

I spent several days with Glen Ith in December 2007, three months before he died of cardiac arrest in March 2008. *Forest Magazine* was doing a special issue on the Tongass National Forest, and I wanted to learn more about the complex issues on that vast forest. The FSEEE board member who had offered to squire me around southeast Alaska was out of town, so I asked Glen to be my guide. I knew FSEEE was assisting Glen as a U.S. Forest Service whistleblower, and that he had been put on administrative leave. I didn't know many details. My purpose in visiting Petersburg, where Glen lived, was to learn about issues on the Tongass, not to dig up dirt on his treatment by the agency he had worked with for more than twenty years.

Glen spent the majority of our time together teaching me about issues on the forest. We drove to the area where he had found the Forest Service building roads to access timber sales that hadn't been sold. He explained the importance of retaining large patches of old growth to support wildlife habitat, and how the lack of sunlight in impenetrable second-growth forests means they don't support the plants that Sitka deer depend on for food. He was a patient, thorough teacher and seemed to me to be as solid as the yellow cedar he so loved to work with.

Glen was on his fifth month of administrative leave by then, and he was clearly anxious about his standing with the Forest Service. One night at his house he described in detail the misconduct investigation he had undergone and the string of disciplinary measures he had been subject to ever since he commented on a proposed timber sale in 2004.

As it happened, in my zeal to report the story I thought I was after, I tripped over the one that most needed to be told. I didn't track a lot of what he told me at the time, but I could see how frustrated, victimized and worn down he felt. It wasn't until months after his death, when the agency released hundreds of documents from Glen's personnel file in response to a Freedom of Information Act request, that I began to understand. Even though the file was missing several hundred additional pages that the agency considered confidential, it was evident from those we did receive that the campaign launched against him was intended to discredit and discipline him for speaking out. Neither FSEEE nor Glen had any idea of how many attorneys and officials were involved, or that the scope of the campaign reached from Alaska to the Forest Service's Washington office.

It wasn't until FSEEE helped Marketa Ith sue the Forest Service to get the remaining documents that we were able to put names and words to the relentless, two-year campaign to discredit Glen. We offer here an unprecedented look at the extent to which agency individuals went—including urging people to destroy emails and ignoring legal opinions—to punish an employee who spoke the truth with integrity and without thought of personal gain.

## Point of View

**After Glen filed a federal lawsuit** against the Forest Service for illegal road building on the Tongass National Forest in March 2006, agency officials embarked on a campaign to unearth an ethics violation that would justify firing him. When they discovered that he had signed an FSEEE fundraising appeal to help pay for litigating his suit, they were hopeful they had found one. Human resources specialist Karlene Hale took the step of reporting Glen to the Office of Inspector General, which investigates reports of waste, fraud and abuse in government agencies. Hale wrote that she made five "telephone contacts" to report Glen, and finally filed a detailed message on the agency's online hotline.

## BURN AFTER READING

BY ALICE TALLMADGE

OIG never responded to the Forest Service complaint, but the agency launched a misconduct investigation against Glen in July 2006. Forest Service investigator Carol Kittson interviewed several Forest Service employees; most of them denigrated Glen's job performance and said they believed he used information he acquired in the course of doing his job to prepare public comments opposing timber sales, another misconduct charge the Forest Service was contemplating.

During her interview, Patricia Grantham, district ranger on the Petersburg District, accused Glen of lying in his fundraising appeal about the road construction on the Overlook timber sale.

Six months later, Forest Service attorneys conceded in federal court that the agency had violated the National

GS-486-9, on the Petersburg Ranger District in Petersburg Alaska. I reported to OIG what I believe may be a violation of law and regulations. Mr. Ith has filed a law suit in conjunction with the FSEEE (Forest Service Employees for Environmental Ethics). He has used this website to solicit funds, requesting funds amounting to \$50,000. to litigate this lawsuit. ....

I would like to proceed with disciplinary actions, but do not want to continue without the input and assurance of OIG regarding these matters. I have attached the fund-raising article for your reference.

Environmental Policy Act (NEPA) by allowing roads to be built to access the Overlook and Traitors Cove timber sales before required environmental assessments were completed.

On other ethical grounds, I believe that Glen is lying in the article he prepared for the FSEEE magazine. He refers to "road building" throughout the article, but all of the roads in question were built many years ago. The work that is going on with the roads includes maintenance and repair work. I believe he is deliberately misleading the public by exaggerating the activity that took place.

Agency officials differed about what Glen's most egregious behavior was. When Melvin Shibuya, the Forest Service's chief for the Labor/Employee Relations Branch, first explained his reason for wanting to fire Glen, it had nothing to do with signing the fundraising appeal, or Glen's release of a draft resource report to a private citizen, a second misconduct charge the agency leveled against Glen.

There is growing consensus for proceeding with administrative action. We recommend removal. I contend the employee has destroyed the confidence and trust of his employer when he used information he acquired as a Forest Service employee to further his environmental agenda in the Scott Peak appeal.

The draft does not adequately explain why the release of the document was so egregious as to warrant removal as the only appropriate penalty. This is a critical point that needs to be made explicitly.

As we explained by telephone last month, we strongly recommend that the Forest Service re-write the proposed removal to include much more of the substance that explains why the charges are supported by the facts and why they are so egregious...

However, we cannot support issuing the document as it stands. It would be virtually impossible to defend in litigation as it is currently written.

The investigation didn't speed the termination process as quickly as Shibuya had hoped. He and Tongass Forest Supervisor Forrest Cole tried to accelerate it by drafting a "proposed adverse action" letter against Glen in April 2007 and sending it to the Office of General Counsel for review. In May, Shibuya wrote an email to Tami Trost, assistant general counsel for the Civil Rights Policy, Compliance & Counsel Division, expressing his frustration and urging immediate action. "I cannot let this matter languish for much longer," he wrote.

**"The draft does not adequately explain why the release of the document was so egregious as to warrant removal as the only penalty."**

A few weeks later, Trost wrote back, informing Shibuya that his document was "woefully inadequate" because it didn't give a factual basis for the charges.

It's clear OGC is against issuing this notice. We exercise considerable care in identifying the charge and believe the specification supports the charge. OGC disagrees.

This is information for your eyes only. Please destroy after reading. It's not protected by privilege and is subject to discovery.

Melvin Y. Shibuya  
Chief, Labor/Employee Relations Branch

Shibuya forwarded Trost's objections to Hale and then-Deputy Forest Supervisor Olleke Rappe-Daniels, directing them to destroy his email.

On July 20, 2007, Glen was presented with a proposed termination letter outlining the two misconduct charges against him: he had signed the fundraising appeal, and he had given an internal agency document to a member of the public. He was put on paid administrative leave; Glen rebutted the charges.

With Shibuya's help, Cole continued to revamp his reasons—called Douglas Factors—in his proposed personnel action against Glen. Shibuya wrote Cole an email in August explaining how to present an analysis that would withstand legal scrutiny.

Cole tried again, and in September Shibuya wrote back a four-page letter coaching him again on how to defend the charges so they would stick.

In October, FSEEE filed a complaint on Glen's behalf with the Office of Special Counsel. Shibuya wrote to Trost, warning her that OSC involvement might hamstring the Forest Service's ability to fire Glen.

Trost responded a month later, expressing concern about how the agency was handling Glen's case and emphasizing the strength of his rebuttal to the charges levied against him. She suggested what she considered an appropriate discipline: a fourteen-day suspension.

**"Please destroy after reading. It's not protected by privilege and is subject to discovery."**

Regarding the pending administrative leave decision, Melvin stated that the WO does not prefer it as a step to take in such a situation, but the circumstances and timing make it a necessary step; they are supportive of it being the only option available right now to protect the interests and integrity of the Forest Service position at this time.

You need to destroy this email as it's subject to discovery (fancy term for opposing side to get information) under MSPB rules. I'm not an attorney. This email is therefore not protected by privilege between an attorney and his/her client...Tell everyone to not keep emails related to this matter.

**"Tell everyone not to keep emails related to this matter."**

If you agree, trash your first worksheet and use my advice as a guide when you address anew . Your worksheet is releasable to the appellant when he files an appeal and the parties engage in discovery . That's why you should destroy your original worksheet and any attachment of it in emails . Make sure it does not exist. Also, you should trash this email as it too is discoverable . I'm not an attorney .

It is conceivable that if OSC suspects there may be merit to his claims, they might ask us to stay the action if we have not issued the decision letter by that time they decide to intervene.

We would, of course, rather not have to deal with OSC on a stay and would like to proceed as promptly as reasoned deliberation will allow.

**"If OSC suspects there may be merit to his claims, they might ask us to stay the action."**

First, I was not aware that Mr. Ith has been on administrative leave since July. I am not sure why the decision was made to place him on administrative leave, but I hope it is consistent with an agency policy to place all persons facing proposed removal on administrative leave. Otherwise, I am concerned that there is a potential reprisal claim here.

Second, the rebuttal evidence provided by Mr. Ith, including the two affidavits from external witnesses, will be very persuasive to an adjudicating body....

Given the whistleblower allegations and the fairly persuasive rebuttal arguments, I think the fact that there is no progressive discipline in this case will be fatal. The agency is on much steadier ground if it suspends Mr. Ith now, and then punishes any subsequent violations with the harsher penalty of removal. This places the agency in a far better position than the risk of removing him now and ultimately being required to reinstate him.

Based on our review, we cannot determine with any level of confidence that Mr. Ith violated any ethical rules under Specification 1. We believe, however, that his actions, as allegations under Specification 2, appear supported and that those actions could have violated ethical rules.

On February 1, 2008, ethics official Raymond Sheehan announced his finding on Specification 1, the charge that Glen released a draft document to a member of the public, and Specification 2, that he signed a fundraising appeal requesting money to pay for litigating his case against the Forest Service.

**“This matter has gone on long enough and the toll of waiting for someone to do something threatens to doom this case.”**

We need to put closure to this case. Either we proceed with the proposed adverse action (removal). Or, we drop the case.

A pall of silence hung over the once-hot misconduct case. Finally, on February 19, 2008, a frustrated Shibuya broke the silence.

No one seems to know in whose court the ball is.

We have to do something, else the employee continues on administrative leave for which there is no end. This matter has gone on long enough and the toll of waiting for someone to do something threatens to doom this case. (Stale charges get increasingly difficult to defend.)

The next day, Trost told Ronald Banegas, deputy director of human capital management for the Forest Service, that she had changed her recommended suspension but still rejected the notion of termination.

If you want to reduce the removal to a 45-day suspension, we think that is defensible given the new ethics opinion. Please feel free to contact me if you wish to discuss this further. Thanks.

**As is now known, no suspension was necessary.**

Instead, the Forest Service eliminated Glen’s wildlife biologist position on the Tongass, which meant he had to apply for a new job on a different forest while still on administrative leave. Glen’s attorney, John Phillips, wrote District Ranger Chris Savage on February 27, 2008, asking him to withdraw Glen’s proposed termination letter so that he could apply for another position in good standing. “By failing to do so, the Forest Service will have doomed any chance Mr. Ith has of obtaining another placement in the Forest Service.”

There is no record of a response from the agency. Four days later, Glen, forty-eight, died. The OSC closed his case without ruling on it.

The misconduct charges levied against him still stand, casting a permanent shadow over his record. Marketa Ith has asked to have all her husband’s files returned to her. “I would like all the documents back for safekeeping until Izabelle [the Iths’ ten-year-old daughter] is old enough to understand what has happened to her dad’s professional life for speaking the truth.” *TM*

See full text of these emails and others at <http://www.fsee.org/index.html?page=http%3A//www.fsee.org/forestmag/ithindex.htm>