §3033 (g)(3)(B).

contested fact is more likely than not true than untrue. In order to progress to the second stage of the investigative process, there must be sufficient evidence based on proof by a preponderance of the evidence to make three findings:

1. The complainant made a protected disclosure;
2. The complainant was the subject of a personnel or security clearance action; and
3. The protected disclosure was a contributing factor in the personnel/security clearance action.

By law, the contributing factor is established through the knowledge/timing test, where the individual taking the action had knowledge of the complainant's protected disclosure prior to taking the action, and where the action took place subsequent to the disclosure within a period of time that reasonable finder of fact would conclude that the proximity of the events would establish that the protected disclosure was a contributing factor.

If a preponderance of the evidence supports the three findings above, the investigation will proceed to the second stage of the analysis. At that point, the Agency is afforded the opportunity to provide evidence regarding the allegations and, specifically, evidence that would establish that the Agency would have taken, withheld, or threatened the personnel/security clearance actions against the complainant absent the protected disclosure. The second stage of analysis is held to a clear and convincing evidence standard. "Clear and convincing" evidence is that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established. It is a higher standard than preponderance of the evidence but a lower standard than beyond a reasonable doubt.

To address the fourth element, the following three *factors* for presence of "clear and convincing evidence" must be present for the Agency to prevail. Note: This is a *factoral* analysis to assist the trier of fact in determining whether the responsible management officials/Agency can establish, by clear and convincing evidence, that absent the protected communication the actions would have occurred:

1. The strength of the Agency's evidence in support of its personnel/security clearance action;
2. The existence and strength of any motive to retaliate on the part of the Agency officials who were involved in the decision; and
3. Any evidence that the Agency takes similar actions against employees who are not whistleblowers/did not make a protected communication but who are otherwise similarly situated.

Abuse of Authority

Abuse of authority is defined as an arbitrary and capricious use of power that adversely affects the rights of any person or results in personal advantage or gain of the abuser. To determine whether responsible management officials abused their authority, the following questions must be answered:

1. Did the responsible management official's actions either:

- (a) adversely affect the rights of any person (ie. demotion, administrative leave, suspension of access to classified information, etc.)
- (b) result in personal gain or advantage to the responsible management official (ie. Promotion, awards, etc.);

If either questions 1(a) or 1(b) are answered with a yes, the investigation must proceed to questions 2 and 3:

- 2. Did the responsible management official act within the authority granted under applicable regulations, law, or policy?; or
- 3. Was the action arbitrary and capricious, that is, what were the reasons, reasonableness, consistency, and motive for the action.

Abuse of authority analysis is conducted to the preponderance of the evidence standard.

REMEDIES

As a direct consequence of the aforementioned, I request that corrective action be taken against Mr. Buckley and CIA OIG senior staff to prevent such abuses from occurring in the future and that I, the complainant in this matter, be made whole through the following:

- Favorable adjudication of my security clearance with a memorandum placed in my human resource and security files explaining that I had my clearance suspended and was placed on administrative leave in reprisal for engaging in protected activity;
- Retroactive promotion to GS-14 step 4;
- Student Loan Repayment Assistance Program (SLRAP) forgiveness;
- Per statute, financial compensation of no less than \$300,000, which would include legal fees as well as compensatory and punitive damages; and
- Return of all personal property.

Adjudication of Clearance and Memorandum with Security and Human Resource Files

Being placed on administrative leave pending adjudication of my security clearance for an extended period of time has, and will continue to, make it difficult to look for work, both within and outside CIA. Prospective supervisors within CIA will question such an extended break from meaningful employment within the Agency. Further, the fact that I underwent a significant investigation, at the behest of the Inspector General, will always be a red flag. I request that to minimize the long-term impact of the reprisal actions against me that appropriate memoranda and notations be made in my human resource and security files, and that my clearance be adjudicated favorably.

Retroactive Promotion

Retroactive promotion is warranted in this instance because I accepted a downgrade from GS-14 to join CIA OIG. I believed that I would have been promoted back to GS-14 within two years of joining CIA OIG; my past performance evaluations warranted it, notably my 2013 PAR with Constance R. as my rater. Further, I was precluded from applying to GS-14 positions during my administrative leave, as I had to wait for my security clearance to be adjudicated. During my administrative leave, my federal career has effectively stalled.

Student Loan Repayment Assistance Program (SLRAP)

Upon my arrival at CIA in 2012, I applied for, and was accepted for, enrollment in SLRAP. One of the conditions for student loan assistance was agreeing to be employed with CIA for a period of time. I did this with the goal of beginning a long career with CIA. The reprisal actions taken against me, and my fear of continued reprisal (notably given the office has a culture of reprisal), forces me to look for employment outside of CIA. Accordingly, in order to prevent any further harm, including financial harm, I request that the employment requirement be waived, and that should I need to find employment outside of CIA that I not be required to repay the Agency. Given the actions against me, I have withheld reapplying to SLRAP for 2015.

Financial Award

As a direct result of having my access to classified information suspended and being placed on administrative leave, I have endured financial hardship. First, I was required to retain an attorney. Second, I was precluded from applying to any Federal positions given the status of my security clearance. Third, I am three years shy of serving 10 years with the Federal Government (I intended to serve the Federal Government for many more years), which would result in my Federal student loans being forgiven. Further, the actions against me have had a significant impact on my life, my wellbeing, and my family. Notably, this situation created significant stress for my wife and I during our first year of marriage. This hardship has resulted in the decision to relocate back to Connecticut and forgo the opportunity to continue a Federal career. Effectively, resigning will result in over \$100,000 of my \$200,000 outstanding student loans NOT being forgiven and selling a home I purchased only two years prior, with the danger of losing a portion of our down payment. The significant impact of this action not only impacts my career and my family, but my family's financial wellbeing.

As to punitive damages: CIA OIG is required to be the Agency's standard-bearer for internal investigations. Notably, CIA OIG is the office tasked with receiving and investigating complaints of whistleblower reprisal for CIA. This is significant both in mission and juxtaposed against the fact that CIA OIG, and the Inspector General directly, abused their authority and reprised against me. Notably: CIA OIG provided partial and intentionally misleading information to the Office of Security and intentionally withheld critical information, both factual and legal, in their allegations against me. These actions have tarnished the shield that the OIG issues to its investigators and runs contrary to CIA OIG motto: "follow the truth . . . wherever it may lead." The allegations and intentionally misrepresented information provided to the Office of Security by CIA OIG is neither complete nor truthful. Further, the Inspector General's actions, and the actions of CIA OIG, have not only tarnished my reputation personally, but has created a chilling-effect within CIA OIG, running contrary to the very foundation of what an Office of Inspector General should be.

In order to restore CIA OIG as the model investigative body within CIA, rehabilitative actions are necessary. Accordingly, in the best interest of justice and to prevent future reprisals against employees, and given that CIA OIG is tasked to investigate allegations of reprisal and, instead, has reprised against CIA's reprisal investigations subject matter expert, I should be awarded punitive damages for CIA OIG's violations.

Total damages: \$300,000, per statute.

Return of Personal Property

The following items have yet to be returned to me.

1 Blacks Law Dictionary;
2 Blue Books for Legal Citation;
1 Red Book for citation;
1 McCormick on Evidence; and
my personal rolodex.

THEREFORE, given the aforementioned, I request that your office initiate an investigation into whistleblower reprisal and abuse of authority taking place within CIA OIG; that appropriate corrective action be taken to prevent such from happening in the future; and that I, ANDREW P. BAKAJ, be made whole.

Andrew P. Bakaj

Date

EXHIBIT “3”

**ANALYSIS CONCERNING VIOLATIONS OF
LAW, RULE, AND REGULATION
BY THE CIA INSPECTOR GENERAL AND SENIOR STAFF**

WHISTLEBLOWER REPRISAL ANALYSIS

1. Did I, Andrew P. Bakaj, make a protected communication? Yes.

Pursuant to Intelligence Community Directive 120 (ICD-120) §2(c)(3), *Intelligence Community Whistleblower Protection*, a protected communication includes “cooperating with or disclosing information to an IG, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG.”¹ Moreover, 50 USC §3033, *Inspector General of the Intelligence Community* states:

The Inspector General [of the Intelligence Community] is authorized to receive and investigate, pursuant to subsection (h), complaints or information from any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety . . .²

The Inspector General shall have access to any employee, or any employee of a contractor, or any element of the intelligence community needed for the performance of the duties of Inspector General.³

The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials that relate to the programs and activities with respect to which the Inspector General has responsibilities under this section;⁴

. . . no action constituting a reprisal, or threat of reprisal, for making such complaint or disclosing such information to the Inspector General [of the Intelligence Community] may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.⁵

Finally, by law, individuals employed within the Intelligence Community are obligated to cooperate with ICIG’s inquiries. 50 U.S.C. § 3033 g(2)(E) states that failure to cooperate with an ICIG inquiry can lead to action being taken for non-cooperation.

¹ ICD-120 §2(c)(3).

² 50 U.S.C. §3033 g(3).

³ 50 U.S.C. §3033 g(2)(B).

⁴ 50 U.S.C. §3033 g(2)(C).

⁵ 50 U.S.C. §3033 g(3)(B).

The Director, or on the recommendation of the Director, another appropriate official of the intelligence community, shall take appropriate administrative actions against an employee, or an employee of a contractor, of an element of the intelligence community that fails to cooperate with the Inspector General. Such administrative action may include loss of employment or the termination of an existing contractual relationship.⁶

On April 4, 2014, I met with Paul J. W., the Deputy Counsel to the Inspector General of the Intelligence Community (ICIG), regarding an inquiry he was conducting concerning my office, CIA OIG. I cooperated with Paul W's inquiry with full knowledge of his authorities and my obligation to participate pursuant to 50 U.S.C. §3033 as specified, above. Participating with an OIG inquiry is a protected communication pursuant to ICD-120, PPD-19, and 50 U.S.C. §3033. Accordingly, on April 4, 2014, I made a protected communication. Failure to cooperate is prohibited.

Additional relevant information concerning protected communications will be addressed during an intake interview with the individual(s) investigating this reprisal allegation, as the matters are sensitive and classified. This information will be corroborated by the ICIG.

2. Was I, Andrew P. Bakaj, subjected to a reviewable security clearance and personnel action? Yes.

Pursuant to 50 U.S.C. §3341, PPD-19, and IDC-120, an action impacting access to classified information is a reviewable action. The United States Code clarifies the basis for review. Matters involving suspension of security clearance may be challenged for evidence of reprisal should the suspension last longer than one year. *See* Pub L. 113-126, §602(b)(j)(4)(A).

Further, 50 U.S.C. §3341, PPD-19, and IDC-120, adopt the definition of personnel action from Title 5 of the United States Code. In 2014, Congress enacted enhanced Intelligence Community reprisal protections whereby the definition of "personnel action" in the Intelligence Community is defined as follows:

- (A) an appointment;
- (B) a promotion;
- (C) a disciplinary or corrective action;
- (D) a detail, transfer, or reassignment;
- (E) a demotion, suspension, or termination;
- (F) a reinstatement or restoration;
- (G) a performance evaluation;
- (H) a decision concerning pay, benefits, or awards;
- (I) a decision concerning education or training if such education or training may reasonably be expected to lead to an appointment, promotion, or performance evaluation; or

⁶ 50 U.S.C. §3033 g(2)(E).

(j) any other significant change in duties, responsibilities, or working conditions.⁷

On April 30, 2014, the Office of Security notified me that Mr. Buckley, pursuant to his authority as CIA Inspector General, suspended my access to classified information. Moreover, as of April 30, 2015, one year has elapsed since having my security clearance suspended, meeting the statutory requirement for review. Accordingly, the security clearance action taken against me is a reviewable action.

Further, as a direct consequence of the suspension of access to classified information, I was concurrently placed on administrative leave. Being placed on administrative leave has impacted my career as I am unable to have an observed performance evaluation conducted during my time away from the office and my official Agency biography will note that I was on administrative leave from April 30, 2014, until I am reinstated. Further, these actions are a significant change of duties, responsibilities, and working conditions, conditions that have effectively stalled my professional career as I have been precluded from advancing my career by applying to other positions within the Intelligence Community because I had to wait for the clearance adjudication process to conclude. Most importantly, the burden on my family has resulted in me resigning and moving to Connecticut: constructive termination. Having served in the United States Government for seven years, resigning means that I have ended a strong federal career, one that I intended on continuing by serving within CIA for many, many years. These actions constitute reviewable personnel actions by definition as they are (e) constructive termination; (g) lack of performance evaluation; and (j) significant change of duties, responsibilities, or working conditions.

Accordingly, the suspension of access to classified information, concurrent administrative leave, lack of a performance evaluation, and constructive termination are reviewable actions for evidence of reprisal.

3. Did the acting officials have knowledge of my protected communication and did the personnel and security clearance actions take place within a period of time subsequent to the disclosures, such that a reasonable person could conclude that my disclosure was a contributing factor in the decision to take the action? Yes.

Knowledge

On April 10, 2014, I met with both Anthony C. and Michael R. in Michael R.'s office. As a result of their questioning, I explained to them my protected activity with Paul W. of the ICIG's office. Later that day I met with Mr. Buckley, the Inspector General, and Christopher S., the Deputy Inspector General, in Mr. Buckley's office and later with Howard C., Assistant Inspector General for Investigations, in his office, whereby I informed them of my protected communication. The following day on April 11, 2014, I met with Robin W., Counsel to the Inspector General, concerning the matter and explained to him my protected communication.

⁷ 5 U.S.C. §2302, *Prohibited Personnel Practices* (as adopted by Intelligence Community Directive 120 (ICD 120), *Intelligence Community Whistleblower Protection*; Presidential Policy Directive 19 (PPD-19), *Protecting Whistleblowers with Access to Classified Information*; and Title 50 U.S.C. §3341, as amended (2014)).

Accordingly, Mr. Buckley, Christopher S., Howard C., Michael R., Anthony C., and Robin W., all had knowledge of my protected activity. This encompasses the entire executive leadership/Front Office of CIA OIG as well as of leadership within Investigations.

Timing

My protected activity with the ICIG occurred on April 4, 2014. My access to classified information was suspended and I was placed on administrative leave on April 30, 2014. Twenty-six (26) days elapsed between those two events. Moreover, on April 10, 2014, Mr. Buckley, Christopher S., Howard C., Michael R., and Anthony C. all had direct knowledge of my protected activity; the duration between their knowledge and the aforementioned action against me was twenty (20) days. Robin W.'s direct knowledge of my protected activity was established on April 11, 2014, within nineteen (19) days of the aforementioned actions being taken against me.

Accordingly, the suspension of access to classified information and concurrent placement on administrative leave occurred within such a close period of time to both my protected activity and the aforementioned individual's knowledge of my protected activity that causation has been established; a presumption of reprisal exists. The lack of a performance evaluation and my constructive termination is directly related to the security clearance suspension, thus falling within the timeframe for review.

4. Is there clear and convincing evidence that the Agency would have taken the same actions absent my protected communication? No.

In order for CIA OIG to prevail and rebut the presumption of reprisal, CIA OIG must establish, **by clear and convincing evidence** that the actions taken against me would have occurred absent my protected communication. **In short, CIA OIG will FAIL in establishing that the actions would have occurred absent my protected communication because the very purpose for the actions taken against me, suspension of access to classified information and concurrent placement on administrative leave (which has resulted in no performance evaluation and constructive termination) was predicated on my protected activity because my cooperation with the ICIG's inquiry was the stated reason for the action.** Specifically, I was sent home because I cooperated with the ICIG inquiry, which CIA OIG contends was inappropriate despite clear, statutory requirements that I comply with the inquiry. I will further establish CIA OIG's failures in the below analysis.

4(a) CIA Office of Inspector General is unable to provide support for the actions.

The actions taken against me were due to my protected activity and based on false and misleading information forwarded to the Office of Security and the Special Investigations Branch (SIB) by CIA OIG.

As background, during the late summer/early fall of 2013, Anthony C. assigned me, as "lead" Agent, a case concerning alleged whistleblower reprisal. Shortly thereafter, the case was reassigned to another Agent, Heather S., and I was directed to be the "secondary" Agent working on the investigation. The purpose was, given my subject matter expertise in whistleblower reprisal

investigations, to train another Agent on how to conduct such inquiries in order to broaden the depth of knowledge of reprisal investigations within the office. Anthony C. believed assigning the other Agent as “lead” and me as “secondary” Agent made the most sense in accomplishing this goal. As further background, on April 4, 2014, Paul W. of the ICIG contacted me and inquired into this very case. I cooperated with his inquiry and double-checked the limited information I provided him by conducting a case search in the Investigation’s case management system. Later that same day I contacted Paul W. by telephone to state that the limited information I provided during our meeting was correct; I provided no new information.

On April 30, 2014, my point of contact, Donna, Special Activities Division (SAD), informed me that **the Inspector General, per his authority**, was suspending my access to classified information and concurrently placed me on administrative leave because of my computer use and alleged mishandling of classified information. These allegations by Mr. Buckley and the OIG were clarified during my subsequent interview with Special Investigations Branch (SIB) on August 20, 2014. The Investigator informed me that CIA OIG asserted that my cooperation with the ICIG and my subsequent database query, where I double-checked myself following my interview with Paul W., was inappropriate. These allegations and questions directly involve my protected activity. Thus, by definition, **BUT FOR my protected activity I would not have had my access to classified information suspended and concurrently placed on administrative leave (resulting in no performance evaluation and constructive termination).**

During my interview with SIB, the investigator asked me whether I had any reason to search the OIG’s case management database concerning the aforementioned reprisal case. I stated “yes” because I worked on the investigation. As stated above, for a brief period of time I was the “lead” Agent working on the matter and, shortly thereafter, I was reassigned as “secondary” Agent in order to train the new “lead” Agent on how to conduct reprisal investigations. In taking the actions against me, CIA OIG leadership relied on the assertion that I had no reason to search for the case; that I did not work on the investigation. This assertion is false.

While I was conducting the reprisal investigation as the “secondary” Agent, both Howard C. and Anthony C. would regularly have meetings with me concerning the investigation. These meetings always occurred at a time in the afternoon when the new “lead” Agent had departed the office for the day. Further, on at least four occasions I met with Robin W., counsel to Mr. Buckley, to discuss the case, and he attended a meeting with Howard C., Anthony C., and myself concerning the reprisal investigation. Accordingly, Anthony C., Howard C. and Robin W. were fully aware of my participation in the case and I believe that OIG leadership, Mr. Buckley, had direct knowledge of this fact. Accordingly, they intentionally misled the Office of Security and SIB. Given that CIA OIG leadership and Counsel had direct knowledge that I worked on the investigation and, if they claim that they have forgotten, could have refreshed their own recollections by double-checking the case management system (as I conducted two interviews and my name appears in investigative interview reports/Memorandum of Investigative Activity). Thus, critical facts were omitted and intentionally withheld by CIA OIG in order for CIA OIG to falsely give credence towards the actions against me.

Additional information was incorrectly reported to SIB by CIA OIG, which SIB relied upon in their investigation. The SIB Investigator appeared to be unaware of when I attended the Federal Law Enforcement Training Center (FLETC). The Investigator was under the impression that I had attended FLETC between May 21, 2013, and August 9, 2013. While those were my original FLETC

dates, my grandmother's passing resulted in my FLETC dates being changed to October 29, 2013, through January 25, 2014. This is critical because upon my return in February, I was readjusting back into CIA OIG, an office that had seen numerous leadership, policy, and work product changes in those few short months.⁸ The fact that CIA OIG misinformed SIB of such basic information is misleading and troubling. *It is troubling because CIA OIG, which should be the standard-bearer for internal investigations within CIA, is, in fact, reporting false information.*

During the course of my interview with SIB, the Investigator stated that CIA OIG provided SIB an internal CIA OIG policy document prohibiting disclosures to parties outside of CIA OIG. This internal policy document is dated AFTER my protected communication. Accordingly, I informed the SIB Investigator that (1) the policy did not apply to my situation as it was issued FOLLOWING my participation with the ICIG inquiry (an inappropriate retroactive/*ex post facto* application of an internal policy), and (2) this internal policy document is in direct conflict with 50 U.S.C. §3033, requiring that members of the Intelligence Community cooperate with ICIG inquiries⁹ and that the ICIG “shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials.”¹⁰ It is clear CIA OIG provided SIB an internal policy document but never informed them of applicable U.S. law, namely 50 U.S.C. §3033. *If CIA OIG provided partial and intentionally misleading information to SIB, how can CIA OIG continue to be the standard-bearer for internal investigations?*

The SIB Investigator also stated that CIA OIG asserted that I had misused government computers on two other occasions: (1) where I copied a number of documents from another case file; and (2) where I searched three or four case numbers in the case management database that were not of any cases I was working on. My answer to the first was that while I do not recall doing it, looking at the date (March 2014), I must have copied the documents because I had just returned from FLETC the month prior and I was looking for sample documents (notably case chronologies and an internal memos) that I could use as templates for projects I was working on, particularly those documents that have passed muster with leadership.¹¹ As to the second point that I searched three or four case numbers in the case management system inappropriately, that allegation is patently false as well. In February/March 2014, my then-supervisor, Michael Gr., was departing the Agency and I was asked to complete my performance evaluation, or PAR, narrative. In order to do this, I needed to review some of the cases I worked on prior to departing for FLETC. Between October 29, 2013, and January 25, 2014, I was in Glynco, GA attending the Criminal Investigator Training Program (CITP) at FLETC. During that time, a number of investigations I was working on were either closed or reassigned. The case management database was difficult to use and made it challenging to find cases once closed or reassigned to other Agents; the case management system's

⁸ Between May 2013 and April 2014, I had four (4) different first-line supervisors: Constance R., Anthony C., Michael Gr., and Patrick C.

⁹ 50 USC §3033 g(2)(E).

¹⁰ 50 USC §3033 g(2)(C).

¹¹ It is important to point out that the OIG Investigations was undergoing significant reorganization and changes throughout 2013-2014. CIA OIG had issued a new Investigations Manual in March 2013, and due to numerous deficiencies, was issuing a revised version in March 2014. Numerous documents, including case chronologies, Memorandums of Investigative Activity (MOIAs), and ARNMs were being changed on a monthly basis.

deficiencies were so bad that it was scheduled to be shutdown in favor of a new system.¹² I explained to the SIB Investigator that I am decent with remembering numbers, like case numbers, and that I was trying to recall a case I worked on prior to my departure for FLETC. I even noted that I am sure those case numbers that I typed do not actually point to a case, as I was trying to locate a case and recalled coming up with no hits. I asked the Investigator if these case numbers actually resulted in any case hits; the SIB Investigator could not answer. It became clear that all of my computer use was appropriate and for official business. Moreover, my initial supervisors, Constance R. and Frederick K., encouraged employees to use and search the database to learn from past cases when working on new matters.

The aforementioned establishes that CIA OIG leadership was effectively “digging” to try and find something, anything, to establish that I violated a law, rule, or regulation. They knew they had nothing because I did nothing wrong—because I followed the law. CIA OIG acted first and thought second, or, to put it differently, attempted to “reverse engineer” a case against me. CIA OIG was doing anything to locate information to support their false accusations, knowing they had nothing.

Mr. Buckley and CIA OIG violated internal policies in taking the actions against me.

As you will come to learn, I am very law, rule, and regulation oriented; my professional reputation as an investigator and as an attorney relies on this. Unfortunately, I have come to learn that the same cannot be said of CIA OIG leadership. It is my understanding that when an individual’s security clearance is suspended and the individual is concurrently placed on administrative leave, a “case” should have already been established to justify the action. In this case, Mr. Buckley, by his authority (according to Donna LNU), took this action and CIA OIG was trying to reverse engineer a justification for the action. They failed. Not only did they fail, the manner by which the office attempted to reverse engineer an investigation, that is making a “conclusion” and subsequently trying to find supporting evidence to justify their action, is a violation of investigative guidelines as taught at the Federal Law Enforcement Training Center and governing policies with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) standards for investigations. Moreover, CIA OIG conducted an internal investigation, in violation of CIGIE and CIA policies/standards. I believe that Chad S., a fellow Agent and computer specialist, was tasked to investigate fellow CIA OIG Agents, such as myself, in violation of policy and regulation. Had proper procedures been followed, CIA OIG would have referred their concerns out to another entity, such as SIB, and it would have been determined that I did not violate any laws, rules, or regulations, and thus, would not have had my access to classified information suspended and concurrently placed on administrative leave (with no performance evaluation and constructively terminated). I would not be in this position today.

The manner in which I was sent home is troubling as well. On April 30, 2014, I was contacted by Donna at the Office of Security and told to drive to another location. Upon arrival and meeting with Donna, I was informed that the Mr. Buckley, per his authority, was taking the actions against me. She briefly informed me that it was due to computer use and possible

¹² In 2013 the case management system crashed and CIA OIG Investigation’s Evidence Room logs were all lost. CIA OIG Investigation’s leadership directed that the Evidence Room logs be hand written, as the database was unstable and not trustworthy.

mishandling of classified information. I asked if I could see the statement of reasons; she replied there are none and that what she had typed out was for herself as notes so she knew what to tell me. The fact that I was sent home and, effectively, never informed of why I was sent home for months is troubling and, I am certain, a violation of Agency Policy. I should have been provided written justification for the action. Further, it is my understanding that my clearance suspension should have occurred by the Office of Security. How then did Mr. Buckley assert his “authority” in taking an action that, to my understanding, is within the sole authority of the Office of Security, Clearance Division?

The actions taken against me concern a jurisdiction dispute between two statutory Inspectors General: CIA OIG and the ICIG. Mr. Buckley’s assertion and direction to me would require that CIA OIG employees violate 50 U.S.C. § 3033, which Mr. Buckley is violating himself.

On April 10, 2014, I met with Mr. Buckley in his office concerning my protected communication. He directed that:

- The ICIG statute, 50 U.S.C. §3033, does not apply to CIA OIG;
- That if the ICIG and his staff wish to speak to anyone within CIA OIG, they must first inform Mr. Buckley;
- That I and CIA OIG staff members are prohibited from cooperating with ICIG inquiries; and
- That I and CIA OIG staff members are prohibited from contacting the ICIG.

That same day I met with Howard C. who directed that:

- I and CIA OIG staff are prohibited from contacting the ICIG;
- That if they (ICIG), or even if the FBI, call concerning an inquiry regarding the office, I must refuse to participate and immediately inform my leadership of the inquiry; and
- That there are “things” happening between CIA OIG and the ICIG, and that I do not want to be involved in it.

That same day Michael R. directed that I not cooperate with ICIG inquiries and that I immediately inform leadership of inquiries the ICIG is conducting of the office.

On April 11, 2014, Robin W., Counsel to Mr. Buckley, directed that I not speak to, contact, or cooperate with ICIG inquires.

It has become clear to me that jurisdictional tension exists between the two offices, an issue that was raised by the SIB Investigator in my interview. The SIB Investigator asked me that if I were to face the same situation today what would I do? I explained that I would have to seek counsel. On the one hand, federal law, 50 U.S.C. §3033 (g)(2)(E), directs that I, as an employee within the Intelligence Community, cooperate with ICIG inquiries and that failure to do so can result in an adverse action, up to termination, being taken against me. On the other hand, my leadership is directing that I ignore/violate the law, per CIA OIG office policy. What does one do? My concern is that Mr. Buckley and CIA OIG leadership are directing employees to violate federal

law, as I was directed to do. Further, such a restriction in communicating with an Office of Inspector General is in direct violation of 50 USC §3033. The fact that CIA OIG is relying on their internal office policy directing that CIA OIG employees violate federal law in taking the action against me, while seemingly incongruous, is exactly what is taking place here.

CIA OIG's questionable behavior creates concern for future reprisals.

In the days following my meetings with CIA OIG leadership where I explained to them my protected communication, Howard C. advocated a new and disturbing policy within the office. Howard C. and CIA OIG leadership were trying to gain access to CIA OIG employee polygraph, security, and human resource documents to find “derogatory” information that may be relevant to, what they claimed to be, their lawful duties to comply with *Giglio*. *Giglio*, under Federal Criminal Law, requires that any information that can impact the credibility and truthfulness of witnesses in criminal investigations, which include the Agents investigating the crimes, must be reported to the U.S. Attorney prosecuting those crimes so that appropriate notifications can be made to Defense counsel.¹³ My concern is that this justification is a pretext for obtaining information concerning employees, such as myself, in order to further reprise against them by removing those individuals, such as myself, from future assignments and investigations under the pretext that investigators are precluded from those assignments because CIA OIG is “complying” with *Giglio*. I question whether CIA OIG senior staff has the authority to investigate their own employees in such a manner under this pretext.

Moreover, between February and April 2014, a significant disclosure concerning a violation(s) of federal law, rule, and regulation was/were made to the Intelligence Community Inspector General. The gravity of the disclosure(s) and the end result is significant, the details of which are classified and must be discussed during an interview in an appropriate location with appropriate individuals. What is significant is CIA OIG leadership's reaction. Notably, the Inspector General, Mr. Buckley, appointed an external Inspector General to conduct a “lessons learned review” of the matter. During the course of the “review,” it became clear that the purpose of the “review” was to identify the whistleblower(s) who disclosed the matter to the ICIG's office. Notably, on one occasion, Christopher S., Deputy Inspector General, interrupted an individual while they were being questioned by the external OIG Agent. It became clear to that individual, and all involved, that reason Christopher S.'s action was to intimidate witnesses and that the purpose of the “review” was to uncover the identity of the whistleblower(s). Greater detail into this matter will be provided during the course of an interview.

It is clear that CIA OIG does not have evidence to support my suspension of access to classified information and concurrent administrative leave, which has resulted in no performance evaluation and constructive termination. Further, their lack of support, the manner in which they have taken the action, and the false reliance on office policy in lieu of federal law speaks to motive.

¹³ *Giglio v. United States*, 405 U.S. 150 (1972).

4(b) CIA Office of Inspector General leadership had, and continues to have, motive to reprise.

By law motive can be established both directly and indirectly. That is, responsible management officials need not state, “I am taking the actions in reprisal because of the complainant’s protected communication.” For example: the timing of the actions and the manner by which responsible management officials take the actions speaks to motive. That is true in this case. Moreover, the stated reasons for CIA OIG’s actions and the statements against interest by CIA OIG leadership underscores their motive to reprise.

Within twenty days of becoming aware of my protected communication, five of which for I was on leave, Mr. Buckley and OIG leadership suspended my access to classified information and placed me on administrative leave. Not only is the “quick snap” in taking the action following their knowledge of my disclosure probative, the fact that they cite to my protected communication as the basis for their actions is compelling evidence of motive to reprise. It is not often that responsible management officials, particularly Presidential appointees, err by making an admission through their actions. However, that has occurred in this very case. **Suspending my access to classified information and concurrently placing me on administrative leave *because of* my cooperation with the ICIG inquiry is an admission of reprisal and directly explains the “why” or the “motive” for the action; reprisal is, in fact, CIA OIG’s stated reason for the actions.**

It is not only that CIA OIG leadership admits reprisal by their stated reasons for the actions, it is also the manner by which they executed the actions as described, above. CIA OIG made missteps throughout, from conducting improper internal investigations of their employees to intentionally misleading the Office of Security and SIB of critical facts and relevant sections of the law (ie. my obligation to cooperate with ICIG inquiries per 50 U.S.C. § 3033 (g)(2)(E)). Further, CIA OIG subsequently stated that directly relevant sections of the United States Code do not apply to CIA OIG. Compounding these facts is that CIA OIG attempted to reverse engineer a case against me, underscoring the nefarious reasons for their actions and their motive to reprise.

CIA OIG’s motivation to reprise goes one step further: I cooperated with the ICIG—an office that I have since learned is currently at odds with CIA OIG. Individuals within CIA but outside of OIG subsequently raised concerns regarding issues between CIA OIG and the ICIG. On April 11, 2014, the day after my meeting with CIA OIG leadership where they questioned me, and I explained to them, my cooperation with the ICIG inquiry, I met with my area Grievance Officer and Office of General Counsel Attorney Elizabeth V. She informed me that a “war” existed between CIA OIG and the ICIG, and that it was set to go “thermonuclear.” This assertion is supported by Howard C.’s statement to me the previous day that “something” was going on between the two offices, and that I have been caught up in it.

There is additional information that I will be able to provide during an interview, information that is sensitive and can be corroborated by the ICIG. Effectively, events occurring within CIA OIG are embarrassing and have lead to major actions, providing additional motive to reprise.

Given that CIA OIG is unable to support their action; that CIA OIG's stated reason for their action is my participation with an ICIG inquiry—a protected communication; that Mr. Buckley and his staff advocate violating 50 U.S.C. §3033; that CIA OIG provided false and misleading information to the Office of Security and SIB—all establishes that CIA OIG's actions were not carried out in good faith, but rather with the motivation to harm me professionally through reprisal. Further, I will restate the following: It is not often that responsible management officials, particularly Presidential appointees, err by making an admission through their actions. However, that has occurred in this very case. **Again, suspending my access to classified information and concurrently placing me on administrative leave *because of my cooperation with the ICIG inquiry is an admission of reprisal and directly explains the “why” or the “motive” for the action; reprisal is, in fact, their stated reason for the actions.***

Accordingly, CIA OIG had and continues to have significant motive to reprise against me.

4(c) CIA Office of Inspector General leadership has treated me differently from other similarly situated individuals who are not whistleblowers or engaged in protected activity.

The third and final question in the analysis is whether I have been treated differently from others who are not whistleblowers. I am confident that the investigators reviewing this matter will find that, unfortunately, a culture of reprisal exists within CIA OIG. I state this because I have learned that on April 30, 2014, one other individual from my office, Valarie C., also had her access to classified information suspended and was concurrently placed on administrative leave for engaging in protected activity. Others have been targeted as well but were fortunate to leave prior to additional actions being taken against them.

Further, I have learned during my interview with SIB, through the Investigator's questioning, that members of OIG Leadership have “targeted” me, which by definition means that I have been singled out and was treated differently. Moreover, additional evidence of a culture of reprisal is prevalent throughout the organization, details of which are sensitive and I will be able to further elaborate upon during an intake interview.

In reviewing my situation, I point to the fact that the suspension of access to classified information and concurrent administrative leave was predicated solely on my protected activity. Further, as stated above, the information CIA OIG provided to the Office of Security and SIB was false and misleading. I believe the investigation will find that few, if any, individuals within CIA as a whole who did not engage in protected activity had their access to classified information suspended and concurrently placed on administrative leave under false pretenses and misleading information.

Given the OIG's culture of reprisal and targeting of individuals who have engaged in protected activity, evidence will establish that there are no similarly situated individuals who had their access to classified information suspended and concurrently placed on administrative leave who did NOT engage in protected activity. I am perhaps one of two individuals treated differently because of our protected activity. Investigators will find during their review compelling evidence that other whistleblowers within the office have been targeted and that the organizational leadership has engaged in prohibited activity creating a culture of reprisal.

CIA OIG will fail in their ability to establish that the suspension of access to classified information and concurrent administrative leave (resulting in no performance evaluation and constructive termination) would have occurred absent my protected disclosure and that, in fact, these actions constitute reprisal. This conclusion will be made not only because “but for my” protected activity this would not have occurred, but because of the lack of support for the action, motivation to reprise, and disparate treatment that I have faced.

ABUSE OF AUTHORITY ANALYSIS

In addition to conducting a whistleblower reprisal investigation, investigative bodies may conduct an inquiry to determine whether CIA OIG leadership, including Mr. Buckley, a Presidential appointee, abused his authority in taking the actions against me. In the case of Mr. Buckley, the appropriate Congressional Committees, namely the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence, as well as the Council of Inspectors General on Integrity and Efficiency (CIGIE), must be informed of the inquiry because of Mr. Buckley's status as a Presidential appointee. I am confident that the investigation will find that Mr. Buckley and his senior staff (Christopher S., Robin W., Howard C., Michael R., and Anthony C.) abused their authority in suspending my access to classified information and concurrently placing me on administrative leave (resulting in no performance evaluation and constructive termination).

Abuse of authority analysis is conducted to the preponderance evidentiary standard (ie. more likely than not). Restated: is it more likely than not that Mr. Buckley and CIA OIG senior staff abused their authority in taking the actions against me? Much of the below analysis is similar to the reprisal analysis conducted above, but is organized in a manner that will answer the relevant questions under an abuse of authority analysis.

1. Did the responsible management official's actions either:

(a) Adversely affect the rights of any person?

Yes.

(b) Result in personal gain or advantage to the responsible management official?

Yes.

The answer to both questions is yes. CIA OIG responsible management official's actions have adversely impacted the rights of a person resulting in personal gain and advantage to CIA OIG responsible management officials, to include Mr. Buckley.

As to the first question, by definition my rights have been impacted as a result of having my access to classified information suspended and concurrently being placed on administrative leave (resulting in no performance evaluation and constructive termination). I have not been a productive member of society for an extended period of time, and my career has suffered significantly as I have not been permitted to both work and look for other employment within the Federal Government pending resolution of this matter.

As to the second question, as described in the reprisal analysis section above, I have been caught in the middle of what appears to be a jurisdictional dispute between CIA OIG and the ICIG. Presumably, Mr. Buckley and CIA OIG have used this action against me as a means to gain an advantage in their dispute with the ICIG. Awareness of the dispute goes beyond CIA OIG and the ICIG, as individuals within CIA but outside of OIG raised concerns regarding issues between CIA OIG and the ICIG.

On April 11, 2014, the day after my meeting with CIA OIG leadership where they questioned me and I explained to them my cooperation with the ICIG inquiry, I met with my area

Grievance Officer and Office of General Counsel Attorney Elizabeth V. She informed me that a “war” existed between CIA OIG and the ICIG, and that it was set to go “thermonuclear.” This assertion is supported by Howard C.’s statement to me the previous day that “something” was going on between the two offices, and that I have been caught up in it.

It has become clear to me that jurisdictional tension exists between the two offices, an issue that was raised by the SIB Investigator in my interview when we discussed prohibitions for CIA OIG employees to both contact and cooperate with members of the ICIG staff. Given the ongoing tension between the two offices, the actions taken against me were used to benefit Mr. Buckley and CIA OIG in their dispute with the ICIG.

Ultimately, question one is answered in the affirmative. I am confident an investigation may further establish that Mr. Buckley and CIA OIG personally gained by taking the actions against me.

2. Did the responsible management official(s) act within the authority granted under applicable regulations, law, or policy? No.

Based upon the information that I am privy to, Mr. Buckley and CIA OIG exceeded their authority in taking the actions against me. Specifically, as previously established, CIA OIG reprimed against me in violation of the following:

- Intelligence Community Directive 120 (ICD-120), *Intelligence Community Whistleblower Protection* (incorporating Presidential Policy Directive-19, *Protecting Whistleblowers with Access to Classified Information*; 50 U.S.C. §3341; and 50 U.S.C. §3033 ((g)(3)(B)).
- Central Intelligence Regulation, *Protecting Whistleblowers with Access to Classified Information* (incorporating Presidential Policy Directive-19, *Protecting Whistleblowers with Access to Classified Information*; 50 U.S.C. §3341; and 50 U.S.C. §3033 ((g)(3)(B));
- 50 U.S.C. §3033 (g)(3)(B); and
- 50 USC §3341 (*as amended*, 2014).

Mr. Buckley and CIA OIG violated internal policies in taking the actions against me.

As you will come to learn, I am very law, rule, and regulation oriented; my professional reputation as an investigator and as an attorney relies on this. Unfortunately, I have come to learn that the same cannot be said of CIA OIG leadership. It is my understanding that my clearance suspension should have occurred by the Office of Security. How then did Mr. Buckley assert his “authority” in taking an action that, to my understanding, is within the sole authority of the Office of Security, Clearance Division? Further, when an individual’s security clearance is suspended and the individual is concurrently placed on administrative leave, a “case” **should have already been established** to justify the action. In this case, Mr. Buckley, **asserting his authority**, took this action and CIA OIG was trying to reverse engineer a justification for the action. They failed. Not only did they fail, the manner by which the office attempted to reverse engineer an investigation,

that is making a “conclusion” and subsequently trying to find supporting evidence to justify their action, is a violation of investigative guidelines as taught at the Federal Law Enforcement Training Center and governing policies with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) standards for investigations. Moreover, CIA OIG conducted an internal investigation, in violation of CIGIE and CIA policies/standards. I believe that Chad S., a fellow Agent and computer specialist, was tasked to investigate fellow Agents, such as myself, in violation of policy and regulation. Had proper procedures been followed, CIA OIG would have referred their concerns out to another entity, such as SIB, and it would have been determined that I did not violate any laws, rules, or regulations, and thus, would not have had my access to classified information suspended and concurrently placed on administrative leave. I would not be in this position today.

The manner in which I was sent home is troubling as well. On April 30, 2014, I was contacted by Donna at the Office of Security and told to drive to another location. Upon arrival and meeting with Donna, I was informed that the Mr. Buckley, **per his authority as Inspector General**, was taking the actions against me. She briefly informed me that it was due to computer use and possible mishandling of classified information. I asked if I could see the statement of reasons; she replied there are none and that what she had typed out was for herself as notes so she knew what to tell me. The fact that I was sent home and, effectively, NEVER been informed of why I was sent home for months is troubling and, I am certain, a violation of Agency Policy. Further, it is my understanding that my clearance suspension should have occurred by the Office of Security. How then did Mr. Buckley assert his “authority” in taking an action that, to my understanding, is within the sole authority of the Office of Security, Clearance Division?

The actions taken against me concern a jurisdiction dispute between two statutory Inspectors General: CIA OIG and the ICIG. Mr. Buckley’s assertion and direction to me would require that CIA OIG employees violate 50 U.S.C. § 3033, which Mr. Buckley is violating himself.

On April 10, 2014, I met with Mr. Buckley in his office concerning my protected communication. He directed that:

- The ICIG statute, 50 U.S.C. §3033, does not apply to CIA OIG;
- That if the ICIG and his staff wish to speak to anyone within CIA OIG, they must first inform Mr. Buckley;
- That I and CIA OIG staff members are prohibited from cooperating with ICIG inquiries; and
- That I and CIA OIG staff members are prohibited from contacting the ICIG.

That same day I met with Howard C. who directed that:

- I and CIA OIG staff are prohibited from contacting the ICIG;
- That if they, or even if the FBI call concerning an inquiry regarding the office, I immediately inform my leadership of the inquiry and refuse to participate; and
- That there are “things” happening between CIA OIG and the ICIG, and that I do not want to be involved in it.

That same day Michael R. directed that I not cooperate with ICIG inquiries and that I immediately inform leadership of inquiries the ICIG is conducting of the office.

On April 11, 2014, Robin W., Counsel to Mr. Buckley, directed that I not speak to, contact, or cooperate with ICIG inquires.

It has become clear to me that jurisdictional tension exists between the two offices, an issue that was raised by the SIB Investigator in my interview. The SIB Investigator asked me that if I were to face the same situation today what would I do? I explained that I would have to seek counsel. On the one hand, federal law, 50 U.S.C. §3033 (g)(2)(E) directs that I, as an employee within the Intelligence Community, cooperate with ICIG inquiries and that failure to do so can result in an adverse action, up to termination, being taken against me. On the other hand, my leadership is directing that I ignore/violate the law, per CIA OIG office policy. What does one do? My concern is that Mr. Buckley and CIA OIG leadership are directing employees to violate federal law, as I was directed to do. Further, such a restriction in communicating with an Office of Inspector General is in direct violation of 50 USC §3033. The fact that CIA OIG is relying on their internal office policy directing that CIA OIG employees violate federal law in taking the action against me, while seemingly incongruous, is exactly what is taking place here.

Accordingly, responsible management officials did not act within the authority granted under applicable regulations, law, or policy.

3. Was the action arbitrary and capricious, that is, what were the reasons, reasonableness, consistency, and motive for the action? Yes, the actions were arbitrary and capricious.

3(a) Reasons and Reasonableness

The sub-issue of reasons and reasonableness is, in part, similar to the support issue in reprisal analysis. Based on the facts as I understand them to be, it is clear the reasons for the actions taken against me are questionable and, given the circumstances, the reasonableness for them are inappropriate. Notably, the actions taken against me were due to my protected activity and based on false and misleading information forwarded to the Office of Security and the Special Investigations Branch (SIB).

As background, during the late summer/early fall of 2013, Anthony C. assigned me, as “lead” Agent, a case concerning alleged whistleblower reprisal. Shortly thereafter, the case was reassigned to another Agent, Heather S., and I was directed to be the “secondary” Agent working on the investigation. The purpose was, given my subject matter expertise in whistleblower reprisal investigations, to train another Agent in how to conduct such inquires in order to broaden the depth of knowledge in this area within the office. Anthony C. believed assigning the other Agent as “lead” and me as “secondary” made the most sense in accomplishing this goal. As further background, on April 4, 2014, Paul W. of the ICIG contacted me and inquired into this very case. I cooperated with his inquiry and double-checked the limited information I provided him by conducting a case search in the Investigation’s case management system. Later that day I contacted Paul W. by telephone to state that the information I provided during our meeting was correct; I provided no new information.

On April 30, 2014, my point of contact, Donna, Special Activities Division (SAD), informed me that **the Inspector General, per his authority**, was suspending my access to classified information and concurrently placed me on administrative leave because of my computer use and handling of classified information. These allegations by Mr. Buckley and the OIG were clarified during my subsequent interview with Special Investigations Branch (SIB) on August 20, 2014. The Investigator informed me that CIA OIG asserted that my cooperation with the ICIG and my subsequent database query, where I double-checked myself following my interview with Paul W., was inappropriate. These allegations and questions directly involve my protected activity. Thus, by definition, **BUT FOR my protected activity I would not have had my access to classified information suspended and concurrently placed on administrative leave (resulting in no performance evaluation and constructive termination).**

During my interview with SIB, the investigator asked me whether I had any reason to search the OIG's case management database concerning the aforementioned reprisal case. I stated "yes" because I worked on the investigation. As stated above, for a brief period of time I was the "lead" Agent working on the matter and, shortly thereafter, I was reassigned as "secondary" Agent in order to train the new "lead" Agent on how to conduct reprisal investigations. In taking the actions against me, OIG leadership relied on the assertion that I had no reason to search for the case; that I did not work on the investigation. This assertion is wrong.

While I was conducting the reprisal investigation as the "secondary" Agent, both Howard C. and Anthony C. would regularly have meetings with me concerning the investigation. These meetings always occurred at a time in the afternoon when the new "lead" Agent had departed the office for the day. Further, on at least four occasions I met with Robin W., counsel to Mr. Buckley, to discuss the case, and he attended a meeting with Howard C., Anthony C., and myself concerning the reprisal investigation. Accordingly, Anthony C., Howard C. and Robin W. were fully aware of my participation in the case and I believe that OIG leadership, Mr. Buckley, had direct knowledge of this fact, thus intentionally misleading the Office of Security and SIB. Given that CIA OIG leadership and Counsel had direct knowledge that I worked on the investigation and, if they claim that they have forgotten, could have refreshed their own recollections by double-checking the case management system (as I conducted two interviews and my name appears in investigative interview reports/Memorandum of Investigative Activity). Thus, critical facts were omitted and intentionally withheld in order for CIA OIG to falsely give credence towards the actions against me.

Additional information was incorrectly reported to SIB by the OIG, which SIB relied upon in their investigation. The SIB Investigator appeared to be unaware of when I attended FLETC. The Investigator was under the impression that I had attended FLETC between May 21, 2013, and August 9, 2013. While those were my original FLETC dates, my grandmother's passing resulted in my FLETC dates being changed to October 29, 2013, through January 25, 2014. This is critical because, as it will become apparent, upon my return in February I was trying to readjust back into CIA OIG, an office that had seen numerous leadership, policy, and work product changes in those few short months.¹⁴ The fact that CIA OIG misinformed SIB of such basic information is misleading and troubling. *It is troubling because CIA OIG, which should be the standard-bearer for internal investigations within CIA, is, in fact, reporting false information.*

¹⁴ Between May 2013 and April 2014, I had four (4) different first-line supervisors: Constance R., Anthony C., Michael Gr., and Patrick C.

During the course of my interview with SIB, the Investigator stated that CIA OIG provided SIB an internal OIG policy document that prohibits disclosures to parties outside of CIA OIG. This internal policy document is dated AFTER my protected communication. Accordingly, I informed the SIB Investigator that (1) the policy did not apply to my situation as it was issued FOLLOWING my participation with the ICIG inquiry (an inappropriate retroactive/*ex post facto* application of an internal policy), and (2) this internal policy document is in direct conflict with 50 U.S.C. §3033, requiring that members of the Intelligence Community cooperate with ICIG inquiries¹⁵ and that the ICIG “shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials.”¹⁶ It is clear CIA OIG provided SIB an internal policy document, but never informed them of applicable U.S. law, namely 50 U.S.C. §3033. *If CIA OIG provided partial and intentionally misleading information to SIB, how can CIA OIG continue to be the standard-bearer for internal investigations?*

The SIB Investigator also stated that CIA OIG asserted that I had misused government computers on two other occasions: (1) where I copied a number of documents from another case file; and (2) where I searched three or four case numbers in the case management database that were not of any cases I was working on. My answer to the first was that while I do not recall doing it, looking at the date (March 2014), I must have copied the documents because I had just returned from FLETC the month prior and I was looking for sample documents (notably case chronologies and an internal memos) that I could use as templates for projects I was working on, particularly those documents that have passed muster with leadership.¹⁷ As to the second point that I searched three or four case numbers in the case management system inappropriately, that allegation is patently false as well. In February/March 2014, my then-supervisor, Michael Gr., was departing the Agency and I was asked to complete my performance evaluation, or PAR, narrative. In order to do this, I needed to review some of the cases I worked on prior to departing for FLETC. Between October 29, 2013, and January 25, 2014, I was in Glynco, GA attending CITP at FLETC. During that time, a number of investigations I was working on were either closed or reassigned. The case management database was difficult to use and made it difficult to find cases once closed or reassigned to other Agents; the case management system’s deficiencies were so bad that it was scheduled to be shutdown in favor of a new system.¹⁸ I explained to the SIB Investigator that I am decent with remembering numbers, like case numbers, and that I was trying to recall a case I worked on prior to my departure for FLETC. I even noted that I am sure those case numbers that I typed do not actually point to a case, as I was trying to locate a case and recalled coming up with no hits. I asked the Investigator if these case numbers actually resulted in any case hits; the SIB Investigator could not answer. It became clear that all of my computer use was appropriate and for official business. Moreover, my initial supervisors, Constance R. and Frederick K. encouraged employees to use the database to learn from past cases when working on new matters.

¹⁵ 50 USC §3033 g(2)(E).

¹⁶ 50 USC §3033 g(2)(C).

¹⁷ It is important to point out that CIA OIG Investigation was undergoing significant reorganization and changes throughout 2013-2014. CIA OIG had issued a new Investigations Manual in March 2013, and due to numerous deficiencies was issuing a revised version in March 2014. Numerous documents, including case chronologies, Memorandums of Investigative Activity (MOIAs), and ARNMs were being changed on a monthly basis.

¹⁸ In 2013 the case management system crashed and CIA OIG Investigation’s Evidence Room logs were all lost. CIA OIG Investigation’s leadership directed that the Evidence Room logs be hand written, as the database was unstable and not trustworthy.

The aforementioned establishes that CIA OIG leadership was effectively “digging” to try and find something, anything, to establish that I violated a law, rule, or regulation. They knew they had nothing because I did nothing wrong—because I followed the law. CIA OIG acted first and thought second, or in the investigative world, attempted to “reverse engineer” a case against me. CIA OIG was doing anything to locate information to support their false accusations, knowing they had nothing.

Accordingly, the reasons for the actions taken against me are flawed, thus making the actions in and of themselves not reasonable.

3(b) Consistency

The issue of consistency is similar to the third and final question in reprisal analysis. I am confident that the investigators reviewing this matter will find that, unfortunately, a culture of reprisal exists within CIA OIG. I state this because I have learned that on April 30, 2014, one other individual from my office, Valarie C., also had her access to classified information suspended and was concurrently placed on administrative leave for engaging in protected activity. Others have been targeted as well but were fortunate to leave prior to additional actions being taken against them.

Further, I have learned during my interview with SIB, through the Investigator’s questioning, that members of OIG Leadership have “targeted” me, which by definition means that I have been singled out and was treated differently. Moreover, additional evidence of a culture of reprisal is prevalent throughout the organization, details of which are sensitive and I will be able to further elaborate upon during an intake interview.

In reviewing my situation, I point to the fact that the suspension of access to classified information and concurrent administrative leave was predicated solely on my protected activity. Further, as stated above, the information CIA OIG provided to the Office of Security and SIB was false and misleading, resulting in an inappropriate action. I believe the investigation will find that few, if any, individuals within CIA as a whole who did not engage in protected activity had their access to classified information suspended and concurrently placed on administrative leave under false pretenses and misleading information.

Given CIA OIG’s culture of reprisal and targeting of individuals who have engaged in protected activity, evidence will establish that there are no similarly situated individuals who had their access to classified information suspended and concurrently placed on administrative leave who did NOT engage in protected activity. I am perhaps one of two individuals treated differently because of our protected activity. Investigators will find during their review compelling evidence that other whistleblowers within the office have been targeted and that the organizational leadership has engaged in prohibited activity creating a culture of reprisal.

3(c) Motive

As stated in the reprisal analysis, motive can be established both directly and indirectly. That is, responsible management officials need not state, “I am taking the actions in reprisal because of the complainant’s protected communication.” The timing of the actions and the manner by which responsible management officials take the actions speaks to motive. That is true in this case. Moreover, the stated reasons for CIA OIG’s actions and the statements against interest by CIA OIG leadership underscores their motive to reprise and abuse their authority.

Within twenty days of becoming aware of my protected communication, five of which for I was on leave, Mr. Buckley and OIG leadership suspended my access to classified information and placed me on administrative leave. Not only is the “quick snap” in taking the action following their knowledge of my disclosure probative, the fact that they cite to my protected communication as the basis for their actions is compelling evidence of motive to reprise and abuse authority. It is not often that responsible management officials, particularly Presidential appointees, err by making an admission through their actions. However, that has occurred in this very case. **Suspending my access to classified information and concurrently placing me on administrative leave because of my cooperation with the ICIG inquiry is an admission of reprisal and directly explains the “why” or the “motive” for the action; reprisal is, in fact, CIA OIG’s stated reason for the actions.**

It is not only that CIA OIG leadership admit reprisal and abuse of authority by their stated reasons for the actions, it is also the manner by which they executed the actions. CIA OIG made missteps throughout, from conducting improper internal investigations of their employees, to intentionally misleading the Office of Security and SIB of critical facts and relevant sections of the law (ie. my obligation to cooperate with ICIG inquiries per 50 U.S.C. § 3033 (g)(2)(E)). Further, CIA OIG subsequently stated that directly relevant sections of the United States Code do not apply to CIA OIG. Compounding these facts is that CIA OIG attempted to reverse engineer a case against me, underscoring the nefarious reasons for their actions and their motive to reprise and abuse their authority.

CIA OIG’s motivation to reprise and abuse authority goes one step further: I cooperated with the ICIG—an office that I have since learned is currently at odds with CIA OIG. Individuals within CIA but outside of OIG raised concerns regarding issues between CIA OIG and the ICIG. On April 11, 2014, the day after my meeting with CIA OIG leadership where they questioned me and I explained to them my cooperation with the ICIG inquiry, I met with my area Grievance Officer and Office of General Counsel Attorney Elizabeth V. She informed me that a “war” existed between CIA OIG and the ICIG, and that it was set to go “thermonuclear.” This assertion is supported by Howard C.’s statement to me the previous day that “something” was going on between the two offices, and that I have been caught up in it.

There is significant additional information that I will be able to provide during an interview, information that is sensitive and can be corroborated by the ICIG. Effectively, events occurring within CIA OIG are embarrassing, which has lead to major actions, providing additional motive to reprise.

Given that CIA OIG is unable to support their action; that CIA OIG’s stated reason for their action is my participation with an ICIG inquiry—a protected communication; that Mr. Buckley

and his staff advocate violating 50 U.S.C. §3033; that CIA OIG provided false and misleading information to the Office of Security and SIB—all establishes that CIA OIG’s actions were not carried out in good faith, but rather with the motivation to harm me professionally through reprisal and abuse of authority. Further, I will restate the following: It is not often that responsible management officials, particularly Presidential appointees, err by making an admission through their actions. However, that has occurred in this very case. **Suspending my access to classified information and concurrently placing me on administrative leave *because of my cooperation with the ICIG inquiry is an admission of reprisal and directly explains the “why” or the “motive” for the action; reprisal is, in fact, their stated reason for the actions.***

Accordingly, CIA OIG had and continues to have significant motive to reprise against me and abuse their authority.

REMEDIES

As a direct consequence of the aforementioned, I request that corrective action be taken against Mr. Buckley and CIA OIG and senior staff to prevent such abuses from occurring in the future and that I, the complainant in this matter, be made whole through the following:

- Favorable adjudication of my security clearance with a memorandum placed in my human resource and security files explaining that I had my clearance suspended and was placed on administrative leave in reprisal for engaging in protected activity;
- Retroactive promotion to GS-14 step 4;
- Student Loan Repayment Assistance Program (SLRAP) forgiveness;
- Per statute, financial compensation of no less than \$300,000, which would include legal fees as well as compensatory and punitive damages; and
- Return of all personal property.

Adjudication of Clearance and Memorandum with Security and Human Resource Files

Being placed on administrative leave pending adjudication of my security clearance for an extended period of time has, and will continue to, make it difficult to look for work, both within and outside CIA. Prospective supervisors within CIA will question such an extended break from meaningful employment within the Agency. Further, the fact that I underwent a significant investigation, at the behest of the Inspector General, will always be a red flag. I request that to minimize the long-term impact of the reprisal actions against me that appropriate memoranda and notations be made in my human resource and security files, and that my clearance be adjudicated favorably.

Retroactive Promotion

Retroactive promotion is warranted in this instance because I accepted a downgrade from GS-14 to join CIA OIG. I believed that I would have been promoted back to GS-14 within two years of joining CIA OIG; my past performance evaluations warranted it, notably my 2013 PAR with Constance R. as my rater. Further, I was precluded from applying to GS-14 positions during

my administrative leave, as I had to wait for my security clearance to be adjudicated. During my administrative leave, my federal career has effectively stalled.

Student Loan Repayment Assistance Program (SLRAP)

Upon my arrival at CIA in 2012, I applied for, and was accepted for, enrollment in SLRAP. One of the conditions for student loan assistance was agreeing to be employed with CIA for a period of time. I did this with the goal of beginning a long career with CIA. The reprisal actions taken against me, and my fear of continued reprisal (notably given the office has a culture of reprisal), forces me to look for employment outside of CIA. Accordingly, in order to prevent any further harm, including financial harm, I request that the employment requirement be waived, and that should I need to find employment outside of CIA that I not be required to repay the Agency. Given the actions against me, I have withheld reapplying to SLRAP for 2015.

Financial Award

As a direct result of having my access to classified information suspended and being placed on administrative leave, I have endured financial hardship. First, I was required to retain an attorney. Second, I was precluded from applying to any Federal positions given the status of my security clearance. Third, I am three years shy of serving 10 years with the Federal Government (I intended to serve the Federal Government for many more years), which would result in my Federal student loans being forgiven. Further, the actions against me have had a significant impact on my life, my wellbeing, and my family. Notably, this situation created significant stress for my wife and I during our first year of marriage. This hardship has resulted in the decision to relocate back to Connecticut and forgo the opportunity to continue a Federal career. Effectively, resigning will result in over \$100,000 of my \$200,000 outstanding student loans NOT being forgiven and selling a home I purchased only two years prior, with the danger of losing a portion of our down payment. The significant impact of this action not only impacts my career and my family, but my family's financial wellbeing.

As to punitive damages: CIA OIG is required to be the Agency's standard-bearer for internal investigations. Notably, CIA OIG is the office tasked with receiving and investigating complaints of whistleblower reprisal for CIA. This is significant both in mission and juxtaposed against the fact that CIA OIG, and the Inspector General directly, abused their authority and reprised against me. Notably: CIA OIG provided partial and intentionally misleading information to the Office of Security and intentionally withheld critical information, both factual and legal, in their allegations against me. These actions have tarnished the shield that the OIG issues to its investigators and runs contrary to CIA OIG motto: "follow the truth . . . wherever it may lead." The allegations and intentionally misrepresented information provided to the Office of Security by CIA OIG is neither complete nor truthful. Further, the Inspector General's actions, and the actions of CIA OIG, have not only tarnished my reputation personally, but has created a chilling-effect within CIA OIG, running contrary to the very foundation of what an Office of Inspector General should be.

In order to restore CIA OIG as the model investigative body within CIA, rehabilitative actions are necessary. Accordingly, in the best interest of justice and to prevent future reprisals against employees, and given that CIA OIG is tasked to investigate allegations of reprisal and, instead, has reprised against CIA's reprisal investigations subject matter expert, I should be awarded punitive damages for CIA OIG's violations.

Total damages: \$300,000, per statute.

Return of Personal Property

The following items have yet to be returned to me.

- 1 Blacks Law Dictionary;
- 2 Blue Books for Legal Citation;
- 1 Red Book for citation;
- 1 McCormick on Evidence; and
- my personal rolodex.

THEREFORE, given the aforementioned, I request that your office initiate an investigation into whistleblower reprisal and abuse of authority taking place within CIA OIG; that appropriate corrective action be taken to prevent such from happening in the future; and that I, ANDREW P. BAKAJ, be appropriately made whole.

Andrew P. Bakaj

Date

EXHIBIT “4”

Integrity Committee
Council of the Inspectors General on Integrity and Efficiency
935 Pennsylvania Avenue, N.W., Room 3973
Washington, D.C. 20535
IC_Complaints@ic.fbi.gov

Personal and Confidential

July 14, 2015

Andrew P. Bakaj
[REDACTED]

Complaint to the Integrity Committee of the CIGIE

Dear Mr. Bakaj:

The Integrity Committee (IC) of the Council of Inspectors General on Integrity and Efficiency recently reviewed the allegations that were referred on your behalf by the Office of Inspector General for the Intelligence Community and by the Central Intelligence Agency Office of Inspector General, concerning Deputy Inspector General Christopher Sharpley, Counsel to the Inspector General Robin Walmsley, and Assistant Inspector General for Investigations Howard Cox, at the Central Intelligence Agency.

The IC is charged with receiving, reviewing, and investigating, where appropriate, specific allegations of administrative misconduct made against Inspectors General (IGs) and designated members of an IG's staff. The allegations must substantially involve administrative misconduct (defined as a violation of law, rule or regulation, gross waste of funds, or abuse of authority in the exercise of official duties or while acting under color of office) or potentially involves conduct so serious that it may undermine the appearance or integrity reasonably expected of an Inspector General or Office of Inspector General senior staff member.

The IC reviewed the allegations at their July 2015 meeting and determined that the allegations did not meet the IC's threshold for further consideration, and decided to close the matter. Your primary allegation about the CIA Office of Inspector General's failure to follow the requirements of Presidential Policy Directive 19 is outside of the IC's jurisdiction. Your reprisal complaint was properly submitted to the Office of the Inspector General for the Intelligence Community (IC OIG). We have provided the IC OIG with a courtesy copy of this letter so they are aware of the IC's disposition of this matter and may take any appropriate action in reviewing and investigating your allegations. Thank you for providing this complaint to the IC.

Sincerely,

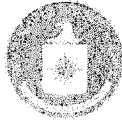


Joseph S. Campbell
Chair
Integrity Committee

cc: Jeanette McMillian, General Counsel, Office of the Inspector General for the Intelligence Community
Christine Ruppert, Counsel to the Inspector General, Central Intelligence Agency

EXHIBIT “5”

UNCLASSIFIED
Central Intelligence Agency



Washington, D.C. 20505

23 October 2015

Dear Mr. Bakaj:

(U) This letter is to provide you with the status of your reprisal complaint filed with the Office of Inspector General (OIG).

(U) On July 14, 2015, the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency closed your matter, asserting lack of jurisdiction. Upon return of the case, Counsel to the OIG initiated a file review at my request. This file review has been completed and the OIG has determined that your complaint did not satisfy the requirements for a whistleblower retaliation claim.

(U) Although you were a covered employee, your communications with the Intelligence Community Inspector General's (IC IG) office were not protected communications, as there was no assertion that the communication with the IC IG was in furtherance of an audit, inspection or investigation. Even assuming, however, that your communications were protected, the facts show that the decision to place you on paid administrative leave was based on evidence that you improperly accessed classified information on multiple occasions, and that this action to place you on leave would have been taken even absent any communication with the IC IG.

(U) You have 15 business days after receipt of this notification to submit any additional information to OIG regarding this matter. Upon receipt, OIG will evaluate any new information and determine if further review is warranted. If after 15 business days you have not provided additional information or if the additional information did not warrant further review, this matter will be considered closed.

(U) You also have the right to appeal this matter to the IC IG. You can contact the IC IG at Hotline number (855) 731-3260 (unclassified).

UNCLASSIFIED

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Central Intelligence Agency



Washington, D.C. 20505

(U) Should you have any questions please contact Counsel to the OIG, Christine Ruppert, at 703-374-8052.

Regards,

A handwritten signature in cursive script that reads "Jesse N. Roth".

Jesse N. Roth
Assistant Deputy Inspector General

UNCLASSIFIED
Central Intelligence Agency

Mr. Bakaj



Washington, D.C. 20505

OIG/Counsel/CRuppert/sw: 95553 (14 Oct 15) **2015-0322**
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Ltr_14 Oct 15.docx

Orig - Mr. Bakaj
1 - OIG/FO

EXHIBIT “6”

MARK S. ZAID, P.C.

ATTORNEY-AT-LAW

1250 CONNECTICUT AVENUE, N.W.

SUITE 200

WASHINGTON, DC 20036

TELEPHONE: (202) 454-2809

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ILANA S. GREENSTEIN, OF COUNSEL (admitted in DC, MD)

E-MAIL: ILANA@MARKZAID.COM

October 31, 2015

VIA E-MAIL

Jesse N. Roth
Assistant Deputy Inspector General
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Roth:

I represent Mr. Andrew P. Bakaj, a former Central Intelligence Agency (“CIA”) Office of Inspector General (“OIG”) Special Agent/Investigator, in a matter concerning your office. I am responding to your letter sent to Mr. Bakaj and dated October 23, 2015, that informed him that CIA OIG determined that his complaint “did not satisfy the requirements for a whistleblower retaliation claim.”

Please note that this letter constitutes formal notice that Mr. Bakaj is appealing that decision and his complaint directly to the Intelligence Community Inspector General’s (“IC IG”) office.

On July 14, 2015, the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) closed Mr. Bakaj’s complaint based on lack of jurisdiction. That was an appropriate determination as CIGIE does not have jurisdiction to investigate Intelligence Community whistleblower reprisal allegations. Contrary to CIA OIG’s flawed conclusions, however, Mr. Bakaj made protected communications with and to the IC IG. Pursuant to 50 U.S.C. §3033, the IC IG is authorized to receive and investigate complaints or information from “any person concerning the existence of an activity within the authorities and responsibilities of the Director of National Intelligence constituting a violation of laws, rules, or regulations . . .”

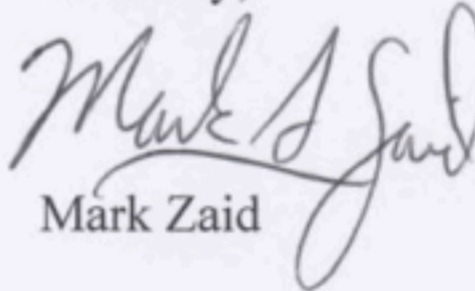
Mr. Bakaj’s cooperation with representatives of the IC IG was in furtherance of an audit, inspection, or investigation emanating from the United States Senate. Furthermore, “no action constituting reprisal, or threat of reprisal” may be taken against an individual cooperating with an IC IG inquiry. As to the actions taken against Mr. Bakaj, fact-finding will establish that the

actions taken against him would not have occurred absent his protected communications because he never improperly accessed classified information. CIA OIG targeted Mr. Bakaj in an effort to remove him because those communications illustrated CIA OIG's mission failure in numerous areas, including investigative misconduct, a significant liability for CIA.

CIA OIG's flawed conclusion concerning this matter, which is neither based on independent fact-finding nor on an investigation, illustrates CIA OIG's continuing motivation to reprise against Mr. Bakaj. In addition to reporting its findings absent an investigation, it is clear CIA OIG's independence is severely tainted in this matter as officials within CIA OIG directly targeted Mr. Bakaj in reprisal for his protected communications. Furthermore, current and former officials within the Office of Security are responsible for the actions taken against Mr. Bakaj, further tainting the ability of CIA to conduct an independent review. CIA OIG's actions not only compromise the independence of the office, but it destroyed the ability of both the Executive and Legislative branches from conducting oversight over CIA and its operations. Given that Mr. Bakaj cooperated with an inquiry emanating from the United States Senate, the actions by CIA OIG continue to thwart Congressional oversight as mandated by the Constitution of the United States.

Accordingly, we are appealing this matter directly to the IC IG and welcome a thorough and independent investigation in to this matter. Should you have any questions, I can be reached via e-mail or on my cell at [REDACTED]

Sincerely,



Mark Zaid

cc: Andrew Bakaj, Esq.
The Honorable I. Charles McCullough, III, Intelligence Community
Inspector General
Senator Richard Burr, Chairman, Senate Select Committee on Intelligence
Senator Dianne Feinstein, Vice Chairman, Senate Select Committee on Intelligence
Congressman Devin Nunes, Chairman, House Permanent Select Committee on
Intelligence
Congresswoman Jackie Speier, Member, House Permanent Select Committee on
Intelligence
Senator Charles Grassley, Chairman, Senate Judiciary Committee
Senator Richard Blumenthal, Member, Senate Judiciary Committee

EXHIBIT “7”

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August 1, 2016

VIA E-MAIL

The Honorable I. Charles McCollough, III
Inspector General
Office of the Intelligence Community Inspector General
Office of the Director of National Intelligence
Washington, DC 20511

Dear Mr. McCullough:

As you are aware in 2014 my client, Andrew P. Bakaj, was a source to an investigation your office was conducting of Central Intelligence Agency's ("CIA") Office of Inspector General ("OIG"). As a direct result of his cooperation, Mr. Bakaj was reprimed against and professionally harmed by having his security clearance suspended by CIA's Office of Security at the direction of then-CIA Inspector General David Buckley. It has been over two years since he has been retaliated against and over one year since Mr. Bakaj filed his reprisal complaint that, ironically, relies upon the very CIA regulation he drafted to protect whistleblowers with access to classified information. Accordingly, I am writing to request a status update and to learn what your office is doing to protect him – your source.

I am writing out of concern that the investigation into his reprisal is taking far too long. As we understand it, the matter has been referred to the Department of Homeland Security ("DHS") OIG as an appeal. However, an appeal would make sense if the matter had already been investigated. However, in this case, an investigation by CIA OIG of itself is a clear conflict of interest and thus we believe the DHS OIG investigation must be *de novo*. Furthermore, we have heard that Chad Steel, a former mid-level CIA OIG employee who was involved in the actions taken against Mr. Bakaj, is now with DHS OIG. If accurate, this is of great concern and we would like assurances that Mr. Steel will have absolutely no interaction with Mr. Bakaj's matter.

Given the current situation, I would like to highlight Mr. Bakaj's work ensuring that the institution of the Office of Inspector General is safeguarded. Concurrent to his cooperation with your office's investigation, which was initiated following an inquiry by Senators Grassley and Wyden, Mr. Bakaj was protecting the equities and interests of both the Executive and

Congressional oversight functions of our Federal Government. Put another way: Mr. Bakaj's actions were protecting the credibility and integrity of an institution over which you sit – the Office of Inspector General.

The complaint Mr. Bakaj filed with your office details his cooperation with your investigation. It does not, however, expand upon how he was instrumental in ensuring others lawfully engaged in protected activity as he was concerned about those individuals being subsequently targeted by CIA OIG leadership should those details get out. His hope was that during the course of an interview he would be afforded the opportunity to discuss CIA OIG's actions and investigative misconduct. However, an interview has yet to occur and enough time has passed where Mr. Bakaj is comfortable discussing, in a limited manner, the additional issues that plagued CIA OIG.

Upon Mr. Bakaj's arrival at CIA, Mr. Buckley named him the Agency's subject matter expert on federal whistleblower law and investigations. Accordingly, he directed that Mr. Bakaj draft the Agency regulation in compliance with Presidential Policy Directive 19, the directive protecting whistleblowers with access to classified information. The program Mr. Bakaj developed, per Presidential directive, was part of a government-wide effort to prevent unauthorized leaks, such as the unlawful activities perpetrated by Edward Snowden, by developing programs that facilitate internal disclosures. By virtue of his position, numerous CIA OIG officials disclosed to Mr. Bakaj violations of law and investigative misconduct within that very office. This placed Mr. Bakaj in a precarious position because while he was the Agency's subject matter expert, he was not in a position to take disclosures about his direct superiors and senior leadership and implement corrective action. Accordingly, to protect both his sources and, most importantly, national security, he advised that those individuals lawfully make their disclosures in a manner that protects both the sensitivity of the information disclosed as well as themselves. As a result, Mr. Bakaj steered these individuals – who all qualified as legitimate whistleblowers – to your office. To this day, and forever, he will protect the identities of these sources.

The information those individuals disclosed to your office resulted in your immediate decision to refer the matter to the Federal Bureau of Investigation ("FBI"). This resulted in multiple CIA OIG officials being contacted by FBI Special Agents. In fact, FBI Special Agent Pollack contacted Mr. Bakaj after being urged to do so by individuals within your office. Mr. Bakaj surmised that he was contacted so that he may advise Special Agent Pollack of the significance of source protection, particularly given that a culture of reprisal had already permeated CIA OIG. Accordingly, Mr. Bakaj advised that Special Agent Pollack be cautious in his actions and be mindful of the precarious position the whistleblowers were in.

This disclosure to your office and to the FBI was significant. It resulted in multiple investigations and unearthed evidence that CIA OIG senior officials either destroyed or manufactured evidence, notably by altering interview reports and reports of investigation, to mold it into a pre-determined outcome. The actions by those senior CIA OIG officials resulted in the defendant in that investigation pleading guilty to a criminal offense before the U.S. District Court for the Eastern District of Virginia. Following the numerous investigations that resulted from the whistleblower's disclosures, the Federal Judge overseeing the prosecution threw out the

guilty plea. It is common knowledge that the U.S. Attorney's Office for the Eastern District of Virginia subsequently announced an informal policy to pass on any future criminal referrals from CIA OIG because of its destroyed credibility.

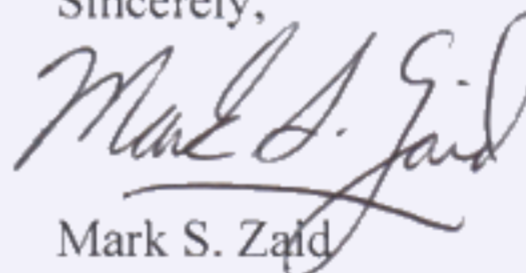
Subsequent to the case being thrown out of Federal Court, Mr. Buckley and the Deputy Inspector General, Christopher Sharpley, initiated a "management review" of the matter. This resulted in an external OIG being called in to conduct an investigation. Frankly we view the management review as a cover for Messrs. Buckley and Sharpley's attempt to identify the whistleblowers and punish them. It also acted as a deterrent against CIA OIG officials contacting your office. In fact, during the course of multiple interviews with CIA OIG staff, Mr. Sharpley walked in on the confidential interviews in order to intimidate and harass those witnesses.

In the year since Mr. Bakaj departed CIA OIG, it is common knowledge that the organization is reeling. This is due in no small part to Mr. Bakaj, the CIA OIG's internal disclosure expert, being targeted for doing his job and following the law. An example was made of Mr. Bakaj by CIA OIG leadership in contradiction to the very regulation mandated by the President they directed him to draft. Unfortunately, Mr. Bakaj is not the only person to have been reprimanded against. Furthermore, Mr. Buckley and Mr. Sharpley, along with their deputies, actively challenged the authority of your office, the ICIG, to conduct oversight over CIA OIG.

Accordingly, any failure on the part of the ICIG to protect its sources and its authority by making Mr. Bakaj whole defeats the purpose of your office's mission and the policies and procedures Mr. Bakaj developed in concert with your office to comply with the President's directive. To be blunt: if you fail Mr. Bakaj, then your program has failed and is no longer credible.

I appreciate your consideration of this request. Please do not hesitate to contact me should you need additional information. I can best be reached by e-mail or on my cell at [REDACTED], and I look forward to hearing from you or your representative shortly.

Sincerely,



Mark S. Zaid

cc: Senate Select Committee on Intelligence
House Permanent Select Committee on Intelligence
Senate Armed Services Committee
House Armed Services Committee
Senate Committee on Homeland Security and Governmental Affairs
House Committee on Oversight and Government Reform
The Honorable Senator Grassley
The Honorable Senator Wyden
Congresswoman Jackie Speier
Andrew P. Bakaj, Esq.