

Ryan Zinke  
Member of Congress

September 7, 2016

House Committee on Oversight  
and Government Reform

*Subcommittee on National Security*

Good Afternoon, Chairman DeSantis, Ranking Member Lynch, and distinguished members of the Subcommittee on National Security, I would like to thank you for the opportunity to testify before you today on the important issue of the Department of Defense Office of Inspector General's (DoD IG) Military Whistleblower Reprisal Investigations.

In my testimony today I would like to focus my attention on the DoD IG investigations of Rear Admiral (RDML) Brian Losey during his time as Commander of Special Operations Command Africa. Beginning with an anonymous complaint in 2011, the DoD IG held five separate investigations into accusations of reprisal against RDML Losey, which has taken more than four years to complete.

One of these investigations involved the alleged reprisal against a suspected whistleblower under his command. During this investigation, the office of DoD IG seemed to display a blatant mishandling and misrepresentation of evidence in both their preliminary and final report.

Following numerous witnessed accounts of misconduct by the Complainant from RDML Losey and others, the Security Officer for Special Operations Command Africa ordered a Command Directed Investigation (CDI) into the Complainant's actions. During the preliminary report, the DoD IG blatantly misrepresented the CDI by stating that "... the IO [Investigating Officer] completed the CDI and determined that all 10 allegations were not substantiated as alleged;" A statement that was eventually proven to be completely false. The CDI found that three allegations were substantiated, and 2 of the allegations were partially substantiated. Additionally, the CDI recommended that the Complainant should be issued a negative referral on an Officer Performance Report and administrative discipline. Acting on the recommendations, RDML Losey relieved the Complainant of his position and reassigned him to a different position in a different geographical combatant command that he believed to be commensurate of his rank.

Although the DoD IG amended their language in the final report, the DoD IG still chose to dismiss the Complainant of any wrongdoing, dismissed the findings and recommendations of the CDI and claimed that the administrative actions taken by RDML Losey constituted as an act of reprisal. In reality, he was simply holding a subordinate accountable for his own actions and following the guidance of the report.

In the same investigation, DoD IG claims: "... during this investigation, RDML Losey specifically accused Complainant of signing three letters of retention for Air Force officers using the autopen."

However, this supposed accusation by RDML Losey is not found in any of his DoD IG interview transcripts. According to the DoD IG, this accusation arose from an unrecorded conversation the DoD IG investigator had with RDML Losey outside of the official interview. The DoD IG should not be using unrecorded conversations as evidence that cannot be corroborated or confirmed. This unprecedented action has no legal merit and is completely inappropriate behavior by the DoD IG.

Over the course of the five investigations of acts of reprisal by RDML Losey, the DoD IG was in blatant violation of military law and United States code. Title 10 U.S. Code Section 1034 clearly

states that the DoD IG is required to complete their investigations in 180 days or less. Unfortunately four out of the five investigations completed by the DoD IG were in complete disregard for this 180 day deadline. Additionally, per Title 10 U.S. Code Section 624, an active investigation cannot hold statutory promotions for more than 18 months. After being confirmed by the Senate for promotion, RDML Losey was to be promoted to the rank of Rear Admiral (Upper Half) on April 1, 2013. On March 31, 2015, the DoD IG informed the Secretary of the Navy that RDML Losey was no longer a subject in the 5<sup>th</sup> and final investigation; one day shy of his promotion being held up by the DoD IG for 24 consecutive months, far longer than the 18 month mandate.

These blatant violations of the law by the DoD IG not only cheapen the findings of their reports, but erodes the trust that the public and the military have in their government institutions. If the DoD IG lacks the ability to simply follow deadlines in investigations or use evidence that cannot be corroborated, then it raises questions as to what other laws or guidelines they simply choose to disregard while conducting their investigations.

In conclusion I would like to call the attention to a memo that former Secretary of Defense Chuck Hagel penned called Integrity of the Military Justice Process. In it he stated “Central to military justice that those involved in the process base their decisions on their independent judgment... Service members and the American people must be confident that the military justice system is inherently fair and adheres to the fundamental principle of due process of law.” Regardless of the outcome and conclusions of the DoD IG investigations in the case of RDML Losey, I believe the process and the manner in which those investigations were conducted failed to uphold to the standards that the American public and the service members expect.

RDML Losey is a personal friend and fellow soldier that I had the privilege of serving with in the US Navy SEALs. He is an honorable man, whose service, sacrifice and even promotion has been besmirched and delayed by an overextended and poorly run investigation. In the end, the one at fault was able to hide behind whistleblower status at the expense of a good man who was simply doing his job. Chairman DeSantis, Ranking Member Lynch, our government must be better than this.

Thank you for your time and willingness to look into this important matter.