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# Intelligence, defense whistleblowers remain mired in broken system

BY MARISA TAYLOR

McCLATCHY WASHINGTON BUREAU

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 spy 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's office, which is supposed to investigate whistleblower retaliation, never responded to her complaint about her 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.



**Video:** Ilana Greenstein says she tried to blow the whistle on mismanagement at the CIA, but the reaction from the intelligence agency she trusted was to suspend her clearance and order her to turn over her personal computer. (<http://bit.ly/1wyOtnK>)

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

Since the terrorist attacks of Sept. 11, 2001, 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 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 whistleblowers.

**'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."

The president rejected such criticism of the whistleblowing system after National Security Agency contractor Edward Snowden referred to the prosecution of an NSA whistleblower as one reason he 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 say they 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 four retaliation claims among them, 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," said James A. Protin, counsel to the NSA inspector general. "There are a lot of reasons that action may have been taken that had nothing to do with them talking to the IG."

Gaps remain in legal protections despite the president's revisions. For example, intelligence contractors 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 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 example, 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 captured on video urinating on dead Taliban fighters in Afghanistan.

The officials said the inspector general’s office 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,” said one official. “They cherry-pick the

## How retaliation cases unfold

A McClatchy investigation found daunting obstacles for defense and intelligence whistleblowers when they allege retaliation by their managers.

These include a battle between investigators and managers at the Pentagon inspector general’s office over the handling of reprisal claims; an entrenched and pervasive anti-whistleblower attitude; and delays that discourage even the most persistent whistleblower.

*Here is how the process works:*

### FIRST: A whistleblower feels retaliated against

After calling out government misconduct to the appropriate officials inside their agency or Congress, some whistleblowers still face retaliation from superiors.

Perceived reprisal following reporting bad behavior often includes:

- Dismissal from work
- Blocked career advancement
- Suspended or revoked security clearances



**Interactive:** Graphic shows daunting obstacles defense and intelligence whistleblowers face when they allege retaliation by their managers (<http://bit.ly/1wyOtnK>)

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 Rymer 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 raised 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, R-Iowa, who has 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 that 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.

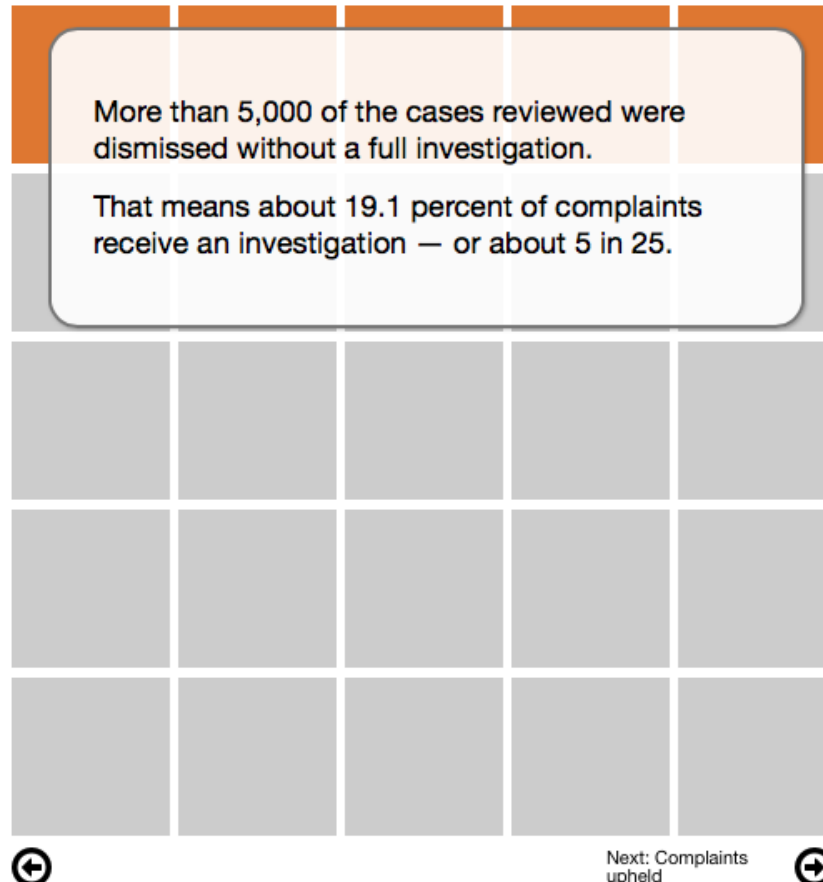
In fact, whistleblowers may experience years of retaliation even after their claims are substantiated. George Sarris, a former mechanic at Offutt Air Force Base in Nebraska, first blew the whistle on improper maintenance of reconnaissance planes used in Iraq and Afghanistan in 2004. Many of his claims 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 this year.

“I would advise people to consider their position in life to see if they can endure an attack on

## How Pentagon reprisal complaints turn out

The Defense Department inspector general sides with whistleblowers once for every 25 claims of retaliation.



**Interactive:** Graphic shows how Pentagon reprisal complaints turn out (<http://bit.ly/1wyOtnK>)

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 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 is retired, handled a major whistleblower case during her tenure but refused to comment on it.

She did say 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 starting an inquiry after meeting secretly with four top officers of the National Reconnaissance Office, which oversees spy satellites.

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

Mashiko continued in her position for another year, and then retired honorably. However, the careers of some who spoke up suffered, according to people familiar with the matter, who spoke on the condition of anonymity 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 findings that Mashiko had used her government car improperly as a “personal limousine service.”

The high-level officers told the inspector general that 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 recently released Senate Intelligence Committee report on the agency’s detention and interrogation of terrorism suspects overseas.

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 changed 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 example, says it hasn’t substantiated any of the eight whistleblower retaliation complaints it has 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 that 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 is 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

## Retaliation claims

Five intelligence inspectors general have only substantiated an estimated four whistleblower retaliation claims in the last decade, prompting critics to charge the low number demonstrates the offices are not independent enough to handle the cases.

**Central Intelligence Agency:** Received 77 reprisal claims, of which it says only 10 were from potential whistleblowers. Has not substantiated any claim.

**National Security Agency:** Received 35 claims and substantiated two.

**National Geospatial-Intelligence Agency:** Received 21 claims and substantiated one saying it can only track back to 2007 but it does not believe there are any others.

**National Reconnaissance Office:** Received two and substantiated none of them.

**Defense Intelligence Agency:** Does not have number of claims available. Substantiated one.

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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, said 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



T.J. KIRKPATRICK /MCCLATCHY

**Thomas Drake, a former senior official at the NSA, seen at his home in Glenwood, Md. on Dec. 16, 2014, cooperated with a Pentagon inspector general inquiry in 2002 into allegations of waste and mismanagement of an NSA surveillance program known as Trailblazer.**

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 cases 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, 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.



**Video:** Drake says he is emblematic of the problems with the whistleblower system for defense and intelligence employees. He says he was retaliated against by the agency because he blew the whistle on massive waste in a program known as Trailblazer. The Pentagon inspector general's office rejected his claims but has yet to make its findings public.  
(<http://bit.ly/1wyOtnK>)

"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 report.*

#### SIDEBAR

## For whistleblower vet, winning is a long-elusive quest

BY MARISA TAYLOR

McCLATCHY WASHINGTON BUREAU

WASHINGTON — Still reeling from combat injuries, Mike Helms opened the letter from the Pentagon, afraid of more bad news.

Military doctors had already told him he couldn't get treatment for a head injury he'd sustained in a blast in Iraq. After the intelligence offi-

cer complained to Congress, he was fired.

But reading the notice, Helms realized it was the best outcome he could have hoped for: Investigators had concluded the military had illegally retaliated against him for blowing the whistle.

"Finally," he told his lawyer that day in 2010.



McClatchyDC

“This is going to be fixed.”

But it wasn't. More than four years later, he still can't get his old job back or even a new one after the Army revoked his security clearance. He still struggles to get proper medical treatment.

The case illustrates the perseverance required of defense and intelligence whistleblowers and the hurdles they encounter despite initiatives aimed at improving protections for them. Most recently, the Pentagon inspector general's office has been accused of changing findings in his case and several others in a way that's detrimental to whistleblowers.

“According to President Obama, everything should be hunky-dory for whistleblowers,” said Helms, a Georgia native who lives in a community outside Fort Knox, Ky. “Well, it's not.

“The whistleblowing system has ruined my life. I'm 38 years old, and I'm wondering whether I have to move back in with my mother.”

Bridget Ann Serchak, a spokeswoman with the Pentagon inspector general's office, said she couldn't comment on specific cases because the office had to protect the privacy of employees who made the claims.

In response to the overall allegations that her office had improperly changed findings, she said cases underwent a “rigorous quality-review process” to ensure that they were “accurate and complete, legally sufficient and professionally prepared.”

Helms' troubled journey through the whistleblower system began in 2004, when he was wounded in Iraq as a gunner and transported to Walter Reed Army Medical Center.

Although he'd been hit by a roadside bomb while in an unprotected Humvee, the hospital refused to admit him. The hospital told Helms he couldn't be treated there because he wasn't active-duty military but a civilian for the Army Intelligence and Security Command.

So he slept on the floor of his first sergeant's guesthouse.



WILLIAM DESHAZER / MCCLATCHY

**Mike Helms, 38, of Radcliffe, Ky., was denied treatment at military hospitals after being hit with a roadside bomb while serving as a gunner in Iraq. Helms alerted Congress to the inadequate medical care he and others received.**

“Mr. Helms continued to be denied treatment,” records on his case say.

Helms began contacting members of Congress and eventually received treatment. In 2007, he testified before a closed House Armed Services Committee hearing on the matter. The committee later issued a report that confirmed the problems he'd raised with military civilian employees being improperly denied medical treatment for combat injuries.

A year after he testified, the Army accused him of putting adult pornography on a classified network that he and others used. Officials also claimed that he'd installed an unauthorized version of computer software. His clearance was suspended, then revoked, and he was fired in 2009.

Unbeknown to Helms at the time, a military computer-forensics team had concluded that there was no evidence he'd placed pornography on the network, according to military documents.

Helms appealed to an administrative employee complaint panel, which declined to assess his whistleblower claims. However, the panel said the Army had the right to suspend him indefinitely.

Four months later, the Pentagon inspector general's office concluded there was evidence he was improperly denied medical treatment and that the firing was in retaliation for his disclosures to Congress.

"As an emergency essential employee, Mr. Helms was entitled to elect treatment at a military treatment facility for no cost," the 2010 report said. "Mr. Helms was denied treatment at military treatment facilities on several occasions from 2004 to the present."

The investigators also found "flaws" in how the Army investigated the porn allegations, their report said, including a "material misstatement of fact."

"The manner in which the investigation was conducted was called into question," they wrote. "We recommend that you consider an appropriate remedy with respect to Mr. Helms."

As part of a partial settlement, the Army dropped the allegations and agreed that it wouldn't use the claims against Helms in the future. Two years later, however, he went back to the Pentagon inspector general's office. His complaint was essentially the same, but now he alleged the retaliation had lasted longer because he still didn't have his security clearance or his job back.

This time, the inspector general's office came to a very different conclusion. While staff investigators concluded that he'd been retaliated against a second time, the general counsel and other supervisors are accused of overturning their findings and rewriting the report, McClatchy has learned from multiple sources who include congressional staffers.

According to a copy of the final report, the new investigation focused on the computer software allegations that had been dropped earlier. It also cited evidence presented by the Army that investigators had discarded in the first review.

And in the end, it found he wasn't retaliated against.

"I was shocked. It was a 180-degree change," said Helms, who owes thousands of dollars in legal fees. "To me, this is corruption of the system."

After hearing of the allegations, U.S. Rep. Jackie Speier, D-Calif., told Inspector General Jon Rymmer she was concerned that his office had handled Helms' case improperly.

"It is my understanding that your investigators DID find that Mr. Helms had been retaliated against for these disclosures but that their conclusions were altered over their protests," she wrote in a letter obtained by McClatchy.

"Your office is on the front line of enforcing these protections, and accusations that the integrity of your retaliation investigations are improperly compromised cut to your core competency to serve the American public and the warfighter."

Serchak, the inspector general's spokeswoman, said in response to the allegations that managers and lawyers routinely reviewed findings. As a result, reports are "edited, findings modified and, when warranted, conclusions changed."

"The process is a collective process . . . reflecting the highest standards for quality, independence and professionalism," she said.

Despite the reversal, Helms persists. He petitioned the intelligence community inspector general, who oversees a new appeals panel set up under the president's expanded whistleblower protections. So far, he's waited more than three months.

"Sometimes I feel like giving up," he said recently, after his latest round in the dozens of rejections he's gotten from potential employers. "But at this point, my future depends on what happens."

*Samantha Ehlinger and Tish Wells contributed to this report.*