U.S. GOVERNMENT FINDS THAT U.S. WHISTLE-BLOWERS ARE ATTACKED 100% OF THE TIME

U.S. Intelligence Shuts Down Damning Report on Whistleblower Retaliation

A top watchdog investigated 190 cases of alleged retaliation against whistleblowers—and found that intelligence bureaucrats only once ruled in favor of the whistleblower.

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EXCLUSIVE

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dThe nation's top intelligence watchdog put the brakes on a report last year that uncovered whistleblower reprisal issues within America's spy agencies, The Daily Beast has learned. The move concealed a finding that the agencies—including the CIA and the NSA—were failing to protect intelligence workers who report waste, fraud, abuse, or criminality up the chain of command.

The investigators looked into 190 cases of alleged reprisal in six agencies, and uncovered a shocking pattern. In only one case out of the 190 did the agencies find in favor of the whistleblower—and that case took 742 days to complete. Other cases remained open longer. One complaint from 2010 was still waiting for a ruling. But the framework was remarkably consistent: Over and over and over again, intelligence inspectors ruled that the agency was in the right, and the whistleblowers were almost always wrong.

The report was near completion following a six-month-long inspection run out of the Intelligence Community Inspector General office. It was aborted in April by the new acting head of the office, Wayne Stone, following the discovery that one of the inspectors was himself a whistleblower in the middle of a federal lawsuit against the CIA, according to former IC IG officials.

Stone also sequestered the mountain of documents and data produced in the inspection, the product of three staff-years of work. The incident was never publicly disclosed by the office, and escaped mention in the unclassified version of the IC IG's semiannual report to Congress.

The IC IG's office declined to comment for this story.

The affair casts serious doubt on the intelligence agencies' fundamental pact with the rank and file: that workers who properly report perceived wrongdoing through approved channels won't lose their job or, worse, their security clearance, as a result. It also adds another layer of controversy to the Intelligence Community Inspector General office, already under fire for cuts to its whistleblower protection program and the unexpected sacking of the program's executive director in December. In a confirmation hearing last month, Trump's pick to head the watchdog agency acknowledged the apparent chaos in the office, citing a detailed expose by *Foreign Policy* magazine. "My first objective as Inspector General, if confirmed, will be to make sure the IC IG's house is in order," said former Justice Department prosecutor Michael Atkinson.

Stone shut down the whistleblowing inspection just days after taking over for Charles McCullough III, who'd served as the intelligence community inspector general from the day the office was founded in 2010 until his retirement in March of last year.

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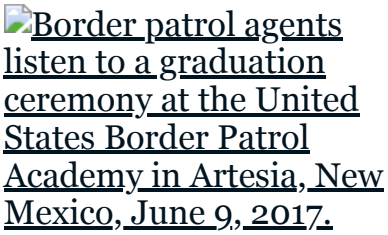
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None of this was supposed to happen. In 2012, then-President Barack Obama signed a policy directive called PPD-19, which prohibits intelligence agencies from punishing workers who report abuses through approved government channels. The directive has been left in place under President Trump.

Among other things, PPD-19 requires the Office of Inspector General (OIG) at each agency to carry out an investigation when a worker complains he or she suffered retaliation for lawful whistleblowing. If, after investigating, the

OIG finds no evidence of reprisal, the whistleblower can appeal up to the Intelligence Community Inspector General, who can choose to impanel a three-person appellate board, comprised of IGs from other agencies, to review the case and either affirm or disagree with the OIG's decision.

The investigators found that basically never happened. "Absent a review process which adheres to mandated legal standards for reprisal investigations, the protections remain weak with minimal chance for a complainant to have a reprisal complaint substantiated," read one of the conclusions in the suppressed inspection. "From the data it appears PPD-19 has had no impact on Agency reprisal investigations and/or protections for complainants making protected disclosures."

Rob Johnson, the former deputy IC IG under McCullough, broadly confirmed the findings in an interview with The Daily Beast, attributing some of the problems to the expected growing pains in implementing a new policy.

"We saw a couple of cases from some offices that showed that they didn't speak to witnesses that they should have, or that the cases had languished," says Johnson. "And we saw cases where they took no action… Whether it was systemic or not, well, that's why we were doing the inspection."

The IC IG probe was billed as the first independent check-up on how seriously the intelligence inspector generals were taking the presidential directive, and a possible first step in setting a formal peer review process in the future. Six experienced inspectors had been chosen for the probe: three permanent members of the IC IG staff, and three more who were on

extended loan from other agencies, the Defense Intelligence Agency, the FBI, and the CIA.

Of the six, the CIA officer—we're calling him James Pars, the alias the CIA assigned him for his lawsuit—was likely the least accustomed to working in the comfortable climes of the IC IG's air-conditioned office. Cuban-American and now in his early fifties, Pars was part of the CIA's controversial Directorate of Operations, the division responsible for, among other things, carrying out covert actions abroad. A mosaic of interviews with colleagues, court filings and details in other documents seen by The Daily Beast paint a picture of a man who has seen a lot of nasty stuff over the years, serving in war zones in Iraq and Afghanistan, South American jungles, and cities like Bagdad and at least one other Middle East capital.

(Pars' lawsuit was first reported last year by the Project on Government Oversight.)

A sanitized autobiography Pars prepared in connection with his court action is riddled with staccato bursts of trauma: "… sleep deprived, and having to constantly relay threat information to appropriate entities…"; "… the direct line of fire for one rocket which must have missed my exact location by meters as it tore through our living quarter…" , "… helicopters which had to take evasive maneuvers and discharge flares because of a perceive threat…" "… a leaking casket by my feet and two decomposing dead bodies in body bags not far from me…" The anecdotes, shorn of locations and dates, don't lend themselves to easy verification, but a former intelligence colleague confirms the gist of it. "He understands what happens in the field. He's been in the mud and blood."

There are notes of regret in Pars' subjective career rundown—particularly over the long stints away from his wife and young daughter—but few traces of resentment or personal grievance. That is, until he recounts, with agonizing precision, two occasions when he clashed with a superior, and felt mistreated by the CIA's bureaucracy afterward. The first incident in 2009 ended with him being sent home from a long-term assignment in South America. The second, and the one that ultimately led to his lawsuit, began in

December 2014 when he was made the CIA's deputy chief of base at a U.S. military site that Pars doesn't name, but which matches the sprawling Bagram Air Base in Afghanistan.

At Bagram, Pars had issues with his new boss, the chief of base, who he believed was running her command "like a college dormitory," as Pars later wrote in a court filing. She allegedly adopted favorites within her staff, and placed "her personal needs of cooking, baking, socializing, entertainment, exercise and shopping above the needs of the mission, often going days and sometimes more than a week without meeting with key personnel."

Pars' most serious complaint charged that the base chief frequently led her personnel on unnecessary errands—"food, shopping or to the gym"—that took them through parts of the base hit frequently by Taliban rocket fire; one such excursion allegedly crossed a flight ramp that was hit by a rocket just 10 minutes later.

Without more information it's hard to weigh the merits of Pars' complaint, and his version of events contains obvious echoes of longstanding gender stereotypes. But under PPD-19 the relevant question isn't whether Pars' concerns were well founded, completely imagined or something in between. Only whether he faced retaliation for reporting them.

Following procedure, Pars sent his concern up the chain of command. Word of his complaint got back down to the base chief, who allegedly retaliated on a scale that ranged from the petty—assigning him to duty as the compound "noise monitor"—to the serious, writing a critical performance review of Pars faulting him for poor communication skills and lack of leadership. Soon after, the CIA's station chief in Afghanistan issued a "short-of-tour" cable reporting that Pars no longer had the confidence of the chief of base. The cable cut short Pars' one-year detail after four months, and sent him home to Virginia with a reduction in take-home pay.

Upon his return, Pars spent months applying for new CIA assignments that would fit his experience and qualifications, according to his lawsuit, but

with the poor performance review and short-of-tour cable on his record, he was rejected again and again. His finances went to ruin, as did his family life; his wife left the country, taking their daughter with her. Pars appealed to the Equal Employment Opportunity office for aid, and worked through the CIA bureaucracy to try and clear his name. He finally lodged a whistleblower reprisal complaint in April 2015.

While waiting for the reprisal investigation to run its course, he applied to a detail that would take him outside the CIA for a while. In September 2015, Pars reported for work at a Reston, Virginia, office park that houses the office of the Intelligence Community Inspector General.

Pars worked as an inspector at the office for nearly a year before he was recruited onto the team that would examine whistleblower retaliation issues. It was a delicate inspection from day one. The intelligence OIGs had recently lost enthusiasm for the PPD-19 whistleblower protection regime, after the very first reprisal case to reach an appeal panel was decided by an independent review board.

In that case, the whistleblower claimed that the NSA's own inspector general, George Ellard, had retaliated against him for reporting wasteful spending on a conference. The Defense Department's OIG ruled against the whistleblower, but the decision was reversed on appeal. In the aftermath, an incensed NSA director Mike Rogers fired Ellard.

"That really did tarnish the IGs perception of PPD-19," says Irvin McCullough, an investigator at the nonprofit Government Accountability Project (and the son of the former IC IG). "They thought the first case would be a manager, and instead it was an IG. They didn't like that."

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frequently led her personnel on unnecessary errands—'food, shopping or to the gym'—that took them through parts of the base hit frequently by Taliban rocket fire."

At a setup meeting for the whistleblower inspection on Sept. 1, 2016, Jeanette McMillian, the IG's general counsel, suggested the inspection should focus on the five largest intelligence agencies—CIA, NSA, NRO, NGA, and DIA—as well as the Office of the Director of National Intelligence, according to an official memorandum memorializing the meeting seen by The Daily Beast. She added that PPD-19 might go away after the next president was sworn in, and, in a departure from protocol, urged the inspectors to conduct a quick evaluation that would end by Inauguration Day and reach a positive conclusion. "Conducting a review and affirming that PPD-19 is working would help to continue these protections with a new presidential administration," reads the memo, paraphrasing McMillian.

Continuing in that vein, McMillian noted that a positive finding would also provide a nice send-off for departing Director of National Intelligence James Clapper, according to the memo. Clapper's term had largely been defined by the Edward Snowden revelations, and he was a staunch supporter of PPD-19, hoping that clear, protected avenues would encourage American spies to keep their complaints in the intelligence family instead of in the press. (Contractors like Snowden aren't covered by PPD-19, but a measure renewed by Congress last month offers contractors similar protections.) McMillian expressed the view that "an evaluation that affirms that PPD-19 is working would be a 'feather in the cap' for DNI Clapper, and a good way to send DNI Clapper on his retirement," according to the memo.

The IG officially kicked off the inspection in early October 2016, and the six inspectors, including Pars, began conducting interviews inside the agencies

(the three inspectors on joint detail were recused from the interviews inside their home agency), gathered the procedures, forms, and manuals used in reprisal cases, and collected and crunched the internal numbers.

Two months later, Pars quietly filed his retaliation lawsuit against the CIA.

Getting into court is a complicated process for an undercover CIA officer. Pars first had to receive his agency-assigned alias, and hire a lawyer who had, or could get, a security clearance—in this case, Washington, D.C., employment law attorney Susan Kruger. “I sent the complaint to be reviewed by the CIA first, because I didn’t want to file something that contained information that was secret,” said Kruger. “So you might say they were on notice.”

When the lawsuit finally hit the docket in December 2016, some 630 days had elapsed since Pars lodged his reprisal complaint—two-and-a-half times the 240-day limit endorsed by PPD-19. And still there was no decision. Without an OIG ruling one way or the other, Pars couldn’t appeal to the IC IG (where he worked) for an external review board, for the simple reason that there was no ruling to appeal. It’s PPD-19’s Catch-22. “We just wanted them to take the first step and complete their investigation,” Kruger said.

For whatever reason, though, Pars didn’t tell his superiors that he was suing the CIA for whistleblower retaliation at the exact same time that he was serving on a large-scale inspection of the same.

By February, it was clear that the results of that inspection would be a feather in nobody’s cap. The data alone was troubling. The inspectors general at the six agencies had received 190 allegations of reprisal from 2010 through 2016, according to unclassified memoranda from the inspection seen by The Daily Beast. Less than half, 61 complaints, had been investigated, and of those 57 were ruled unsubstantiated.

The NSA had received 56 of the retaliation complaints and investigated 12; the CIA got 62, investigated 13 and shunted 21 to other offices, primarily Equal Employment Opportunity. The Defense Intelligence Agency, or DIA,

received 50 complaints, and investigated 19. In the entire batch of 190 cases, only once did an OIG find in favor of the whistleblower. That was in a DIA case that took 742 days to complete. Other cases remained open longer. One complaint from 2010 was still waiting for a ruling.

Beyond the numbers, the inspectors found endless obstacles to effective whistleblower protection in the spy agencies, according to documents from the prove. There was no clear standard for conducting reprisal investigations; even the standard of proof—probable cause? preponderance of the evidence?—was murky to the OIGs. The investigation manuals at most agencies gave retaliation probes only cursory attention. There were mixed incentives in play: The primary metric for weighing an OIGs effectiveness was how much money the office saved taxpayers through its waste and fraud investigations, and a successful whistleblower claim could cost the government money in the form of back wages or attorneys fees. Some inspectors complained that reprisal cases were too difficult and time consuming compared to other OIG tasks, and even the most dedicated investigator might struggle to definitively prove a connection between an intelligence worker's subpar performance review, reduced security clearance or missed promotion to their prior whistleblowing.

In March the inspection moved into the final stage and the team was preparing the official report, earmarked for Donald Trump's newly confirmed director of national intelligence, Daniel Coats. Copies would have gone to all the intelligence IGs, as well, according to Johnson, and probably to Congress. A public release was also on the table.

Instead, it went nowhere.

In early April, rumors of Pars' lawsuit reached the IG IC's office. Under questioning, Pars acknowledged he was the pseudonymous plaintiff in the case. Stone immediately removed Pars from the inspection and sent him back to the CIA.

Pars wasn't a zealot, and his work was always diligent and thorough, say former colleagues. But removing him from the project was largely uncontroversial. "We have a standard in the IG to not only avoid a conflict of interest, but to avoid the appearance of a conflict of interest," Johnson says, and Pars wouldn't have been permitted to work on the inspection if they'd known he had a whistleblower retaliation complaint pending at CIA.

But Stone's next action was more puzzling. The following day he ordered the entire inspection halted, according to sources from the agency. Data, files, memos, charts, and graphs were locked down and work on the final report stopped on a dime. The official explanation was that the inspection had been tainted by Pars' involvement. But even now questions loom over the decision.

Johnson says there's virtually nothing a single inspector could do to contaminate a report that relies heavily on verifiable numbers. "Everything has to be backed up with data… There's not a lot of opinion on those reports." Some former IC IG officials believe that Stone used the Pars affair as an pretext to kill an inspection that was producing inconvenient results. "Pars was told to cease and desist and they walked him out the door and buried the program," says one former IC IG official who worked with Pars. "They pulled the carpet out from under him because they wanted an excuse to quash the report."

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Though the whistleblower report never appeared, last October the nonprofit Project on Government Oversight got ahold of a leaked copy of one of the inspection memos. They quoted from it in an article. "A complainant alleging reprisal for making a protected disclosure has a minimal chance to have a complaint processed and adjudicated in a timely and complete manner."

Calling the language "stark," Dianne Feinstein brought up the memo the next day in a tense exchange at the Senate confirmation hearing for

Christopher Sharpley, the acting CIA inspector general and Trump's pick for the permanent position.

"I would ask that you provide a copy of that document to our office, the Intelligence Committee's office," she told Sharpley.

"Senator, I am unfamiliar with that document," said Sharpley, seemingly taken aback. "I am not aware of its contents… The IC IG did not make me aware of it as acting IG at CIA. This is the first I'm hearing of this particular program."

One source familiar with the abortive whistleblower inspection says this particular memo was written by Pars.

Pars' lawsuit is still pending, but the Justice Department has asked the court to dismiss the claim, pointing to language in PPD-19 that more or less says the directive can't be used as the basis for a lawsuit. After the drama in the IC IG, Pars' future in the CIA is even dimmer. Two sources with knowledge of the matter say the agency recently referred Pars to an executive review board as the first step to possibly terminating his service to the CIA. Attorney Kruger said she couldn't comment on anything beyond the lawsuit, but after a pause added, "In general we believe that the CIA is taking further actions in retaliation against him."