

Robert M. Gates
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

November 19, 2010

Dear Secretary Gates:

This letter seeks your leadership to end retaliation against Mr. Franz Gayl, a senior United States Marine Corps' civilian Science and Technology Advisor. Mr. Gayl blew the whistle to successfully challenge failure to deliver available mine resistant ambush protected (MRAP) vehicles and nonlethal systems to Iraq for over 1.5 years. Thousands of needless combat and civilian casualties have been prevented in Iraq and Afghanistan due to his efforts. A bi-partisan coalition of Senate leaders, including then-Senator Biden, Senator Bond, Senator Levin, Senator McCaskill, Senator Kennedy and Senator Rockefeller praised his whistleblowing for saving lives. During Congressional testimony, General Petraeus even expressed personal appreciation for the vehicles that Mr. Gayl championed.

Unfortunately, the Marine Corps responded to Mr. Gayl's initial warning to Department of Defense officials by cutting off briefings and proposing his suspension. Despite Mr. Gayl's official vindication by the DoD Inspector General, harassment has intensified so crudely it appears the Marine Corps is trying to make an example of him so that others will not repeat his contribution. The latest attack has been to completely cut Mr. Gayl off from his ability to do his job by suspending his access to classified materials, placing him on administrative leave indefinitely and barring him from entering the Pentagon. Since he does not have viable rights under the Whistleblower Protection Act for security clearance retaliation, your leadership is indispensable against this attack on the merit system directly, and the safety of both military and civilians in combat zones.

Mr. Gayl's current exile climaxes an over three and a half year campaign of intensifying retaliation that has persisted despite protests from Senate and House offices, as well as support and an ongoing investigation by the U.S. Office of Special Counsel. It is only through the efforts of those offices that he has not been terminated, as threatened numerous times. But in the absence of effective legal rights, that outside support could not shield him from sustained harassment. Prior to the current attack, his attorneys at the Government Accountability Project report there has been no break in harassment, as they have filed evidence of --

- * a gag order on any communications with the Office of the Secretary of Defense about his concerns, without prior concurrence of his Marine Corps chain of command;
- * a formal reprimand for communicating directly with General Petraeus;
- * a proposed two week suspension for disobeying the gag order and reprimand by communicating his concerns to Congress;

- * denial of advanced education that routinely had been approved before Mr. Gayl's whistleblowing disclosures;
- * denial of requests for his services to Senate and House offices as a congressional fellow;
- * numerous instances of demeaning and widely proliferated e-mail and other correspondence by and from supervisors that questions his judgment and character with associated meetings that repeatedly sought his resignation;
- * personal abuse such as obscenities and name-calling in front of co-workers and repeated advice to resign to avoid termination;
- * repeated substandard performance appraisals that placed him in the bottom three percent of Marine Corps civilians for two consecutive years, and contrasted with a formal recommendation for consideration for the SES ranks immediately before his whistleblower disclosures;
- * denial of bonuses;
- * two successive, identical, and impossible Performance Improvement Plans, each requiring completion of 223 information papers for a total of 241 tasks over a period of as little as 22 working days;
- * rewritten job descriptions that first reduced and then eliminated his science and technology functions for which he was hired;
- * proposed demotion from GS-15 to a GS-14;
- * accusations of criminal theft of intellectual property by using expertise and knowledge obtained on the job in whistleblowing disclosures to Congress; and
- * a two year criminal investigation for alleged leaks of classified information, after which he was not found to have improperly disclosed any.

The exhaustive probe did find one item for which an allegation could be based: twice in 2008 there was an unsecured flash drive in his computer workstations, in an open classified work area that *Mr. Gayl's supervisors who requested the investigation had failed to properly secure*. Although Mr. Gayl denies any recollection of the flash drive he is accused of employing, and which has not been traced to him, his career is in a professional coma over this allegation. Without Whistleblower Protection Act coverage, he can expect to be suspended for over a year before he even has internal procedural rights to challenge the action.

It is particularly noteworthy that for most of the over two and a half year probe Mr. Gayl was never informed that he may have committed any security violations. He maintained unrestricted and unsupervised access to his SCIF and Special Technical Operations facility throughout. His work stations were never quarantined prior to his recent suspension, and he even served as Acting Branch Chief. The current suspension on this most contrived basis is a double whammy: the nation is deprived from further services by a patriot who has saved countless lives, and his absence will have a chilling effect on other would-be whistleblowers. There are few better illustrations than Mr. Gayl's ordeal that secrecy enforced by repression is a clear and present danger to America's national security. We request your leadership to return this public servant to a comparable DoD position, pending any final determinations.

Sincerely,

Tom Devine, Legal Director
Government Accountability Project

Joe Carson, President
Affiliation of Christian Engineers

J. Bradley Jansen, Director
Center for Financial Privacy and Human Rights

Tanya Ward Jordan, President
Coalition for Change, Inc.

Lokesh Vuyyuru, MD, Founding Member
Concerned Citizens of Petersburg

Ben Smilowitz, President
Disaster Accountability Project

Jason Zuckerman, Principal
The Employment Law Group

Gabe Bruno, Founder
FAA Whistleblowers Alliance

Jon Adler, National President
Federal Law Enforcement Officers Association

Conrad Martin, Executive Director
The Fund for Constitutional Government

Dr. James Murtagh, Co-Chair
International Association of Whistleblowers

Mark S. Zaid, Esq., Executive Director
James Madison Project

Michael Ostrolenk, Co-Founder and National Director
Liberty Coalition

Zena Crenshaw - Logal, Esq.
National Forum On Judicial Accountability (NFOJA)

Dr. Andrew D. Jackson, Deputy Director

National Judicial Conduct and Disability Law Project, Inc.

Kel McClanahan, Executive Director
National Security Counselors

Stephen Kohn, Executive Director
National Whistleblowers Center

Hon. Thomas H. Andrews, Executive Director
New Security Action

Sean Moulton, Director, Federal Information Policy
OMB Watch

Progressive Librarians Guild
*Organizational communication

Danielle Brian, Executive Director
Project On Government Oversight

Stephen Soldz, President
Psychologists for Social Responsibility

Craig Holman, Ph.D., Legislative Representative
Public Citizen

Scott A. Pullins, Esq., Publisher
The Pullins Report

John W. Whitehead, President
The Rutherford Institute

James Faller, Founder
U.S. Justice Watch

Dr. Jeffrey Fudin, Founder
Veterans Affairs Whistleblower Coalition

Paul Sullivan, Executive Director
Veterans for Common Sense

Reuben Guttman, Co-Founder
Voices for Corporate Responsibility

Linda Lewis, Board Member
Whistleblower Support Center and Archive

