



Whistleblower Retaliation: A Governmental Accountability and National Security Crisis

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The role of an Inspector General (IG) office in a federal agency or department is to root out waste, fraud, and abuse, and where necessary refer criminal conduct to the Justice Department for prosecution. But what happens when the IG itself is corrupt, especially in a national security context where secrecy can be used to conceal malfeasance?

Austrian filmmaker Fritz Moser's documentary, "[A Good American](#)," released in February 2017, explores a real-world case of IG corruption and misconduct before and after the September 11, 2001 attacks. The film tells the tale of a small group of National Security Agency employees who, prior to 9/11 developed a revolutionary intelligence collection and analysis capability, code-named THINTHREAD. Had THINTHREAD been fully operationally deployed even a few months before the attacks, it likely would have detected most or all of the would-be hijackers before they had a chance to act, as the THINTHREAD team lays out in the movie.

The documentary poses and answers another major, relevant question. What happens when conscientious government employees in the national security establishment report wrongdoing that costs American lives and billions in taxpayer dollars?

More often than not, their careers are destroyed by senior bureaucrats who will seemingly stop at nothing to bury the truth.

The THINTHREAD core team consisted of NSA's leading crypto-mathematician, William Binney; analyst Kirk Wiebe; and computer whiz Ed Loomis. They were supported in their efforts by a single GOP House Intelligence Committee staffer, Diane Roark, who helped get the fledgling program money in its earliest days and was a tireless, but ultimately unsuccessful, champion of the program.

The single biggest obstacle to THINTHREAD's success came from then-NSA director Air Force Gen. (R) Michael Hayden, who became so incensed with the THINTHREAD team's Capitol Hill

lobbying that he threatened each team member with disciplinary action. Hayden had his own pet program he wanted to promote at THINTHREAD's expense: a Science Applications International Corporation (SAIC)-sponsored program called TRAILBLAZER, which cost more than \$1 billion compared to THINTHREAD's \$3 million. The latter became a classic Washington, DC defense contractor fiasco; wasting huge sums but never producing a single piece of intelligence for NSA. (Jim Risen's *Pay Any Price* also has a fair amount on this episode that's worth reading.)

There is a reason that this story has not been widely told before now: neither the Congressional Joint Inquiry into 9/11, the 9/11 Commission, nor either Congressional intelligence committee followed up on the scandal, despite each being approached by THINTHREAD's developers in the aftermath of the attacks.

I know, because when I worked as senior policy advisor to then-Rep. Rush Holt (D-NJ), I spoke at length to THINTHREAD's developers about the controversy and the subsequent waste, fraud, and abuse complaint they filed with the Defense Department Inspector General's (IG) office in 2002, and how that one act altered their lives forever.

After Gen. Hayden killed THINTHREAD in the weeks before 9/11, Binney, Wiebe, Loomis, and Roark agreed that the waste, fraud, and abuse from the TRAILBLAZER program, along with the lost opportunity to stop the attacks via THINTHREAD, required a real investigation. Subsequent inquiries resulted in one major DoD IG report being issued in December 2004, a partially declassified version of which was subsequently obtained via the Freedom of Information Act (FOIA) by the Project on Government Oversight in 2011. Some 100 paragraphs of the report remained redacted, including 80 that were marked "Unclassified/For Official Use Only" (U/FOUO).

The portions that were readable gave a sense of the debacle that was TRAILBLAZER, but the most damaging portions of the report were withheld from the public.

In the seven years between the IG report's publication and its partial release, Binney, Wiebe, Loomis, Roark, and a fifth colleague, NSA Senior Executive Service member Tom Drake, had all been investigated by the FBI for leaking information about the controversy to the *Baltimore Sun*. None had revealed classified information, and Drake was in fact the source of the stories about TRAILBLAZER's massive cost overruns and ineffectuality. The government went so far as to charge Drake under the Espionage Act, but the felony case against him fell apart in 2011. Drake subsequently pleaded to a misdemeanor charge of misusing a government computer, his government career destroyed and his personal finances wrecked from the legal battle with the government.

I followed all of this from Rep. Holt's office, even after Holt rotated off of the House Intelligence Committee in 2011. When I finally had the chance to spend more time with the THINTHREAD team and learn the full details of their experience in 2013, it became clear that someone in the DoD IG's office had falsely accused one or more of them of leaking classified information. I became determined to learn who had been responsible for railroading the THINTHREAD team.

By the summer of 2013, I had the original, classified 2004 DODIG report in my hands. Reading it made my blood boil. It was the most damning report of its kind I'd seen in my over 25 years in Washington. And it confirmed the core allegations the THINTHREAD team made in their original complaint.

Unfortunately, the relevant Congressional commission had no appetite to reopen the issue, as its tenure was drawing to a close and its report for Congress was largely complete. Within months, Holt would announce his retirement from Congress, and I too left the House of Representatives. But having seen the 2004 report, and other investigative documents as well, I was more determined than ever to continue pressing for the declassification of all relevant THINTHREAD and TRAILBLAZER documents.

In early 2015, I filed an extensive FOIA request seeking every available document on both programs, but was essentially led around in circles. In late January 2017, with the help of the Chicago-based firm of Loevy and Loevy and the Government Accountability Project, I filed suit in federal district court to try to get answers. But the THINTHREAD team's experience is, unfortunately, just one example of the kinds of integrity problems plaguing the DoD and NSA IG offices.

As outlined below, there are similar investigations now underway, looking into other whistleblower retaliation complaints against the DoD IG and NSA's IG office—complaints that raise the specter of other unexamined government surveillance and national security programs that threaten citizens' rights while wasting still more taxpayer money.

In March 2016, the Office of Special Counsel announced that it had uncovered evidence of Drake prosecution-related document destruction by the DoD IG, involving a “substantial likelihood” that IG personnel had potentially violated the law.” The case was referred to the Justice Department for possible prosecution, where it remains under review.

Those allegations received additional support when former DoD IG Assistant Inspector General John Crane went public in May 2016 with allegations that he had witnessed retaliation against Drake while working in the DoD IG office.

And in July 2016, former DoD IG ombudsman Dan Meyer officially claimed that he had experienced retaliation for exposing attempts by DoD IG officials to manipulate a final version of an investigative report into allegations that then-Defense Secretary Leon Panetta “had leaked classified information to the makers of the film ‘Zero Dark Thirty.’” (For the last several years, Meyer has headed the Intelligence Community Inspector General's whistleblower protection unit.)

If the head of the entire Intelligence Community's whistleblower protection operation is under attack, how can an average CIA, NSA or other intelligence officer possibly hope to report waste, fraud, abuse, or criminal conduct without fear of retaliation?

On December 13, 2016, *The Intercept* reported that the Government Accountability Office (GAO) had “quietly launched an investigation into the ‘integrity’ of the Pentagon's whistleblower protection program.” Whether Drake's case is one of the subjects of the GAO

probe is unknown, but the fact that the entire Pentagon Inspector General operation is now the subject of an external investigation is virtually unprecedented.

And just three days after *The Intercept*'s story on the GAO inquiry broke, *Government Executive* reported that NSA IG George Ellard had been recommended for termination for whistleblower retaliation by NSA Director Adm. Mike Rogers, based on the recommendations of a three-person external IG review panel established under an Obama-era presidential directive, PPD-19.

Indeed, recently two lawyers who represent whistleblowers argued that PPD-19 works and "It is only through cases like Ellard's that senior officials will be forced to realize that reprisal comes with consequences and that seniority will have no bearing on an investigation's outcome." This is magical thinking.

The fact that the Obama administration felt compelled to issue PDD-19 in the first place was a tacit admission that the DoD and NSA IG's were broken and corrupt. Additionally, PPD-19 covers only IC employees, not IC contractors. Thus, IC contractors like Edward Snowden had no protection under PPD-19. They still have none.

Finally, PPD-19 can be rescinded by President Trump, just like any other executive action taken by his predecessors. Given Trump's obsession with leaks he views as damaging to him politically, it's simply a matter of time before PPD-19 is history.

Whether Ellard was involved in retaliation against Drake or other THINTHREAD team members is unknown, but learning the truth about the level of corruption in these two critically important internal Pentagon watchdog units is the core reason why I filed my FOIA suit in the first place. Whether Michael Hayden or any of his subordinates at NSA (including former SAIC executive-turned-NSA-senior manager Bill Black) engaged in contract steering for TRAILBLAZER at the expense of an internally-developed NSA program that could've possibly prevented the 9/11 attacks is just one question for which the families of the 9/11 victims deserve an answer.

And the rest of us need to know that corruption in government agencies will be rooted out, and that anyone working in the IC—government employee or contractors—will know that he or she can safely report waste, fraud, abuse or unconstitutional conduct without fear of retaliation or improper prosecution.

Through its long-running indifference to these episodes, Congress has effectively encouraged the deep flaws that appear to be rampant in the Pentagon's internal oversight offices. The failure to properly investigate the THINTHREAD-TRAILBLAZER controversy, as well as other surveillance overreaches, has clearly contributed to what appears to be extraordinary corruption in parts of the oversight of the Intelligence Community itself. In our system of government, this is the kind of problem Congress should fix. Absent a groundswell of public outrage over any such abuses, it's not likely to happen quickly, if at all.

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