

April 29, 2004

The Honorable Gale Norton
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

I am writing to express my disappointment with your April 5, 2004, response to my March 16, 2004 letter regarding the Interior Department's Inspector General's report on Deputy Secretary J. Steven Griles and the state of your Department's ethics program. Your letter failed to address some of the most troubling issues raised in the IG report, in my letter, and by the Office of Government Ethics (OGE). In particular, your letter does not address either my or OGE's request to specifically determine whether Mr. Griles violated ethics rules with respect to one incident outlined in the report. It suggests that you have not considered a second issue anew in light of the IG report's significant information regarding the identity and interests of Mr. Griles' former clients and his former business partner's current clients, and OGE's specific statement that it would have advised Mr. Griles not to do what he did. And it fails to address whether you intend to review the conduct of, and possibly initiate disciplinary proceedings against, those involved in improper procurement practices revealed by the IG – especially the high level Department officials who took exceedingly disturbing actions to aid a particular company's efforts to obtain DOI contracts.

In short, despite the seriousness of the events discussed in the IG report – and OGE's clear statement that Mr. Griles may well have twice violated ethics rules – you have decided to close the matter without further review. This response cannot help but send a very unfortunate message to the Department's tens of thousands of employees about the standards to which the Department's high level political appointees are held. I believe that you personally want to improve the Department's reputation for ethical conduct. I am therefore hopeful that you will shortly provide me with a more complete response, one reflecting that you have taken appropriate action regarding the events outlined in the IG's report.

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On March 16, the IG issued a 145-page report on his investigation into Deputy Secretary Griles' alleged ethics violations and the Department's ethics program. The report painted a

highly disturbing picture of repeated questionable conduct by the Department's second highest ranking officer and those working for him. In his transmittal letter to you, the IG observed that the cumulative weight of the conduct he reviewed eroded the public trust and reflected an "institutional failure to consider the appearance of a particular course of conduct on the part of Departmental employees and officials." The IG did not make any determinations regarding the legality of Mr. Griles' conduct or the conduct of others discussed in his report, seeking instead the advice of OGE on whether the obviously questionable conduct transgressed ethical mandates.

In a 19-page letter to the IG, OGE opined that although much of Mr. Griles' conduct did not violate the ethics rules, the evidence in the report suggested that Mr. Griles' conduct may well have violated those rules on two occasions. First, OGE wrote that Mr. Griles' request to his former business partner, Marc Himmelstein, to host a dinner party for several high level Department officials would violate the rules barring the solicitation of gifts from so-called prohibited sources if Mr. Griles did not intend to pay for the dinner when he lodged the request. The evidence cited in the IG report largely suggests that Mr. Griles did not, in fact, intend to pay for the dinner when he solicited it from his former business partner.¹ OGE also noted that Mr. Griles' actions with respect to the dinner party may have violated ethics rules prohibiting the use of public office for private gain – in this case that of Mr. Himmelstein, who continues to have clients with substantial business before the Department. OGE declared itself "troubled by the appearance that Mr. Himmelstein was accorded privileged access to senior Government officials at an agency that acts in matters that may have a significant and wide-ranging impact on his consulting clients' interests," and said that the appearance problem "is particularly troubling in this case because not only are Mr. Griles and Mr. Himmelstein former business partners, but Mr. Himmelstein's company agreed to pay Mr. Griles over one million dollars in four annual payments upon his separation from that firm in 2001."

Second, OGE raised questions about Mr. Griles' decision to write and call EPA Deputy Administrator Linda Fisher in April 2002 regarding Environmental Impact Statements (EIS) EPA was reviewing with respect to proposals to expand coalbed methane production in the Powder River Basin. Mr. Griles had represented parties in obtaining funding for an EIS required for additional drilling in the Basin in Montana, and several of his former business partner's current clients were among those who paid for the EIS for Wyoming. As the IG

¹ As the OGE letter well summarizes: "Some statements by Mr. Griles and Mr. Himmelstein suggest they had agreed ahead of time that Mr. Griles would pay for the dinner party. On the other hand, the check Mr. Griles wrote to pay for the dinner was dated three weeks after the event; Mr. Himmelstein did not cash the check for several months; the check number is out of sequence, with check numbers above it and below it dated several months after the dinner party; and an attorney in the DOI Solicitor's office recalls Mr. Griles' Special Assistant stating to him after the event that if the dinner party was a problem, Mr. Griles' would pay for it." (Letter from Marilyn L. Glynn, Acting Director, Office of Government Ethics, March 12, 2004, pages 7-8).

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report points out, these were the very companies with substantial current and future interest in drilling in the Basin. Based both on governing ethics rules and recusal agreements under which Mr. Griles agreed not to get involved in matters involving Mr. Himmelstein's clients, OGE concluded that "we would have advised Mr. Giles not to contact EPA regarding release of the EIS In our view Mr. Griles, at a minimum, should have sought advice from the appropriate agency ethics official prior to participating in the matter."

With respect to both of these matters, OGE declined to make a definitive determination, stating DOI is primarily responsible for determining whether Mr. Griles violated the ethics rules. Again, however, OGE made clear that strong evidence suggested a violation with respect to the dinner party solicited by Mr. Griles, and that it would have advised against Mr. Griles involving himself in the Powder River Basin EISs.

Instead of initiating a detailed review of the IG's 145-page report and making the specific determinations OGE said were warranted with respect to the two specific incidents discussed above, you issued a press release within hours of receiving the IG report declaring Mr. Griles "cleared" and said that your declaration was "[b]ased on Inspector General Devaney's exhaustive review." But even a cursory reading of the IG report and the OGE letter lays to rest any suggestion that either of those documents "cleared" Mr. Griles; at best, they made clear that whether Mr. Griles violated ethics rules was still an open question. But instead of answering that question you stated simply that:

Months ago, the Deputy Secretary acknowledged he should have used better judgment in organizing a dinner with members of the Department. Since then, he has taken a number of steps to strengthen the ethics screening and oversight within his office to avoid a similar occurrence. This closes the issue.

If an acknowledgment that "better judgment" would have counseled against a course of conduct and a pledge not to transgress again were enough for one to stave off a determination whether he violated the law, our courts' criminal dockets would be virtually empty. As I expressed to you when we met to discuss this issue, as former Attorneys General, we both know many cases in which people we investigated expressed regret and remorse for their actions, but those expressions rarely, if ever, stopped us from pursuing those individuals. If you feel that an acknowledgment of the sort Mr. Griles made should weigh in determining the consequences of any determination of wrongdoing, perhaps that is a judgment you can make; it should not, however, stop you from determining and clearly stating whether Mr. Griles violated ethics rules in the first place.

In addition to failing to conduct the necessary review of the incidents involving Mr. Griles personally, you appear to have largely ignored the IG report's troubling tale of efforts Mr. Griles' top assistants made to help a company called Advanced Power Technologies, Inc.

("APTI") obtain Department contracts. I detailed these events in my first letter to you. They included Mr. Griles' top aide, James Cason, allegedly pressuring staff to award a contract to APTI and convening a meeting for APTI with high level DOI staff that one career official declared both made him uncomfortable and was unprecedented in his lengthy career at DOI. In fact, when another Griles' assistant sought your top staffer's help in aiding the company, your staffer told her he would not only not participate in efforts to help the company, but that those efforts were not appropriate. DOI's ethics office agreed with this assessment. Despite my letter pointing you to this evidence, which should trigger significant concerns on your part – and quite probably disciplinary action -- your letter to me was completely silent on this issue. When you and I met to discuss the IG report, you indicated that you were asking the Bureau of Land Management to review its procurement process in response to these events, but said absolutely nothing about whether the Department level political appointees would be held in any way accountable for their actions in this matter.

So that I can be sure I fully understand your response to the IG's report, I would appreciate your answering the following questions:

(1) General Questions

- (a) Did you review the 19-page OGE letter and the 145-page IG report on this matter before issuing your press release declaring Mr. Griles cleared on this matter? Of what did your review consist?
- (b) Did you ask your ethics advisers to review the IG report and the advice contained in the OGE letter before issuing your press release? If not, why not? If so, what did they conclude and upon what did they base that conclusion?

(2) The Dinner Party – Gift Rule

- (a) Did you attempt to make the factual determination OGE stated was necessary to conclude whether Mr. Griles' solicitation of the dinner party from Mr. Himmelstein violated the gift rule – that is, did you seek to determine whether Mr. Griles intended to pay for the dinner when he solicited it?
- (b) If not, why not?
- (c) If you did attempt to make the factual determination, what specific steps did you take? Who did you interview? What documents did you review?

- (d) What did you conclude as a factual matter? Upon what did you base your conclusion?
 - (e) Did you specifically conclude whether Mr. Griles violated the gift rule? Upon what did you base that conclusion?
- (3) The Dinner Party – Use of Official Position for the Private Gain of Mr. Himmelstein
- (a) Did you review OGE’s comments that the facts and circumstances presented in the IG report raised a “question as to whether Mr. Griles may have used, or appeared to use, his official position for the private gain of Mr. Himmelstein within the meaning of 5 C.F.R. § 2635.702.”
 - (b) What specifically did you do in response to those comments? Did you conduct any interviews in addition to those conducted by the IG? Did you review any documents outside the IG report and OGE letter?
 - (c) What determination did you reach? Upon what facts and law did you base that determination?
- (4) Powder River Basin Environmental Impact Statements
- (a) You specifically asked the IG to review the Powder River Basin EIS issues. Did you review the IG’s report on this matter and OGE’s observations before issuing your press release declaring Mr. Griles cleared on this matter?
 - (b) Did you at all reconsider your view that OGE was wrong in its interpretation of the ethics rules?
 - (c) Your press statement said: “eighteen months ago the career ethics office at the Department determined that the Deputy Secretary’s action” was consistent with his ethical obligations. The ethics office made its determination, however, before the IG undertook his investigation on this matter in January 2003. The IG’s investigation revealed that two attorneys who discussed the matter with Mr. Griles were not fully informed regarding his client base or the clients of his former partner, and the IG further reported significant difficulties in obtaining information regarding the clients of Mr. Griles’ former partner. (See IG report, pages 3, 72-73). After receiving the IG report and the OGE letter, did you

ascertain whether the ethics advisers had all the necessary information when they reached their conclusion in 2002?

- (d) As the IG was concluding his report, it was your Deputy Chief of Staff who provided a Memorandum for the Record asserting that Mr. Griles was not recused from participating in the environmental impact statements. Did you seek to determine whether your Deputy Chief of Staff – or any staff who assisted her in preparing the memorandum-- were fully aware of the facts reported in the IG report?
- (e) If so, when did you make that determination, what did you do to make that determination, and what did you find?
- (f) Did you ask your ethics advisers to review the IG report and the advice contained in the OGE letter before issuing your press release? If not, why not? If so, what did they conclude and why?

(5) Powder River Basin Tour

OGE's letter notes concerns about DOI employees accepting meals in connection with a Powder River Basin tour organized by Mr. Himmelstein's company and states that "DOI should ensure that these gifts have been handled in an appropriate manner." What have you done to followup on this advice, and what was the result?

(6) APTI Matter

- (a) Have you initiated an investigation into whether particular individuals violated ethics or other laws or rules in connection with the APTI matter discussed in the IG report?
- (b) If so, what have you done?
- (c) What is the status of any investigation?
- (d) Mr. Griles was recused from involvement in matters relating to APTI. Mr. Griles' recusal, at a minimum, raises questions about whether those whose authority is derivative of Mr. Griles (such as Mr. Cason) should have been so involved. Does your review include actions taken by Mr. Cason and/or other individuals in the Deputy Secretary's office? If not, why not?

- (e) Do you believe the actions taken by Mr. Cason or Mr. Griles' special assistant with respect to APTI comport with ethics and other laws and rules? With respect to Mr. Griles' special assistant, DOI's ethics office, when contacted after-the-fact by the special assistant, concurred that the special assistant's efforts on APTI's behalf were inappropriate. Do you agree with that assessment?
- (f) Did you determine whether any remedial action was warranted in light of the conclusion that her actions were inappropriate or as a result of your review of her or Mr. Cason's actions?
- (g) The IG's report identifies several instances of apparently improper procurement practices: for example, agency employees providing the contractor with the government's estimate; the contractor rather than the government preparing the statement of work; and officials from the Bureau of Land Management's headquarters instructing its field staff to find work for a specific contractor for a specified dollar amount. What action have you taken to discipline responsible officials involved in improper activities?
- (h) Previously you stated that the Bureau of Land Management was reviewing its procurement practices, but your letter makes no reference to that review. What is the status of the review? Who is conducting the review? What is its purpose? When will it be completed?

It is not too late to take appropriate action in response to the IG report. I look forward to hearing your responses to the above questions by May 20, 2004.

Sincerely,

Joseph I. Lieberman
Ranking Minority Member