

# THE MCCLATCHY INVESTIGATION CASE, #145: MANY WHO REPORTED THE CRIMES HAD HIT-JOBS PUT ON THEM

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## Intelligence, defense whistleblowers remain mired in broken system

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Thomas Drake, a former senior official at the NSA, cooperated with a Pentagon inspector general inquiry in 2002 into allegations of waste and mismanagement of an NSA surveillance program known as Trailblazer. When The New York Times revealed the NSA's warrantless wiretapping and electronic surveillance programs in 2005, Drake was caught up in the FBI's investigation in to leaked information, despite having no ties to the Times' reporting. The U.S. Justice Department brought 10 charges against Drake, but all charges were eventually dropped. T.J. KIRKPATRICK — McClatchy

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WASHINGTON — When Ilana Greenstein blew the whistle on mismanagement at the CIA, she tried to follow all the proper procedures.

First, she told her supervisors that she believed the agency had bungled its spying operations in Baghdad. Then, she wrote a letter to the director of the agency.

But the reaction from the intelligence agency she trusted was to suspend her clearance and order her to turn over her personal computers. The CIA then tried to get the Justice Department to open a criminal investigation of her.

Meanwhile, the agency's inspector general, which is supposed to investigate whistleblower retaliation, never responded to her complaint about the treatment.

Based on her experience in 2007, Greenstein is not surprised that many CIA employees did little to raise alarms when the nation's premier spy agency was torturing terrorism suspects and detaining them without legal justification. She and other whistleblowers say the reason is obvious.

"No one can trust the system," said Greenstein, now a Washington attorney. "I trusted it and I was naive."

Since 9/11, defense and intelligence whistleblowers such as Greenstein have served as America's conscience in the war on terrorism. Their assertions go to the heart of government waste, misconduct and overreach: defective military equipment, prisoner abuse at Abu Ghraib, surveillance of Americans.

Yet the legal system that was set up to protect these employees has repeatedly failed those with the highest-profile claims. Many of them say they aren't thanked but instead are punished for speaking out.

More than 8,700 defense and intelligence employees and contractors have filed retaliation claims with the Pentagon inspector general since the 9/11 attacks, with the number increasing virtually every year, according to a McClatchy analysis.

While President Barack Obama expanded protections for these whistleblowers, his changes didn't go far enough to address the gaping holes in an ineffective and unwieldy bureaucracy for those who claim retaliation, McClatchy found.

The daunting obstacles for defense and intelligence whistleblowers in such cases include:

- A battle between investigators and managers at the Pentagon inspector general's office over the handling of reprisal claims, culminating in accusations that findings were intentionally altered in ways that were detrimental to whistleblowers.
- An entrenched and pervasive anti-whistleblower attitude, especially when the claims involve high-level officials or significant or embarrassing wrongdoing.
- Delays that discourage even the most persistent whistleblower.

'A Trojan horse'

"Only someone with a martyr complex would submit themselves to this system," said Tom Devine, legal director of the [Government Accountability Project](#), an advocacy group that's helped whistleblowers since 1977. "We advise intelligence whistleblowers to stay away from established channels to defend against retaliation. In our experience they've been a Trojan horse, a trap that ends up sucking the whistleblower into a long-term process that predictably ends up with the whistleblower as the target."

Obama rejected such criticism of the whistleblowing system after National Security Agency contractor Edward Snowden pointed to the leak prosecution of an NSA whistleblower as one of the reasons he'd decided to go to the news media about the spy agency's collection of Americans' data.

"I signed an executive order well before Mr. Snowden leaked this information that provided whistleblower protection to the intelligence community for the first time," the president said after the leaks in June 2013. "So there were other avenues available for somebody whose conscience was stirred and thought that they needed to question government actions."

Officials with inspectors general's offices also say they already investigated reprisal complaints before the expanded protections. Employees, however, often can't prove they were retaliated against under the terms outlined in whistleblower laws, they said.

In many cases, employers demonstrate that they took action against an employee for performance-related reasons – not in retaliation for whistleblowing. In just over a decade, five intelligence inspectors general have substantiated only a total of four retaliation claims, according to their own estimates.

"There's a view that these whistleblower reprisal cases are all these big, huge programmatic issues, when in reality many of them are about things like performance and promotions," James A. Protin, counsel to the NSA inspector general, told McClatchy. "There are a lot of reasons that action may have been taken that had nothing to do with them talking to the IG."

Gaps also remain in legal protections despite the president's revisions. Intelligence contractors, for instance, who are fired still can't claim retaliation.

"People that the public might perceive as being protected under whistleblowing laws sometimes are not," said Nilgun Tolek, the director of whistleblower reprisal investigations at the Pentagon inspector general's office. "The system is a patchwork of different laws . . . not all complaints meet the criteria necessary for coverage and investigation."

But the obstacles whistleblowers face are more than legal technicalities, McClatchy's inquiry found.

At the Pentagon inspector general's office, its own investigators accused the office of improperly dismissing, watering down or stalling conclusions in retaliation inquiries, according to five federal officials who are familiar with the allegations and spoke only on the condition of anonymity because of the matter's sensitivity.

Cases that are controversial, complicated or involve high-level officials are especially prone to being altered in a way that's unfavorable to whistleblowers, the federal officials said.

For instance, managers and the top lawyer for the office are accused of reversing findings that Mike Helms, an Army intelligence officer, was retaliated against for blowing the whistle in 2004 on inadequate care for military civilians wounded in combat.

'They cherry-pick the evidence'

Pentagon inspector general managers also are accused of impeding an investigation into claims by a staff judge advocate in Quantico, Va. Maj. James Weirick accused the Marine Corps of interfering with the prosecution of four scout snipers who were videotaped urinating on dead Taliban fighters in Afghanistan.

The officials said the inspector general's office had sought for years to avoid investigating claims of retaliation for legal reasons, rather than determining whether cases merited investigation in the first place.

"Managers make the narrative what they want it to be," charged one official. "They cherry-pick the evidence they deem as 'relevant.' "

According to the McClatchy analysis, less than 20 percent of retaliation claims since 9/11 have been investigated. The rest were thrown out after a preliminary analysis or no investigation.

Only 4 percent have been substantiated. In private industry, the substantiation rate is said to be three times higher.

In September, five congressional Democrats and three Republicans [wrote to Inspector General Jon Rhymer](#) to complain that the office was interpreting protections for contractor whistleblowers "so narrowly" that it had "the potential to preclude meritorious claims of retaliation."

In yet another sign of the internal problems, the Pentagon's inspector general office tried – and failed – to suspend the top-secret access of its former director of whistleblowing, triggering concerns in Congress that he was being retaliated against for doing his job.

Officials who've raised the concerns about reprisal investigations have alleged that they've been retaliated against themselves.

"It's not surprising there are so few substantiated reprisal cases at the Pentagon," said Sen. Charles Grassley, an Iowa Republican who's pushed for more aggressive whistleblower investigations. "There is an inherent bias against whistleblowers in the inspector general's office."

Officials with the Pentagon inspector general's office said they couldn't comment on specific cases but that investigations underwent "a rigorous quality-review process" to ensure that final reports were accurate, complete and "legally sufficient." As a result, findings might be modified or "conclusions changed."

To ensure cases don't slip through the cracks, managers have doubled the staff assigned to the unit that handles retaliation, officials said.

"This office is dedicated to providing a thorough and fair analysis of every complaint submitted," said Tolek, who oversees reprisal investigations.

More obstacles

Yet even whistleblowers who prove they've been retaliated against face recalcitrant agencies.

Agencies may ignore reprisal findings because inspectors general can't enforce their recommendations. The Office of Special Counsel, which is able to sue on behalf of whistleblowers, often cannot do so in intelligence or defense cases because the retaliation involves revoking or suspending a security clearance. (The office has no jurisdiction over decisions on security clearances.)

Appealing to a panel overseen by the intelligence community inspector general is a new option in such cases. Whistleblowers can ask to get their security clearances or jobs back and to be awarded back pay and other compensation. Employees must wait for their own agencies to investigate the complaint before appealing, however.

The intelligence community inspector general decides which cases the panel will hear, and he urged whistleblowers not to "have a misperception that blowing the whistle provides a shiny badge or a force shield preventing adverse actions."

"Protection comes after the damage has been done and only if an investigation substantiates wrongdoing and the agency provides corrective action," said the intelligence community inspector general, I. Charles McCullough III.

In fact, whistleblowers may experience years of retaliation even after their claims are substantiated. George Sarris, a former mechanic at Offutt Air Force Base in Nebraska, first blew the whistle on improper maintenance of reconnaissance planes used in Iraq and Afghanistan in 2004. Many of his claims were eventually substantiated, but not before he was accused of being psychologically unstable, a violent troublemaker and a thief.

The charges against him were later disregarded by an administrative law judge who recommended that his security clearance be reinstated. The Air Force, however, resisted the judge's recommendation. Instead, officials told Sarris he could keep his job only if he agreed to be detailed to the base gym until his retirement. Exhausted by his decade-long experience, he retired earlier this year.

"I would advise people to consider their position in life to see if they can endure an attack on their character," he said in a recent interview. "Defending myself was a full-time job."

Another major hurdle for defense and intelligence whistleblowers is an insular and secretive culture that tends to discourage investigating or speaking out against government abuses, although defense and intelligence agencies say they've bolstered training on how managers should handle complaints.

'It depends on the tone at the top'

Lanie D'Alessandro, a former inspector general for the National Reconnaissance Office, acknowledged the challenges of investigating allegations of significant wrongdoing, especially at military intelligence agencies. She pointed out that those inspectors general became "statutorily independent" only recently, which shielded them from being unilaterally removed by the directors of their own agencies.

"There can be obstacles for inspectors general," D'Alessandro said. "It depends on the tone at the top. The intelligence community still lacks a culture of consistently encouraging independence from their IGs."

D'Alessandro, who's retired, handled a major whistleblower case during her tenure but refused to comment on it.

She did add that "if you're going to do this job well, you risk your future job aspirations. It's best if you take the job as a swan song before you retire."

[McClatchy independently reported](#) in 2012 that her office had notified Congress about launching an inquiry after meeting secretly with four top officers of the National Reconnaissance Office, which oversees the nation's spy satellites.

The officers told her about "a series of allegations" of malfeasance by a colleague. The agency's then No. 2 official, Air Force Maj. Gen. Susan Mashiko, was accused of threatening to retaliate against those who went to the inspector general.

Mashiko continued to serve in her position for an additional year and has since retired honorably. However, the careers of some who spoke up suffered, according to people familiar with the matter, who asked not to be identified because of the sensitivity of the issue. The Pentagon inspector general's office refused to comment on the conclusions of the retaliation case, although it published other findings that Mashiko had used her government car improperly as a "personal limousine service."

The high-level officers had told the inspector general they were concerned about flaws in a classified program that involved hundreds of millions of dollars, according to the people familiar with the matter. Officials in the agency disagreed over whether the National Reconnaissance Office already was fixing the problems, which were alleged to be wide-ranging and expensive. The NRO did not respond to McClatchy's questions about the program.

"These were major problems, and no one wanted to deal with them," one of the sources said. "It's probably because they felt they were too big to deal with."

Other intelligence agencies have been accused of ignoring significant abuses or mismanagement, including the CIA in a newly released [Senate Intelligence Committee report](#) on the agency's detention and interrogation of overseas terrorism suspects.

The report said the CIA had "marginalized and ignored numerous internal critiques, criticisms and objections" to its interrogation program, although [the agency maintained](#) that it made changes to the program in response to criticism earlier than it had been given credit for.

The Senate report said senior officials with the agency had overruled their inspector general's recommendations about the program after he "identified wrongdoing," including in the death of a detainee.

"The CIA rarely reprimanded or held personnel accountable for serious and significant violations," it said.

As the inspector general was investigating the program, then-CIA Director Michael Hayden ordered an internal inquiry into the inspector general's office itself. Hayden's inquiry sparked criticism that he was meddling improperly in the work of what was supposed to be an independent watchdog, a charge the CIA denied.

Few complaints are substantiated

Despite experiencing such intense scrutiny, intelligence inspectors general have little experience in handling whistleblower reprisal complaints.

The CIA inspector general's office, for instance, says it hasn't substantiated any of the eight whistleblower retaliation complaints it's closed since 2003. Two more are still open inquiries. It didn't count 67 other reprisal claims, saying they didn't involve whistleblower claims of waste, fraud or abuse.

Some critics question whether the CIA is splitting hairs on the definition of "whistleblower" in a way that makes it appear the agency receives far fewer complaints than it does.

"To those of us in the private sector who protect whistleblowers, anyone who files a complaint is blowing the whistle on agency misconduct," said Kel McClanahan, an attorney who handles such cases. "They're whistleblowers because they are bringing misconduct to the attention of those offices set up to investigate it."

Greenstein, the former CIA officer in Iraq, said she wouldn't be surprised if the CIA didn't count her complaint as a whistleblower reprisal case or even investigate her allegations, including that her security chief in Baghdad had deleted details about safety risks from cables.

The CIA instead focused on trying to get the Justice Department to open a criminal case against her, Greenstein said. She'd mentioned that she was writing a book, which is permitted at the agency as long as it goes through a review. The CIA then demanded to see her personal computers. When she got them back months later, all that she'd written had been deleted.

"I wrote a letter to the IG documenting all that had happened, including the agency's illegal possession of my computers," said Greenstein, who's now an attorney with Mark Zaid's law firm, which specializes in national security law. "We received no response."

Soon after, news broke that Hayden had ordered the internal inquiry of the inspector general's office. Disheartened by the handling of her case, she resigned.

John Reidy, a former CIA contractor, recently cited his frustration with the inspector general's handling of his case in his appeal to the new intelligence community panel. Reidy claimed he was demoted and eventually fired in retaliation after he tried to raise the alarm in 2007 on an "intelligence failure" by the spy agency.

His lawyer McClanahan said he understood that "the intelligence failure involved U.S. government activity that was supposed to be covert but was done in such a bungled way that it was virtually guaranteed to be discovered."

CIA inspector general investigators didn't interview Reidy until two years after he first went to them and then only after being directed to do so by the House Intelligence Committee, McClanahan said.

The inspector general's office also prevented Reidy from telling McClanahan more details because they might be classified, the lawyer said.

McClatchy's requests to speak to the CIA inspector general were referred to the agency's public affairs office, where spokesman Ryan Trapani said he couldn't respond to questions

about specific cases.

The CIA and other intelligence agencies, however, told McClatchy their inspectors general had investigated retaliation allegations before the president's expansion of whistleblower protections.

Obama's initiative "reiterated CIA's long-standing policy that reprisals or threats . . . will not be tolerated," Trapani said in a statement.

The NSA inspector general's office has substantiated only two of the 35 reprisal claims it's received since 9/11. The office opened nine of them without the whistleblowers requesting it themselves.

Officials there say NSA employees have more confidence in the system than Snowden led the public to believe. Since his leaks, whistleblower reprisal claims have increased slightly.

"In general, employees of the NSA want to do what's right," said Protin, counsel to the NSA inspector general. "So when Snowden went public with classified information, employees are aware that's not legally the way to do it."

'You're doomed'

Former senior NSA official Thomas Drake, however, said his own case was emblematic of why intelligence employees couldn't rely on the system.

He and four others cooperated with a Pentagon inspector general inquiry into allegations of the waste of hundreds of millions of dollars in an NSA program known as Trailblazer.

Federal investigators later targeted him for leaking to a New York Times reporter, although he wasn't a source for the story. After the evidence against him unraveled, federal prosecutors permitted him to plead guilty to a misdemeanor. The judge, who sentenced him to probation, [scolded the government for the prosecution](#), saying he was troubled by how it had collapsed despite a long, drawn-out investigation.

Drake resigned as the NSA was moving to revoke his security clearance and fire him. Although the findings haven't been made public, McClatchy has learned that investigators with the Pentagon inspector general's office have concluded he wasn't retaliated against.

His attorneys have been told only that "clear and convincing evidence" had demonstrated that the NSA would have taken the same actions even without his disclosures.

"Who would want to go through the whistleblowing system after seeing what happened to me?" Drake said. "You're doomed."

Even whistleblowers whose retaliation claims are substantiated describe delays and inaction.

The average wait for the Pentagon inspector general to close a reprisal case was 420 days, according to a congressional analysis. Only three of 46 were substantiated in that time period, the inquiry by Grassley's office found. In the end, 39 waited in vain, because their cases were thrown out.

Franz Gayl, a civilian science adviser for the Marine Corps, fought his case for more than seven years before reaching a settlement in September. Senators credited him with blowing the whistle about delays on armored vehicles that would have protected troops from roadside bombs.

But Gayl, who was able to keep his job, pointed out he'll have little recourse if the Pentagon decides he's ineligible for a renewed security clearance.

"National security whistleblowers aren't safe," he said. "I was one of the very lucky ones. And my temporary victory could vanish at any moment."

Samantha Ehlinger and Tish Wells contributed to this article.

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